



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

Prishtina, 12 January 2022
Ref. no.: AGJ 1870/22

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

Case no. KO93/21

Applicants

**Blerta Deliu-Kodra and 12 other deputies
of the Assembly of the Republic of Kosovo**

**Constitutional review of the Recommendations no. 08-R-01
of the Assembly of the Republic of Kosovo, of 6 May 2021**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Referral was submitted by Blerta Deliu-Kodra, Ariana Musliu-Shoshi, Bedri Hamza, Bekim Haxhiu, Eliza Hoxha, Elmi Reçica, Ferat Shala, Floretë Zejnullahu, Ganimete Musliu, Hajdar Beqa, Memli Krasniqi, Mërgim Lushtaku, and Xhavit

Haliti, all deputies of the Assembly of the Republic of Kosovo (hereinafter: the Applicants).

2. The Applicants have authorized the deputy of the Assembly of the Republic of Kosovo (hereinafter: the Assembly) Blerta Deliu-Kodra, to represent them in the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

Contested act

3. The Applicants contest Act no. 08-R-01, adopted by the Assembly on 6 May 2021, entitled “*Recommendations*” (hereinafter: the contested Act).

Subject matter

4. The subject matter of the Referral is the constitutional review of the contested Act of the Assembly, which the Applicants allege to have been issued in violation of Articles: 3 [Equality Before the Law], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 119 [General Principles], 120 [Public Finances], 122 [Use of Property and Natural Resources] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 14 (Prohibition of discrimination) of the European Convention on Human Rights (hereinafter: ECHR), and its protocols, respectively Article 1 (Protection of property) of Protocol no. 1 and Article 1 (General prohibition of discrimination) of Protocol no. 12, as well as Articles 2 and 7 of the Universal Declaration of Human Rights (hereinafter: UDHR).
5. The Applicants request the Court to impose an interim measure suspending the implementation of the contested Act, until the final decision on the Referral.
6. The Applicants also request that a hearing be held.

Legal basis

7. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 42 [Accuracy of the Referral] and 43 [Deadline] of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 32 [Filing of Referrals and Replies] and 74 [Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law] of the Rules of Procedure no. 01/2018 of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

8. On 14 May 2021, the Applicants submitted the Referral to the Court.

9. On 17 May 2021, the President of the Court Arta Rama-Hajrizi appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka-Nimani and Nexhmi Rexhepi (members).
10. On 17 May 2021, based on paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Vice-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21, of 17 May 2021 of the Court, it was determined that Judge Gresa Caka-Nimani assumes the office of President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.
11. On 18 May 2021, the Court notified the Applicants of the registration of the Referral. On the same date were notified: The President of the Republic of Kosovo; The President of the Assembly, who was requested to deliver a copy of the Referral to all members of the Assembly; the Prime Minister of the Republic of Kosovo and the Ministry of Economy; Ombudsperson Institution; the Secretariat of the Assembly, which was requested to submit all documentation regarding the approval of the contested Act; Kosovo Electricity, Transmission System and Market Operator (hereinafter: KOSTT). The interested parties, on that occasion, were notified that their comments, if any, regarding the Referral could be submitted to the Court, no later than 1 June 2021.
12. On 20 May 2021, the General Secretary of the Assembly submitted to the Court the relevant documentation regarding the progress of the procedure pertaining to the contested Act of the Assembly, of 6 May 2021 (hereinafter: the Documentation of the Secretariat of the Assembly).
13. On 24 May 2021, KOSTT requested the Court to extend the deadline for submission of comments for another thirty (30) days.
14. On 25 May 2021, the Court notified the Energy Regulatory Office (hereinafter: ERO) of the registration of the Referral and was given the opportunity to submit their comments, if any, by 7 June 2021.
15. On the same date, the Court notified KOSTT that it had approved their request for an extension of the deadline for submitting a response and informed them that they could submit their comments by 14 June 2021.
16. On 25 May 2021, based on point 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of judge of the Constitutional Court.

17. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision KSH93/21, appointed Judge Bajram Ljatifi as a member of the Review Panel in place of Judge Bekim Sejdiu.
18. On 31 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision KK160/21, assigned Judge Gresa Caka-Nimani to be appointed presiding judge of the Review Panels in cases where she was appointed as a member of the Panel, including the current case.
19. On 1 June 2021, ERO requested the Court to extend the deadline for submission of comments/responses for another seven (7) days following 7 June 2021 with the reasoning for preparing the necessary materials for submission to the Court.
20. On 1 June 2021, within the set deadline, the Court received the comments from the Parliamentary Group of Vetëvendosje Movement! (hereinafter: the LVV parliamentary group), submitted by Deputy Mimoza Kusari-Lila.
21. On 1 June 2021, within the set deadline, the Court received comments/responses from the Ministry of Economy.
22. On 3 June 2021, the Court notified the Applicants of the receipt of the above comments of ERO and the Ministry of Economy and was informed of the possibility that, if they have comments on the comments received, they can submit them by 14 June 2021.
23. On the same day, the Court notified ERO that it had approved their request for an extension of the deadline for submitting a response and informed them that comments could be submitted by 14 June 2021.
24. On 7 June 2021, within the set deadline, the Court received the response with the accompanying documentation from ERO.
25. On 14 June 2021, the Court received the comments with the accompanying documentation from KOSTT.
26. On 21 June 2021, the Court notified the Applicants regarding the comments/responses of ERO and KOSTT.
27. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21, of 17 May 2021, of the Court, Judge Gresa Caka-Nimani assumed the office of the President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi completed the mandate of the President and Judge of the Constitutional Court.
28. On 8 July 2021, the Court requested the Assembly to respond to the following questions:

- (i) *What is the legal nature of the recommendations issued by the Assembly according to Article 65, point 1, of the Constitution of the Republic of Kosovo? More specifically, is the act contested [Recommendations no. 08/R-01] legally binding on the entities to which it is addressed;*
 - (ii) *What are the competencies of the Assembly of the Republic of Kosovo, according to the legislation in force towards the Public Enterprise KOSTT? More specifically, what is the legal basis, according to which the Assembly, as the sole shareholder of this Public Enterprise can authorize the latter to cover losses in the energy system?; and*
 - (iii) *According to which legal basis are the losses of the electricity system covered from the date of entry into force of Law no. 05/L - 085 on Electricity, respectively the period 2016 -2020.*
- 29. On the same day, the Court requested the Secretariat of the Assembly to submit by 22 July 2021 all supporting documentation relating to Resolution [no. 06-R-008] adopted by the Assembly on 5 June 2018.
- 30. On 15 July 2021, the Court received from the Secretariat the documents required as above.
- 31. On 21 July 2021, the Court received from the Assembly the responses to its questions, prepared by the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and the Oversight of the Anti-Corruption Agency (hereinafter: the Committee on Legislation of the Assembly) and the Committee on Economy, Industry, Entrepreneurship and Trade (hereinafter: the Committee on Economy of the Assembly) and submitted to the Court by the President of the Assembly.
- 32. On 26 July 2021, the Court notified the Applicants of the receipt of the responses to its questions, submitted by the President of the Assembly, and they were informed of the possibility to submit their comments, if any, by 6 August 2021.
- 33. On 2 August 2021, the Court submitted to KOSTT a request for responses and information on the following questions:
 - (i) *Based on the legislation in force, what are the competencies of KOSTT in relation to the issues defined in the provisions of the Recommendations no. 08-R-01 of the Assembly of the Republic of Kosovo, of 6 May 2021?*
 - (ii) *Do they constitute the only basic legal recommendations to take the actions defined in point 4 of the Recommendations, respectively covering the deviations of electricity in the four municipalities of Kosovo (North Mitrovica, Leposavic, Zubin Potok, and Zvecan) according to the solution presented and approved in a functional committee using the revenues from the own budget, funds which will be compensated by dividends or any other possible mechanism.”? and*

(iii) What are the actions you have taken in implementation of all the provisions of the above Recommendations, adopted by the Assembly of the Republic of Kosovo?

34. On 6 August 2021, the Court received comments from the Applicants regarding the response of 26 July 2021, submitted by the President of the Assembly.
35. On 16 August 2021, KOSTT submitted the responses to the Court's questions, accompanied by the following documentation: (i) Decision of the Board of Directors of KOSTT no. 210517/II-2 of 17 May 2021; and (ii) Reports submitted by KOSTT to the Assembly Committee on Economy, Industry, Entrepreneurship and Trade, on 4 June 2021, 16 June 2021, 14 July 2021, and 12 August 2021, respectively.
36. On 20 August 2021, the Court notified the Applicants of the receipt of the responses to its questions, submitted by KOSTT on 16 August 2021.
37. On 4 October 2021, the Court submitted to KOSTT a request for responses and information by 18 October 2021, as to the following (i) what is the definition and the meaning of held assets under applicable law, and also what is the legal basis for compensation of these assets from dividends or any other possible mechanism and (ii) how does KOSTT define (a) the deviations of the electricity network in relation to the agreements signed with Albania, Montenegro, and North Macedonia; and (b) the deviations or losses in electricity in the four (4) municipalities of the Republic of Kosovo (North Mitrovica, Leposavic, Zubin Potok, and Zvecan).
38. On 18 October 2021, the Court received KOSTT's response to the Court's above questions.
39. On 21 October 2021, the Court notified the Applicants of KOSTT's response, of 18 October 2021.
40. On 21 October 2021, the Court submitted a request to KOSTT for response and information by 26 October 2021, to the following question: *"What are the revenues and benefits of KOSTT as a result of KOSTT operating as an independent Regulatory Zone after the signing of the agreements?"*
41. On 22 October 2021, the Court delivered to the Assembly, respectively to the Committee on Budget, Labor and Transfers and the Committee on Management of Public Finances, respectively the response of KOSTT, of 18 October 2021 and at the same time delivered the request to respond by 1 November 2021, to the questions, as follows:

In this regard, since the Assembly of the Republic of Kosovo is the approving body of the contested act, we address you with the request that the response attached to this letter of 18 October 2021 by KOSTT be forwarded to the

Committee on Budget, Labor and Transfers and to the Assembly's Committee of Oversight of Public Finance.

Furthermore, within and depending on the competencies of these Committees, please clarify:

- If prior to the review and approval of Recommendations no. 08/R-01 of the Assembly of the Republic of Kosovo in the plenary session of 6 May 2021 of the Assembly, the Recommendation of 28 April 2021 of Committee on Economy, Industry, Entrepreneurship and Trade, was sent for opinion to the Committees on Budget, Labor and Transfers and/ or the Committee of Oversight of Public Finance;*
- If so, please provide us with relevant information in this regard; and*
- If these Committees have not given an opinion on the contested act, please let the above Committees, within and depending on their competencies and within the meaning of the Law on Public Financial Management, clarify if an opinion of these two Committees has been necessary, and also provide us with their comments regarding the letter of KOSTT, of 18 October 2021.*

42. On 26 October 2021, the Court received KOSTT's response to the Court's questions of 21 October 2021.
43. On 1 November 2021, the Court received the responses of the Committee on Budget, Labor and Transfers and the Committee on Oversight of Public Finances of the Assembly, respectively.
44. On 28 December 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same date, the Court unanimously decided that the Referral of the Applicants is admissible and that the contested Act of the Assembly (i) is in compliance with paragraphs 1, 5 and 14 of Article 65 [Competencies of the Assembly] of the Constitution; and (ii) is in compliance with Article 24 [Equality Before the Law] in conjunction with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution and Article 1 (General Prohibition of Discrimination) of Protocol no. 12 of the ECHR.

Summary of facts

45. The following summary of facts is based on: (i) the documentation attached to the Applicants' Referral; (ii) the documentation submitted to the Court by the Secretariat of the Assembly on 20 May 2021 and 15 July 2021, respectively; (iii) KOSTT documentation, submitted to the Court on 14 June 2021; (iv) ERO documentation, submitted to the Court on 7 June 2021; (v) responses submitted by the Committee on Legislation and the Committee on Economy of the Assembly, respectively submitted by the President of the Assembly and received by the Court

on 21 July 2021; (vi) KOSTT responses of 16 August 2021, 18 October 2021 and 21 October 2021, respectively; (vii) responses of the Assembly Committee on Budget, Labor and Transfers and the Committee for the Oversight of Public Finances of the Assembly, respectively of 1 November 2021.

46. Based on the above documentation submitted to the Court, it results that since 1999 the electricity consumed by consumers in the following four (4) municipalities of the Republic of Kosovo: North Mitrovica, Zubin Potok, Zvecan and Leposavic (hereinafter: four (4) municipalities in the Republic of Kosovo) has not been billed. In this regard, the Court refers to the response of ERO, submitted on 7 June 2021, which provided the chronology of factual circumstances regarding the non-billing of the electricity consumed in four (4) municipalities of the Republic of Kosovo.
47. Based on the above documentation submitted by the above public authorities, it also results that from 1999 to 2012 there is a lack of information on how the non-billing of energy was covered for consumers in the four (4) municipalities of the Republic of Kosovo and how the deviations in the electricity system were compensated and covered.
48. On 6 February 2012, the Board of ERO, by Decision [V.399.2012] decided that consumers who did not live in four (4) municipalities of Republic of Kosovo through regular bills be charged the additional amount of 3.5% in order to cover losses in these four (4) municipalities.
49. Based on the documentation submitted by KOSTT and ERO, it turns out that in 2013 they started the preparations for the negotiations of KOSTT's membership to the European Network of Transmission System Operators for Electricity (hereinafter: ENTSO-E), as a body of the Regional Group of Continental Europe (hereinafter: RGCE).
50. On 30 March 2016, the Government of the Republic of Kosovo and the Government of the Republic of Albania signed an Agreement for an indefinite period of time for the exchange and/ or allocation of regulatory reserves between the Transmission System Operator TSO Sh.a of the Republic of Albania and KOSTT Sh.a, of the Republic of Kosovo.
51. Article 1 (Object of the Agreement) of this Agreement provides as follows:

“This Agreement provides for the cooperation between the Government of the Republic of Albania and the Government of the Republic of Kosovo, through the Agencies responsible for each country for the exchange and/ or allocation of the regulatory reserve between the Transmission System Operator TSO sh.a. and the Transmission System and market Operator KOSTT sh.a.”
52. On 1 July 2016, the President of the Republic of Kosovo promulgated Law no. 05/L-085 on Electricity (hereinafter: the Law on Electricity) whose scope, inter alia, includes: *“Common rules for the production, transmission, distribution, supply,*

trade and organized market of electricity, as part of the regional and European electricity market, and sets out the rules relating to the access of the parties to the network, the obligations for public services, consumer rights and conditions of competition.”

53. Article 13 of the above Law on Electricity stipulates that the shareholder rights of the Public Enterprise KOSTT are exercised by the Assembly of the Republic of Kosovo.
54. On 30 March 2017, the Assembly adopted Law no. 05/L-151, on the ratification of the above-mentioned Agreement between the Government of the Republic of Kosovo, represented by the Ministry of Economic Development, and the Council of Ministers of the Republic of Albania, represented by the Ministry of Energy and Industry on the exchange and/ or allocation of regulatory reserves between the Transmission System Operator TSO Sh.a of the Republic of Albania and KOSTT Sh.a. of the Republic of Kosovo.
55. On 13 April 2017, ERO changed the KOSTT License [ZREE/Li_15/12] with License [ZREE/Li_15/17] as electricity transmission network operator. Consequently, KOSTT was authorized to start procurement of electricity to cover electricity losses in four (4) municipalities of the Republic of Kosovo. Pursuant to Article 5 (Loss Compensation in Northern Kosovo) of this License it is determined that:

“1. When required by any Decision or Instruction issued to the Licensee by the Regulator, the Licensee shall provide electricity to compensate for losses arising from energy utilized but not paid for by consumers in the northern part of Kosovo.

2. In its regulatory accounts, the Licensee must ensure that it separately records any costs incurred by it for the purchase of energy, according to paragraph 1 of this Article. “
56. On 13 June 2017, the Ombudsperson Institution, *ex officio*, issued Report [No.265/2017] with recommendations regarding the billing of electricity in the additional amount of 3.5%, which was charged as a burden to electricity consumers who did not live in the four (4) municipalities mentioned above.
57. The above report of the Ombudsperson Institution contained recommendations for stopping billing practices for electricity spent in four (4) municipalities of the Republic of Kosovo and consequently required that in cooperation with ERO and the Kosovo Electricity Distribution Company sh.a (hereinafter: KEDS) to find an alternative way to avoid losses in the north of the country, treating all consumers equally according to constitutional and legal norms. Consequently, by this Report it was recommended that ERO in accordance with Law no. 05/L-084 on the Energy for the Regulator issue a decision through which the reduction of electricity tariffs for consumers would be adopted.

58. On an unspecified date, the Ombudsperson Institution filed a lawsuit with the Basic Court in Prishtina (hereinafter: the Basic Court) requesting the annulment of Decision [V.399.2021] of 6 February 2012 of ERO and at the same time it requested postponement of this Decision until a decision on the merits of the case is taken. The Basic Court by Judgment [A.no.1337/2017] of 11 September 2017 suspended the above-mentioned Decision, of 6 February 2012.
59. On 30 November 2017, ERO delivered KOSTT the notification on the enforcement of the Judgment of the Basic Court on the suspension of Decision [V.399.2012], of 6 February 2012, of ERO. Consequently, ERO suspended KOSTT the revenues for covering electricity costs for the four (4) above-mentioned municipalities.
60. Based on the documentation received from KOSTT, it results that starting from 2 December 2017, as a result of the suspension of revenues by ERO and the non-billing of electricity for consumers in the four (4) above-mentioned municipalities, KOSTT did not manage *“to procure energy to cover electricity losses in four (4) municipalities and consequently consumption in the northern part of Kosovo is registered as a deviation of Kosovo to the Continental European system.”* Consequently, in order to avoid the disconnection of the system of the Republic of Kosovo from the transmission network of the Continental Europe, KOSTT addressed the Government with a request for the allocation of budget funds to cover the costs of electricity supply in four (4) municipalities of the Republic of Kosovo.
61. On 5 March 2018, the Government by Decision no. 02/34 allocated the amount of 1,000,000 (one million) euros for *“covering the costs of electricity supply in the four northern municipalities of Kosovo.”* In point 2 of this Decision it was determined that *“The funds from point 1. of this decision are allocated from the Unforeseen Expenditures with code 13100, the category of Reserve Expenditures, and are transferred to the Ministry of Finance under the Treasury sub-program with code 11200, the category of expenditures, subsidies and transfers. These funds from the Treasury are transferred to the bank account designated by KOSTT.”*
62. On 5 June 2018, as a result of the request for interpellation of the Prime Minister of the Republic of Kosovo, submitted by the Parliamentary Group of Lidhja Demokratike e Kosovës regarding the above decision of the Government of 5 March 2018, the Assembly issued Resolution no. 06-R-008 by which it was determined that:
 - I. *The Government of Kosovo is obliged to come up with a proposal for resolving the situation within three months.*
 - II. *KOSTT and ERO to compile the compensation plan of KOSTT losses, caused by the ERO Instruction for electricity supply in the municipalities of northern Kosovo.*
 - III. *The Government of Kosovo should not continue the dialogue with Serbia on any issue related to energy, without implementing the existing agreement.*

IV. A working group, consisting of the Assembly of Kosovo, the Government of Kosovo, KOSTT and ERO to be established to coordinate actions to overcome the situation.

63. On 20 August 2018, the Board of ERO by Decision [V.1019-2018] *“adopted the loss reduction target and the loss curve allowed for the second regulatory period 2018-2022 for the transmission network (TSO) and distribution network (DSO) which will start from the realized level of losses in the year 2017.”* Point 4 of this Decision stipulated that: *“The loss reduction target and the allowable loss curve do not apply to the amount of non-billed energy in the four (4) municipalities in the north of the Republic of Kosovo.”*
64. On 15 February 2019, ERO by Decision [V.1107.2019] certified KOSTT as an independent electricity transmission operator, and in point II of this decision it was verified that: *“KOSTT SH.A., has met the criteria of property unbundling and decision-making independence, in accordance with the laws of Kosovo and the Energy Community, which recognized the energy borders throughout the Republic of Kosovo, and in this case paved the way for KOSTT to sign the agreement for connection to ENTSO-E [...]”*
65. On 14 March 2020, the Assembly adopted the Law on the 2020 Budget, which, among other things, provided *“also the allocation of funds, of ten (10) million euros for KOSTT, to cover deviations in electricity”* in four (4) municipalities of the Republic of Kosovo.
66. On 20 April 2020, as a result of the vote in ENTSO-E, as a body of the RGCE, was adopted the signing of the Connection Agreement of KOSTT with the synchronous zone of Continental Europe (hereinafter: the Connection Agreement with ENTSO-E). According to this Agreement, KOSTT and the Republic of Kosovo join the Kosovo-Albania Energy Systems Regulatory Block. From the moment of implementation of the new Connection Agreement, it is foreseen that KOSTT will operate as an independent regulatory zone within the AK Block with the Republic of Albania, within the synchronous zone of Continental Europe.
67. In July 2020, the Chief Executive Officer of KOSTT signed the Connection Agreement with ENTSO-E.
68. Based on the documentation received by the Court, the Connection Agreement entered into force on 28 October 2020, while its implementation started on 14 December 2020. Article 13, paragraph 2, of the Connection Agreement stipulates that: *“In the case of a breach by a Party, caused by simple or gross negligence or intentional error or fraud, the claiming Parties shall be entitled to claim compensation from the predetermined Party for any damage, payment fee or expense which may be considered as direct damage deriving from, or resulting from the breach.”*

69. Starting from 14 December 2020, KOSTT started the implementation of the Connection Agreement and as a result, KOSTT *“started to operate as an independent regulatory zone within the AK Block within the synchronous zone of Continental Europe. The allocation of interconnection capacities and the management of congestion of the interconnection network will be realized within the structure of this block and not by EMS (Serbia).”*
70. On 6 April 2021, KOSTT addressed a request to the Committee on Economy of the Assembly, by which it requested that (i) the problem of electricity supply be addressed; and (ii) financial means to cover losses in the four (4) municipalities of the Republic of Kosovo, for the period April - December 2021 be provided.
71. On 28 April 2021, the Assembly Committee on Economy, after considering the request of KOSTT, based on Article 62 of the Rules of Procedure of the Assembly, by a majority of votes, adopted the following Recommendations:
1. *NP KOSTT, must submit to the functional committee, on a monthly basis the deviations of electricity in the following municipalities: North Mitrovica, Leposavic, Zubin Potok, and Zvecan, for the next six (6) months, starting from April 2021;*
 2. *NP KOSTT, to present to the functional committee, electricity expenditures on a monthly basis retroactively from 1 January 2018 until 1 April 2021;*
 3. *NP KOSTT, must present to the functional committee, the monthly solution for the deviation of electricity in the four municipalities of Kosovo (Mitrovica North, Leposavic, Zubin Potok, and Zvecan);*
 4. *NP KOSTT is authorized to cover electricity deviations in four municipalities of the country (North Mitrovica, Leposavic, Zubin Potok, and Zvecan), according to the solution presented and adopted by the functional committee using revenues from its own budget, funds which will be compensated by dividends or any other possible mechanism.*
 5. *The Government of Kosovo is obliged, within six (6) months, to ensure the entire process of including in the billing system according to the rules and laws in force in cooperation with the responsible parties for consumer billing in the four municipalities of Kosovo (North Mitrovica, Leposavic, Zubin Potok, and Zvecan) with electricity.*
72. The functional Committee of the Assembly for Economy justified the approval of the above recommendations as follows:
- “The public enterprise [KOSTT] is the only operator of the system, transmission and electricity market in the Republic of Kosovo. KOSTT is a public company with 100% of state shares. In accordance with the Law on Electricity no. 05/L-085 adopted in 2016, the rights of the shareholder are exercised through the Assembly of the Republic of Kosovo. KOSTT on [6 April 2021] submitted a request to the committee for the provision of financial means to cover losses in municipalities in northern Kosovo. Among other things, it states that: it is necessary for the institutions of the Republic of Kosovo to*

address the supply of consumers in the northern part of Kosovo by providing additional funds for the period April-December 2021 in the amount of about 11 million euros, in order to maintain financial stability of KOSTT, security of electricity supply and fulfilment of obligations to ENTSO-EIRG CE for balancing the electricity system of Kosovo. The committee on 20.4.2021, reviewed the request of KOSTT, and decided that on 27.4.2021 invite KOSTT, to justify the request before the committee, as well as to invite the line minister, in this case the minister of economy. On 27 April 2021, the committee debated in the presence of both parties, KOSTT and the Minister of Economy, where they received clarifications from KOSTT regarding the request and from the Minister of Economy the position of the government.”

73. On 30 April 2021, the President of the Assembly notified the deputies of the Assembly of the holding of the plenary session, which was scheduled for 6 May 2021. As the fifth item on the agenda was foreseen *“review of the recommendations of the functional Committee for Economy, Entrepreneurship and Trade regarding the request of KOSTT to provide financial means to cover losses in the northern part of Kosovo.”*
74. In the plenary session of 6 May 2021, the Deputy President of the Assembly presented the above item on the agenda and stressed that the Committee on Economy of the Assembly has reviewed the request of KOSTT to provide financial resources to cover losses in four (4) municipalities of the Republic of Kosovo and has submitted a recommendation to the Assembly.
75. On 6 May 2021, the Assembly after the presentation of the recommendations of the above mentioned Committee, with 61 votes in favor, none against and no abstentions, adopted the same. The content of the contested Act entitled “Recommendations” is as follows:

“The Assembly of the Republic of Kosovo pursuant to Article 65 (1) and Article 6.1 of the Rules of Procedure of the Assembly, in the Plenary Session held on 6 May 2021, after reviewing the recommendations of the Committee on Economy, Industry, Entrepreneurship and Trade regarding the request of NP KOSTT for providing financial means to cover losses in the northern part of Kosovo, adopted the following:

RECOMMENDATIONS

- “1. NP KOSTT, must submit to the functional committee, on a monthly basis, electricity deviations in these municipalities (Mitrovica North, Leposavic, Zubin Potok, and Zvecan) - for the next six (6) months, starting from April 2021;*
- 2. NP KOSTT, to present to the functional committee, electricity expenditures on a monthly basis retroactively from 1 January 2018 until 1 April 2021;*

3. NP KOSTT, must present to the functional committee, the monthly solution for the deviation of electricity in the four municipalities of Kosovo (Mitrovica North, Leposavic, Zubin Potok, and Zvecan);
 4. NP KOSTT is authorized to cover electricity deviations in the four municipalities of the country (North Mitrovica, Leposavic, Zubin Potok, and Zvecan), according to the solution presented and adopted by the functional committee using revenues from its own budget, funds which will be compensated by dividends or any other possible mechanism;
 5. The Government of Kosovo is obliged, within six (6) months, to ensure the entire process of including in the billing system according to the rules and laws in force, in cooperation with the responsible parties for billing consumers in the four municipalities of the Republic of Kosovo (North Mitrovica, Leposavic, Zubin Potok, and Zvecan) with electricity.”
76. On 17 May 2021, the Board of Directors of KOSTT based on “Article 30 of Law 03/L-087 on Publicly Owned Enterprises, Article 162 paragraph 1.1 and subparagraph 1.12 of Law no. 06/L-016 on Business Organizations and Article 14 paragraph 14.2.2.5 of the Statute of the Joint Stock Company KOSTT JSC.” issued Decision 210517/II-22 with the following content:
1. According to the authorization from the Recommendations no. 08-01 of the Assembly of the Republic of Kosovo of 06.05.2021/budget funds are allocated in the amount of 8 200 000 [eight million two hundred thousand] euros (€) from the profits held to cover the deviation of electricity for the northern part of Kosovo for 2021, funds which will be compensated by dividends or any other possible mechanism

Reasoning

1. The Assembly of the Republic of Kosovo in the plenary session held on 06.05.2021 according to Recommendations no. 08-01 has authorized NP KOSTT sh.a. to cover the deviation of electricity in the four northern municipalities: North Mitrovica, Leposavic, Zubin Potok, and Zvecan according to the solution presented and adopted by the functional committee using revenues from its own budget.
2. Starting from the obligation of authorization to cover losses for the northern part of Kosovo, the Board of Directors in the extraordinary meeting no. 121.1/21 decided to cover the deviations with electricity for the four municipalities of the northern part of Kosovo using funds from their own budget which will be returned from dividends or any other possible mechanism.

3. *The obligation to pay financial means to cover losses for the northern part also results from Article 16 par. 1 sub-par. 1.19 of the Law 03/L-085 on Electricity related to electricity balancing as well.*

4. *Also, according to Article 5 of license No. ZRRE/LI_15/17 for the Transmission System and Market Operator KOSTT SH.A. of 13.04.2017 is provided the obligation by which KOSTT is obliged to compensate electricity losses in the northern part of Kosovo and with the relevant transitional provision in the Rule on revenues of the OST/OT, KOSTT is obliged to compensate losses of electricity in the northern part of Kosovo.*

5. *This balancing obligation respectively to cover losses as a result of electricity deviation for four (4) municipalities of the northern part results also under Article 4 of the Connection Agreement KOSTT - ENTSO where according to this legal provision KOSTT is obliged to operate in accordance with European Committee regulations, including the start of independent operation as an independent zone within the Kosovo-Albania Regulatory Block.*

77. On 4 June 2021, on 16 June 2021, and on 14 July 2021, respectively, KOSTT sent to the Committee on Economy of the Assembly:

1. Report on “*Electricity consumption and costs to cover losses in the northern part of Kosovo for the month of April 2021*” [points 1 and 3 of the contested Act of the Assembly];
2. Report on “*Electricity consumption in the municipalities: North Mitrovica Leposavic, Zubin Potok, and Zvecan*” for the period December 2017-March 2021 and costs to cover losses in the northern part of Kosovo for April 2021 “[points 1 and 3 of the contested act of Assembly];
3. Report on “*Electricity consumption and costs to cover losses in the northern part of Kosovo for May 2021*”;
4. Report on “*Electricity consumption and costs to cover losses in the northern part of Kosovo for the month of June 2021*”; and
5. Report on “*Electricity consumption and costs to cover losses in the northern part of Kosovo for July 2021*”

Presentation of competencies and responsibilities of public authorities and competent enterprises in the energy sector

78. ERO is an independent agency established by Law no. 05/L-084 on the Energy Regulator (hereinafter: the Law on the Energy Regulator). According to the above Law, ERO is responsible for the economic regulation of the energy sector. The duties and functions of ERO are defined in the Law on the Energy Regulator, which, among others, include: (i) the establishment and operation of efficient, transparent and non-discriminatory energy market; (ii) determining the criteria and conditions for issuing licenses for carrying out activities in the field of energy; (iii) determining the criteria and conditions for granting authorizations for the construction of new capacities; (iv) monitoring and ensuring the improvement of security of energy

supply; and (v) setting reasonable criteria and conditions for energy activities based on tariff methodology.

79. KOSTT, respectively Transmission System Operator (TSO) and as Market Operator (MO) was established initially through the Law No. 2004/10 on Electricity of 1 July 2006. KOSTT is the System, Transmission and Electricity Market Operator of Kosovo, a Publicly Owned Enterprise with 100% of state shares, and based on Article 13 of new Law no. 05/L-085 on Electricity adopted in 2016, shareholder rights are exercised through the Assembly of the Republic of Kosovo. KOSTT is responsible, among others, for (i) the planning, development, maintenance and operation of the energy transmission system in Kosovo; (ii) ensuring open and non-discriminatory access to third parties; (iii) the functioning of the new energy market; (iv) providing conditions that encourage competition in Kosovo; and (v) cooperation with Transmission System Operators in neighboring countries. KOSTT operates as a Transmission System Operator and as a Market Operator based on Licenses issued by ERO. KOSTT manages the Transmission System of the Republic of Kosovo by operating with high voltage levels of 400 kV, 220 kV and 110 kV. The transmission system also includes transformers connected to the distribution network: 220/35/10 kV and 110/35/10 (20) kV. KOSTT's responsibility is to transmit electricity safely and reliably from the generation units to the distribution system, 24 hours a day, 365 days a year.
80. Kosovo Energy Corporation (hereinafter: KEK) is a publicly owned enterprise that performs activities in coal mining and electricity generation that includes about 95% of the energy produced in the country.
81. Kosovo Electricity Distribution Company (hereinafter: KEDS) is a private enterprise within the Limak-Çalik consortium that carries out the activity of electricity distribution, maintenance of medium and low voltage network, including meters.
82. Kosovo Electricity Supply Company J.S.C. (hereinafter: KESCO) is an enterprise established in 2014 created as a result of legal unbundling between the distribution operator and the supplier, which entered into force on 1 January 2015. This enterprise carries out the supply activity including the service activity of the universal supplier.

Applicants' allegations

83. The Applicants allege that the contested Act of the Assembly was issued in violation of Articles 3 [Equality Before the Law], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 119 [General Principles], 120 [Public Finances], 122 [Use of Property and Natural Resources] of the Constitution, Articles 14 (Prohibition of discrimination) of the ECHR, and its protocols, respectively Article 1 (Protection of property) of Protocol no. 1 and Article 1 (General prohibition of discrimination) of Protocol no. 12 of the ECHR, as well as Articles 2 and 7 of the UDHR.

84. The Applicants allege that the contested Act of the Assembly: (i) was adopted without legal basis; (ii) violates a fundamental right such as “equality before the law”; (iii) is contrary to the principle of democratic order of the Republic of Kosovo; (iv) violates the independence of independent institutions; and (v) that the enacting clause of the contested Act is of an arbitrary nature.
85. The Applicants state that the contested Act was deliberately adopted in the form of recommendations, although it was duly processed in the Assembly, in the form of final decisions as provided in paragraph 1 of Article 62 (Function of Committees) of the Rules of Procedure of the Assembly.
86. The Applicants further argue that the contested Act of the Assembly was adopted on the basis of a request from KOSTT, requesting the provision of financial means to cover electricity losses in four (4) municipalities of the Republic of Kosovo. According to them, such a decision is not provided in any law in force, as a competence of the Assembly. On the contrary, it is the Assembly, the institution which according to Article 65, paragraph 9 of the Constitution, oversees the work of the Government and other public institutions, which, according to the Constitution and laws, report to the Assembly. The Applicants add that *“KOSTT reports to the Assembly, but the transfer of duties as an independent institution cannot be transferred to the Assembly, just because it reports to this institution.”*
87. The Applicants in this dispute claim that the issue addressed in this decision cannot be considered addressed or finally resolved, insofar as the contested Act of the Assembly is in the form of “recommendations”, when it is well known that the resolutions, statements, and recommendations, as a rule, do not have a normative (binding) character, while decisions have the character of legal acts. If the issue raised in KOSTT’s request was of a financial nature, this could not be decided by *“the Assembly, by another act, except by law, respectively by the law on the budget, as the exclusive competence of the Assembly to approve budget allocations.”*
88. The Applicants state that *“the issue of non-payment of electricity by residents of the northern part of Kosovo is not a new issue. As we noted at the outset, this continues to be a challenge for executive institutions and independent agencies. But, it has never been considered in such a form and decided in the Assembly. Thus, so far there is no case when the Assembly has decided with a decision the allocation of funds from the budget of KOSTT or any other institution.”*
89. According to the Applicants, an allocation of funds for the losses of this institution was made by the Government, in 2020, through the proposal of the Draft Law on Budget Appropriations. This Draft Law, in the form of additional subsidy to KOSTT, had provided the amount of eleven (11) million euros for this enterprise. So, the proposal had come from the government for the allocation of additional funds, and the same was decided through a law by the Assembly. Also, the Assembly, by the contested decision, in an unconstitutional way, overlaps with its Resolution

adopted about three years ago, namely Resolution [No. 06-R-008] of 5 June 2018, exactly on the issue of KOSTT losses. According to the Applicants, this decision has no legal basis and does not fall, as such, within the institutional responsibility of the Assembly.

90. The Applicants further state that KOSTT and ERO are independent institutions that exercise their work and public duties, or must exercise them according to the legislation in force. And this, according to them, is argued by the fact that these institutions report to the Assembly on an annual basis. Thus, KOSTT's relationship with the Assembly is a legal relationship regulated by law and this cannot be understood so that the Assembly, as an institution to which KOSTT reports, has the right to interfere, except by law, with the financial management of its dividend, in complete inconsistency with the aims, objectives, and mission of KOSTT.
91. The Applicants further state that *"From a legal point of view and according to the rule, the legal nature of the act adopted by the Assembly determines the effect and the consequences that it causes. In this context, according to them, the contested act has essential legal flaws because "on the one hand, it is referred to as 'recommendations', and on the other hand, its content, its enacting clause, causes great legal and financial consequences."*
92. In this sense, the Applicants allege that they cannot *"assume that this is simply a "recommendation" which as a rule has no binding force. But, it is a "decision" of the Assembly in the sense of paragraph 5 of Article 113 of the Constitution. This is not only a claim of the Applicants, but it is its enacting clause, which in relation to the naming of the act, is paradoxical. It is especially points 4 and 5 of this act, which from the legal point of view make it absolutely a decision with a legally binding character and by no means a "recommendation" in the legal sense of the act, contrary to what it is titled."*
93. On this basis, the Applicants emphasize that point 4 of the contested Act authorizes KOSTT to cover the recorded losses from its million revenues. According to them, with the recommendation of the Assembly, an authorization for an independent institution cannot be transferred, especially since through it, it is allowed the spending of millions of euros from the budget, in complete contradiction with the applicable law, namely Article 8 (Dedicated revenues of independent agencies) of Law no. 07/L-041 on budget allocations for the Budget of the Republic of Kosovo for 2021, as well as contrary to the Law No. 03/L-048 on Public Financial Management and Accountability.
94. The Applicants further allege that *"[...] even point 5 (five) of the contested Act, explicitly imposes a concrete obligation on the Government, the fulfilment of which is conditioned by a time limit of (6) months. Even this point clearly proves that the contested decision has no legal nature of the "recommendation", but of the "decision" that produces legal consequences. Respectively, through this decision, a series of legal effects have been produced, the legal relations of the involved parties have been created and changed. It is therefore a decision of a legally binding and*

authorizing character. The term “decision; used by Article 113.5 refers to any action of the Assembly, which produces legal consequences according to its constitutional competencies. Therefore, the term ‘decision’ includes not just a legal act of the Assembly, but the decision of the latter through which it was issued.”

95. *In this line, the Applicants argue that “[...] any action of the Assembly that produces legal consequences (general or individual), whether issued in written or unwritten form, both in relation to substantive and procedural matters, may be subject to constitutional scrutiny. The contested decision obliges the public company KOSTT to pay for the electricity consumed by the inhabitants of the northern municipalities of Kosovo from its dividend, a dividend which under normal conditions would go to the Kosovo consolidated budget. So, practically the money is taken from the Kosovo consolidated budget. In these conditions, the citizens of the rest of Kosovo are discriminated against, because the state budget, which is filled by their taxes, is used to pay energy bills for only a part of the citizens, while the other part has to pay from their own income.”*
96. *According to the Applicants, “[...] another very important aspect, is the fact that public enterprises and independent institutions are independent in exercising their competencies, while the intervention to their budget, revenues or expenditures, can only be done in accordance with legal rules. In this case, the contested decision could be taken only if the Assembly, by approving the Law on Budget or supplementing and amending it, would allow KOSTT expenditures, respectively the use of its dividend, to cover the recorded losses.” In this regard, the Applicants refer to Article 136 [Auditor General of Kosovo]; Article 137 [Competencies of the Auditor General of Kosovo]; Article 138 [Report of the Auditor General of Kosovo]; and Article 142 [Independent Agencies] of the Constitution.*
97. *In addition, the Applicants allege that the contested Act, “[...] essentially violates the principle of equality before the law and the fundamental right to equality before the law. Such a constitutional principle is not allowed to be violated by ordinary laws or other decisions of the Assembly. It follows from this principle that even those who enforce the laws, that is, the constitutional power, must apply them equally to all, and provide the same protection to everyone. According to the principle of equality of citizens, it would never be possible to issue any special law or create any privilege for others. So, the sanction of this principle is the basis for the issuance of acts that create the right which is not limited only to laws, this means that the bylaws issued by the legislature, must be based on its observance. Observance for the principle of equality implies an obligation, not only for the executive and the judiciary, but also for the legislature. In fact, for the legislature, the principle of equality implies an obligation to create the right, which will be the same for all. Viewed from a negative angle, unequal rights are not allowed for some individuals or some groups. Therefore, the principle of equality is also considered the right to equality. The principle of equality of citizens, according to this, is valid as a legal principle, that is, the legal right, equality before the law and according to the law is provided.”*

98. In this context, the Applicants allege that the contested Act “[...] directly puts in a discriminatory position all citizens who fulfil their obligation to pay electricity service tariffs, in relation to citizens who do not. The Constitution explicitly prohibits any form of discrimination by not mentioning concrete forms of direct and indirect discrimination, but explicitly prohibits discrimination on the basis of any personal trait of the individual (race, colour, gender, language, religion, political or other opinions, national or social origin, property, economic, social status, sexual orientation, birth, disability or any other personal status). Article 24 guarantees the equality of all citizens before the law and defines their right to equal legal protection without any distinction between them. Indeed, the meaning of this article is the constitutional prohibition of discrimination, as a basic precondition for ensuring the respect of all other human rights guaranteed by the Constitution and their realization on equal terms.”
99. Furthermore, the Applicants state that the contested Act of the Assembly “takes money from the state budget that belongs to everyone, and pays the obligations for the payment of electricity only for a part of the citizens of Kosovo, i.e. those in the four (4) municipalities of the Republic of Kosovo.” In this context, the Applicants, referring to Article 24 [Equality before the Law] of the Constitution, underline that “The issuance of decisions by the Assembly of Kosovo and the creation of other necessary infrastructure to build equality before the Constitution and the law within the meaning of Article 24 of the Constitution is the primary task of this institution. Every decision-making of the Assembly should be seen as the implementation by the Republic of Kosovo of this constitutional obligation. This is the essence of the rule of law, as a constitutional guarantee, which has been violated by this arbitrary decision to pay for electricity for a part of the inhabitants of Kosovo.”
100. Moreover, the Applicants allege that “In addition to the general provision on equality before the law, the right to equal legal protection and the prohibition of discrimination (Article 24, paragraph 1), the Constitution also sets out a special provision that prohibits any form of discrimination based on community affiliation, such as certain national or ethnic, linguistic or religious one, which is traditionally present in the territory of Kosovo, whether in terms of “amnesty” by law enforcement, in this case from the obligation to pay for electric energy. However, the Applicants, do not allege discrimination on any ethnic basis, despite the greater concentration of the Serb community in the northern part of Kosovo, because in this part, of course, in smaller numbers there are members of other ethnic groups, who are direct beneficiaries of non-implementation of the law on the issue of payment of electricity tariffs. But, the basis of this discrimination, despite being considered ethnic in public perception, is nevertheless different. So, discrimination in this case is on the basis of residence, where the applicants place the emphasis of the allegations.
101. In this regard, the Applicants also refer to paragraph 1 of Article 1 of Law no. 05/L-021 on Protection from Discrimination, which according to them explicitly defines

the possibility of discrimination on another basis, which in this case is the place of residence as a basis for creating discrimination by the contested decision.

102. Regarding the above, the Applicants emphasize: *“We consider that with the contested decision, the citizens of the rest of Kosovo, systematically, but notwithstanding this, in this case in a concrete indirect way, are placed in a discriminatory position, compared to the citizens of the settlements of northern municipalities, who do not pay the costs of electric energy and with the contested decision, their release from this obligation is justified, paying the same with the money of the citizens of other parts of Kosovo, regardless of whether these financial means are in the form of KOSTT dividend.”*
103. The Applicants further argue that *“This means, among other things, the failure of state institutions to effectively exercise the duty of law enforcement and full legal and sovereign control throughout the territory of the state of Kosovo. Meanwhile, the Assembly, by its act, the contested decision, only confirms this discrimination on the above alleged basis.* Applicants, referring to paragraph 9 of Article 65 of the Constitution underline that the Assembly has a constitutional responsibility to oversee the work of the Government and other public institutions, which, in accordance with the Constitution and laws, report to the Assembly. Subsequently, the Applicants specify that KOSTT reports to the Assembly and the latter in the best case in order to stop the previous practice of discrimination, demanded responsibility from the Government, as a constitutional institution responsible for law enforcement, to exercise all its legal authority to enforce paragraphs 1 and 2 of Article 2 [Sovereignty] of the Constitution.
104. The Applicants further allege that *“[...] The Assembly has failed to implement the constitutional guarantees set out in Article 119 of the Constitution, which are set out in Article 119 [General Principles], paragraphs 1, 7, 8, 9 and 10, of the Constitution. Regarding the above, with the contested decision, the Assembly has failed to equally protect the consumers of Kosovo, in relation to discrimination in the payment of electric energy, as guaranteed in paragraph 7 of this article. Also, by authorizing the payment of electricity for the inhabitants of the northern part, the Applicants allege that “The Assembly has violated the constitutional obligation for every person to pay taxes and other contributions provided by law. The contested decision justifies the exemption of these citizens from the payment of electricity utility costs, as guaranteed in paragraph 8 of this article.”*
105. Furthermore, the Applicants argue that *“through the contested act, the Assembly has failed to exercise effective control in the public interest towards NP-KOSTT, and it has damaged the value of the enterprise, as required by paragraphs 9 and 10 of this article. The Assembly, with the contested decision, has failed to protect electricity consumers equally.”* According to the Applicants, Law no. 06/L-034 on Consumer Protection through Article 4 (Consumer rights), paragraph 1, point 1.1, 1.2, 1.6, and 1.8 of the law guarantees equal legal treatment is guaranteed and realized in accordance with the law, referred to Article.

106. Finally, the Applicants request from the Court (i) to declare their referral admissible; and (ii) to declare the contested Act of the Assembly as being in violation of the Constitution.

Comments and responses submitted by the interested parties

(i) Comments of the LVV Parliamentary Group [submitted on 1 June 2021]

107. In their comments on the Applicants' Referral, the LVV Parliamentary Group initially stated that *"based on Article 39, paragraph 2 of the Rules of Procedure of the CC, we consider that Referral No. KO93/21 does not justify the Applicants' claim for unconstitutionality of the contested recommendation (manifestly ill-founded on constitutional grounds), as well as the Recommendation which is not a final act of the Assembly of Kosovo is not a constitutional issue, so we consider that the Referral should be rejected as inadmissible."*
108. In support of the allegation of inadmissibility of the Referral, the parliamentary group of LVV states that *"Even the Court rightly in its notification letter of 18.5.2021 states that the subject matter of the assessment is "... the Referral for the constitutional review of the recommendations no. 08/G-01 of the Assembly of the Republic of Kosovo of 6 May 2021". Whereas, the Applicant in its entirety addresses the recommendations of the Assembly as a "decision."*
109. With regard to the contested Act of the Assembly, they state: *"First, the Assembly of Kosovo as the sole shareholder of the company KOSTT has manifested responsibility for the business and sustainability of the company. Second, the Assembly of Kosovo has prioritized the public interest by giving the necessary instructions to the company on how to avoid the consequences for the company and the state interest in terms of energy sovereignty. Third, the parliamentary oversight function of the Committee and the Assembly over the company is fulfilled."*
110. In this sense and emphasizing the role of the Assembly and the responsibility of KOSTT, they underline that, *"the recommendations of the functional Committee clearly show that we are dealing with the fulfilment of the supervisory function of the functional Committee, of the Assembly as the sole shareholder and as the founder of the company, when the recommendations oblige NP KOSTT to report to the functional Committee on the regular basis. Furthermore, recommendation 4 clearly shows that the revenues will be used from the company's own budget."*
111. Regarding the allegations of the Applicant for violation of the principle of equality before the law, they state: *"Thus, the Applicant tries to emphasize Constitutional issues, claiming that the recommendation is contrary to the Constitution and that the issue of covering energy losses is a constitutional issue. In this case, it is not a question that the recommendation as such violates equality before the law or that it discriminates against any citizen in particular, because the recommendation is*

an instruction for the company on how to cover energy losses, but at the same time how to avoid losses for the future. This recommendation has as its object simply the profitability of the company and the protection of the public interest from the consequences that come for the company and the energy sovereignty in general as a result of the obligations from the agreement KOSTT - ENTSO-E."

112. *According to them, "[...] the recommendation responds to a factual situation, such as the loss of energy in a past period, which in real time cannot be undone, except to manage its consequences. Because, the loss of energy in this case is objective and that the request of KOSTT was imminent in relation to this. While the Assembly in this case within two important functions, however different, as shareholders and as supervisors, in addition to orienting on how to cover losses from own source revenues, has also oriented the way to reduce or eliminate energy losses in the future, in order to avoid similar situations in the future. This recommendation also derives from the spirit and letter of the Constitution, such as Article 119, paragraph 9, when it stipulates that "The Republic of Kosovo exercises the right of ownership over any enterprise that it controls in accordance with the public interest, in order to maximize long-term value of the enterprise." "The positive obligation for state institutions, in the sense of this article, is for them to take care of public property as bona fide custodians, and to ensure that such property growth has a positive trend in the long run."*
113. *In this respect, regarding the approval of KOSTT's request, they specify that: "KOSTT is a public enterprise with 100% of state shares. In accordance with the Law no. 05/L-085 on Electricity adopted in 2016, the rights of the shareholder are exercised through the Assembly of the Republic of Kosovo. The functional committee as a body of the Assembly, acting in accordance with the Rules of Procedure of the Assembly, responded to the request of KOSTT and in the meeting held on 27/28.4.2021 adopted the request of KOSTT and issued the recommendations, now contested by Applicants."*
114. *In this context, according to them: "The recommendations of the Committee are addressed to KOSTT and it is a matter of management that within the authorizations and internal operational rules be able to cover the costs from energy loss for the mentioned municipalities or even in other municipalities. The Assembly, as a shareholder of this enterprise through the functional committee holds the enterprise responsible for management, including profits and losses, and in this case, the Committee exercising its mandate towards KOSTT has assessed that these recommendations can address the problem of losses of energy from non-payment. The recommendation is the shareholder permission of the company's decisions, not a decision of the Assembly nor a recommendation with executive effects. Such a responsibility of the Assembly derives not only from the parliamentary oversight role and function, but is provided by the Law on Electricity, respectively Article 13, paragraphs 2, 3 and 5, which stipulate that "Shareholder rights for the Transmission System Operator are exercised by the Assembly of the Republic of Kosovo"; "The shareholder in the annual meeting of the Board is represented by the authorized person of the President of the Assembly*

of the Republic of Kosovo.”; “The Board of Directors reports on the activity of the Transmission System Operator to the Assembly of the Republic of Kosovo on a regular annual basis and whenever such a thing is requested by the Assembly.”

115. In this regard and elaborating the functions of the Assembly Committee, they specify that *“In this case, the functional committee has in its scope to oversee the Law no. 05/L-085 on Electricity and responding to the request of KOSTT, it has issued recommendations that have an operational character. Unlike in year 2020, where 10 million in the budget code of the Ministry of Economy have been allocated from grants and subsidies of public enterprises by the Government for the company KOSTT, this year the Assembly has not made additional allocation of funds, because NP KOSTT generates revenue, but the functional committee has recommended the use of its own funds, so it can use these revenues, without having to burden the budget, respectively allocate additional budget, always to avoid the consequences for the company KOSTT and the public interest when it comes to energy sovereignty of Kosovo according to the obligations arising from the KOSTT - ENTSO-E agreement.”*
116. With regard to the Applicant’s specific allegations of a violation of Article 122 of the Constitution, they underline that *“The reference to Article 122 of the Constitution by the Applicant is completely erroneous. As in the other constitutional references in this Referral, the Applicant has confused the meaning and function of the constitutional provisions. Article 122, paragraph 1, stipulates that the people of Kosovo, in accordance with the reasonable conditions established by law, may enjoy the natural resources of Kosovo, but shall not violate international agreements on economic cooperation arising in this field, such as in this case with the agreement KOSTT - ENTSO-E.”*
117. In this regard, they emphasize that *“Applicant’s allegations to argue the Referral through the Ombudsperson’s report no. 265/2017 are also unstable because this report addresses concrete recommendations for the Government and ERO, that in accordance with Law 05/L-084 on the Energy Regulator issue a decision approving the reduction of tariffs to the extent that it would enable the compensation of consumers who have been unfairly billed [...]. So, the recommendations of the Ombudsperson Institution were addressed to the previous Government and ERO and based on Article 28 of the Law on the Ombudsperson Institution, the institutions must respond within 30 days”.*
118. In the following, they specify that *“The recommendation of the Assembly has an orienting character that serves the company to fulfil the business of the enterprise in the operational sense, to avoid a much greater damage not only for the company but also the entire energy sovereignty of Kosovo. Looking at the content, the recommendation not only does not discriminate against citizens on any affiliation, nor does it favour certain groups, but above all it aims to orient the company to build mechanisms within certain deadlines that prevent energy losses in any case.”*

119. In this regard, the Parliamentary Group of LVV adds that *“No citizen is charged more than for the expenses they create. Like this recommendation that does not amnesty certain consumers, nor does it repay unpaid debts, but simply directs the company to cover deviations from energy loss, which can be for a variety of reasons, no matter the fact that they may be localized. Also, the reference to the Ombudsperson’s report and the Judgment of the Basic Court is irrelevant, because they have no compatibility of the case. In the case of the Ombudsperson’s report and the Court’s decision, it was not a matter of how to deal with the loss of electricity, but of the fact of additional charging beyond the costs of other consumers. But in the case of the Assembly’s recommendations, this does not exist.”*
120. Finally, the LVV Parliamentary Group requested from the Court that, *“In accordance with the reasoning of this submission, we request the Constitutional Court to render a Resolution declaring the Referral inadmissible.”*

(ii) Comments of the Ministry of Economy [submitted on 1 June 2021]

121. In its comments on the Applicants’ Referral, the Ministry of Economy initially states that *“The Referral [of the Applicants] does not substantiate the Applicants’ allegation that the contested recommendation is unconstitutional and is thus manifestly ill-founded, as the Applicant does not substantiate or sufficiently substantiate his allegation. While the Recommendation, which is not a final act of the Assembly of Kosovo, is not a constitutional issue and thus we consider that the Referral should be rejected as inadmissible. Even the Court in its notification letter of 18.5.2021 states that the subject matter of the review is “[...] the Referral for the constitutional review of the recommendations no. 08/R-01 of the Assembly of the Republic of Kosovo, of 6 May 2021”. Meanwhile, the Applicant refers to the Recommendations of the Assembly as a “decision”.*
122. Regarding the allegations of the Applicants for violating the principle of equality before the law, the Ministry of Economy stated that *“Regarding the Applicants’ allegation that the recommendation of the Assembly violated the equality before the law of citizens, we consider that the Applicants incorrectly refer to the provisions of the Constitution, in order to present the recommendation as an unconstitutional act. Articles 3 and 24 of the Constitution provide for the equality of citizens before the law and prohibit discrimination and promote measures to protect and promote the rights of individuals and social groups who are in an unequal position. Regarding the Applicant’s allegation that the recommendation of the Assembly is “contrary to the principles of democratic order” and “violates the independence of independent institutions”, we consider that the same is unclear. The ambiguity lies in the fact that the Applicant does not show how the recommendation of the Assembly violates the independence of the institutions, and this points out the other fact: that the Applicant’s Referral has destructive character”.*

123. Moreover, the Ministry of Economy also stated that: “[...] in none of the cases the Constitution has been violated because we are dealing with the recommendations of the Assembly for KOSTT, since the Assembly of the Republic of Kosovo exercises the right of shareholder for KOSTT, because as defined in Article 13 of Law no. 05/L-085 on Electricity, the shareholder rights for the Transmission System Operator are exercised by the Assembly of the Republic of Kosovo as a public enterprise in accordance with the Law on Public Enterprises, and the relevant legislation in force.”
124. Regarding the contested Act of the Assembly, the Ministry of Economy states that “With the recommendation of the Assembly, the Republic of Kosovo adheres to legal and constitutional obligations, and other obligations arising from the international agreement with ENTSO-E, which entered into force on 29.10.2020, and which has brought the Republic of Kosovo independence from Serbia and is recognized in the energy maps of Europe according to the borders of the Republic of Kosovo, but also other benefits such as enabling the operation of KOSTT as an Independent Regulatory Zone within the Albania-Kosovo Regulatory Block and collecting revenues from the allocation of cross-border capacities which has so far collected EMS-Serbia, and from which will benefit Kosovo consumers.”
125. In this regard, the Ministry of Economy states that “Based on Article 4 of Law no. 05/L-081 on Electricity, energy enterprises charged with the public service obligation must ensure the provision of public service in accordance with the conditions set out in the license. One of the conditions set out in the License for Energy TSO obliges KOSTT to compensate for electricity losses in the northern part of Kosovo. According to the License for the Transmission System Operator and the License for the Electricity Market Operator, KOSTT is responsible for: Planning, operation, maintenance, and development of the Electricity Transmission System in Kosovo; Efficient, economical and coordinated operation of the transmission system, including cross-border flows; System balancing; Providing non-discriminatory access for transmission system users; Promoting effective competition for electricity generation and supply; Promoting economic efficiency in the implementation of Market Rules as well as carrying out activities in accordance with Market Rules; Administration of the centralized electricity market in Kosovo and Management of the final settlement process”.
126. Also, the Ministry of Economy states: “Furthermore, the Law on Electricity, Article 16, paragraph 1.19, obliges KOSTT to balance the electricity system, in accordance with the Transmission Network Code and Market Rules in the Republic of Kosovo. [...] KOSTT has the above-mentioned obligation to balance the electricity system of the Republic of Kosovo, by activating the system for balancing the system with the balancing service providers, therefore the coverage of losses is done necessarily: either through the balancing mechanism, or through the withdrawal of electricity from the electricity system of Continental Europe”.
127. The Ministry of Economy, in its comments, further added that “In all cases, KOSTT as a regulatory zone, i.e. the Republic of Kosovo, cannot avoid the costs of

balancing the electricity system. In the absence of financial resources to cover costs, whether for energy procurement to cover losses in the north, or balancing costs or costs of deliberate deviations, the financial stability of KOSTT is endangered, the extension of KOSTT agreement with ENTSO-E, the reputation of KOSTT and the Republic of Kosovo, the performance of the TSO of Albania in the capacity of the leader of the Regulatory Block AK (Albania-Kosovo Regulatory Block), the functioning of the Albanian Electricity Exchange (where KOSTT is a shareholder), and even KOSTT can be financially penalized. From the above, it can be concluded that the costs of losses in the municipalities of northern Kosovo remain an obligation of KOSTT, either through the purchase of energy or through the obligation to balance the system”.

128. Further, regarding the compensation of energy costs by the Assembly through the contested act, the Ministry of Economy specified that *“Taking into account the importance of KOSTT energy independence on the occasion of signing the Connection Agreement with ENTSO-E, fulfilment of legal obligations regarding the provision of balance deriving from this agreement, financial penalties which would follow in the case of causing deviations as a result of losses caused in northern Kosovo, in relation to the temporary use of funds from the own budget which will then be reimbursed, should not lead to causing any damage which would be difficult to repair, and moreover endangering energy independence would be in complete contradiction with the public interest. In this case, the assumption of responsibility for the compensation of energy costs by the Assembly of Kosovo by the Recommendation of 06.05.2021, represents the commitment of the shareholder in terms of fulfilling its obligations”.*
129. Finally, the Ministry of Economy, referring to its reasoning submitted through the comments, requests the Court to declare the Applicants’ Referral inadmissible.

(iii) Response of ERO [accompanied with documentation submitted on 7 June 2021]

130. ERO attached to its response to the Applicants’ Referral the accompanying documentation, which is also reflected in the summary of facts.
131. ERO in their response elaborating the factual circumstances regarding the specific case and the allegations of the Applicant, stated that *“[...] since 1999, supplier meter readers have not been able to have secure access to properties within the four northern municipalities. Without reading the meters, it is impossible to calculate bills (or even make a reliable bill estimate) for consumers in these localities. Without such a safe access, it is not possible to submit invoices, collect payments or disconnect consumers for non-payment.”*
132. In this context, ERO explained that *“KEK’s initiative in 2009 to disconnect all consumers in the four northern municipalities by sending staff to the localities in question was stopped at the request of the Kosovo government and representatives of the international community. KEK has also been asked to*

continue supplying energy to the four northern municipalities through the Vallaq transmission substation for political and humanitarian reasons as a matter of public policy, despite the fact that it was unable to bill consumers in these localities”.

133. Regarding the historical context elaborated as above, ERO notes that *“In October 2006, the Kosovo Electricity Corporation (KEK Sh.A.) was appointed by the Board of ERO, officially as the only public supplier of electricity in the entire territory of Kosovo, with exclusive licenses for supply issued for KEK. In 2009, as a result of the efforts of the international community present in Kosovo, and KEK, negotiations were successfully concluded with the majority of Serb-majority municipalities to normalize their relations regarding electricity by allowing KEK to bill for supplied electricity and collect debts.”* Despite this, ERO states that in four (4) municipalities, such as Leposavic, Zvecan, Zubin Potok, a part of Mitrovica, their inclusion in the billing system has not been achieved.
134. In addition, ERO added that *“In order to have a fair understanding of the situation created with the four municipalities of northern Kosovo, ERO in this response deems necessary a description of the ongoing efforts of relevant institutions (in particular institutions and operators of the electricity in Kosovo), to regain control of assets in the northern part, as well as to register electricity consumers in this part as their consumers. The problem of controlling the energy system in the northern part of Kosovo has been evident since after the war.”*
135. ERO, after elaborating the responsibilities, competencies, role, and manner of its functioning, referring to the Law on the Energy Regulator, among others, emphasized that *“[...] the supply of electricity to all consumers is a legal obligation, therefore ERO, in accordance with the obligations has requested from licensed operators to supply electricity to all consumers. Therefore, when approving tariffs, ERO takes into account the reasonable level of losses, which it treats equally throughout the territory of Kosovo”.*
136. In this regard, ERO clarified: *“As the Distribution System Operator (DSO) has impossible access to the north of the country, losses incurred in this part of Kosovo by the DSO are considered political losses, and as such are considered losses outside the control of the DSO. If these losses are not covered, then the DSO cannot perform its functions due to the high cost of these losses, which would jeopardize the regular supply of electricity to consumers throughout Kosovo. ERO also informed that on 6 February 2012, it issued Decision no. V399-2012 which determines the level of reduction of distribution losses. This decision for reduction of losses determines the level of reduction of all losses in the electricity system, including losses in the north of Kosovo”.*
137. According to ERO: *“Article 48 subparagraph 3.8 of Law no. 05/L-084 on the Energy Regulator, expressly entitles ERO to set tariffs at a level sufficient to allow for the cost of ‘bad debt’. Under International Financial Reporting Standards, which are the applicable accounting standards, a bad debt is considered to be the*

amount owed to a supplier that is unlikely to be paid or that the creditor cannot act reasonably in order to get that debt repaid and which is rightly written off under these accounting standards. The amount of bad debt arising from the supply of electricity is calculated by referring to the respective cost of wholesale purchase, multiplied by the amount of electricity measured at the substation in “Vallaq” as evidence from the payment data of the supplier. As this calculation compensates the supplier only for the legally incurred expenses incurred, ERO further does not believe that there is any unjust enrichment of the supplier in the sense of the Law no. 04/L-077 on Obligational Relationships. Any attempt to impose on the supplier the cost of maintaining the electricity supply would constitute a violation of Articles 46 and 119 (in particular 119.1, 119.2, 119.4 and 119.6) of the Constitution, as; stated later in this response, and Article 48 of the Law on the Energy Regulator, requesting the supplier to incur a cost and not allowing it to reimburse it properly, unlike the treatment given to its state predecessor, KEK”.

138. Among other things, ERO also argues that “Also, Article 196 of the Law on Obligational Relationships has dealt with the implementation of a natural obligation or a moral duty, where I quote “no return can be requested; what has been given or done to fulfil any natural obligation or moral duty”. So it follows that we were dealing with a moral obligation of universal law and there is no unjust enrichment, as electricity is distributed to and consumed by all consumers by the licensee and also the return of that cannot be requested which is given on the basis of this provision.”
139. In this regard, ERO underlined that “To ensure the financial viability of the electricity system, licensed electricity operators, including suppliers, should be allowed to claim payment for their services at a level that allows them to cover operating costs. This principle is supported by Article 47 sub-paragraph 3.5 of Law 05/L-084 on the Energy Regulator: “tariffs shall not be set below the real cost of operating the service including a reasonable profit”.
140. While, in relation to the contested Act of the Assembly and specifically in relation to the fact that “under point 4 NP KOSTT is authorized to cover electricity deviations in four municipalities of the country: North Mitrovica, Leposavic, Zubin Potok, and Zvecan, according to the solution presented and adopted by the functional committee using revenues from its own budget, these funds which will be offset by dividends or any other possible mechanism” ERO stressed that “it cannot declare on that with the reasoning that the interpretation of legality and constitutionality on this issue belongs to the Constitutional Court as the highest instance.”

(iv) Comments of KOSTT [submitted on 14 June 2021]

141. KOSTT attached to its response to the Applicants’ Referral the accompanying documentation, which is also reflected in the summary of facts. The accompanying documentation, among others, contained the following: (i) ERO Rule/no. 03/2017

of 16 March 2017; (ii) License of [ERO-Li15/17] of 13 April 2017; (iii) Kosovo Electricity Connection-Interconnection Agreement with the Synchronous Zone of Continental Europe of July 2016; (iv) Memorandum of Congestion Management at the Montenegro-Kosovo border; (v) TSO-Kosovo Border Congestion Management Agreement; (vi) Agreement between MEPSO-KOSTT; (vii) Operational Agreement with CGS; (viii) Operational Agreement with MEPSO; (ix) Operational Agreement with the TSO; (x) Multi-year agreement for ITS and its Annex; and (xi) Bilateral Operational Agreement of the Regional Group of Continental Europe ENTSO-E of 8 December 2020.

142. Regarding the Referral, KOSTT initially stated that *“The Referral of the PDK Parliamentary Group for the constitutional review by the Constitutional Court of the Republic of Kosovo for the Recommendations of the Assembly of the Republic of Kosovo, is a fabrication of stereotypical formulations with paraphrasing and truncated quotes, selective, incomprehensible, unclear, confused to the extent that such a request may not be subject to review and evaluation by the Constitutional Court of the Republic of Kosovo. This Referral in its content does not include concrete proposals regarding the decisive facts and legally valid evidence that had to prove the allegations of the Applicant, therefore it exclusively contains defects and shortcomings of a substantial nature that make it impossible to review and evaluate that request as far as the constitutional review of the contested Conclusions is concerned.”*
143. In this respect, KOSTT claims that *“according to this provision [Article 113.5] of the Constitution of the Republic of Kosovo, it results precisely and in a clear way that the subject matter of constitutional review are the laws and decisions of the Assembly of the Republic of Kosovo. Thus, the Constitution with this constitutional provision one by one determines which legal acts according to the legal nature have binding effect such as laws and decisions. According to this constitutional provision of cogence-binding nature, exactly and completely are subject to review, evaluation and consequently control of the constitutionality of the Constitutional Court of the Republic of Kosovo, laws and decisions adopted by the Assembly of the Republic of Kosovo as regards substance and procedure followed.”*
144. In this regard, KOSTT added that *“[...] as well as from the name and the procedure followed, the Assembly of the Republic of Kosovo has not adopted a decision as claimed by the Applicant but only recommendations, therefore according to Article 113 paragraph 5 of the Constitution of the Republic of Kosovo, subject matter of the review and checking of the constitutionality of the Constitutional Court of the Republic of Kosovo cannot be these Recommendations.”*
145. Regarding the Applicant’s allegations, KOSTT comments that *“For the causes and reasons presented are arbitrary, subjective and even unconstitutional, the allegations of the Applicant that in fact it is not about recommendations but about decisions. For these allegations, the Applicant did not present any decisive fact and did not show any legally valid evidence for the concretization of the legal norm as well as the constitutional one and even the legal ones. The treatment and*

legal qualification of the recommendations as decisions not only contradicts the provisions of Article 113.5 of the Constitution of Kosovo but is even contrary to the high standards of professional responsibility.”

146. KOSTT in regard to the Referral of the Applicants reasons that “[...] it is incomprehensible, inexplicable the allegation of the Applicant when he ascribes to the recommendations adopted by the Assembly of the Republic of Kosovo features of a decision and then alleges that according to this constitutional provision the Applicant has the right to challenge the illegality of the decision adopted by the Assembly of the Republic of Kosovo according to the substance and the procedure followed.”
147. According to them, “*The Assembly of the Republic of Kosovo in the plenary session of 06 May 2021 adopted Recommendations, which according to the content and name do not have a binding character.*”
148. KOSTT in the submitted response considers that according to Article 62, paragraph 1 of the Rules of Procedure of the Assembly: “*The Assembly also issues recommendations that do not have a binding normative character, while decisions and conclusions have the nature of binding legal acts. The legal-technical term, recommendation or letter of recommendation means a piece of advice or opinion given on how to proceed. The recommendation is a written opinion that includes the instruction to act or not to act in the concrete case.*”
149. KOSTT further elaborating the role, tasks and manner of operation of the Transmission System Operator based on the provisions of the Law on Electricity, stressed that: “*According to the stated License [ZRRE/Li_15/17_A] of 13.04.2017] and the provision of Article 16 of the Law on Electricity, the public enterprise KOSTT sh.a has the responsibility and is obliged to transmit electricity according to the conditions defined in the License, the operation of the system and the development of this system in the transmission of electricity throughout the integrated territory of the Republic of Kosovo, in interconnection with other electricity systems, balancing the electricity system in accordance with the Grid Code and Rules of the Market. Based on ERO License No. 15/17, KOSTT is obliged and responsible to provide electricity and consequently to compensate the losses arising from the energy used but not paid by consumers in the northern part of the Republic of Kosovo.*”
150. KOSTT, referring to the Law on Obligational Relationships, the Law on Electricity and the Law on Consumer Protection, as well as the decisions of state bodies, including the relevant decisions of the public enterprise KOSTT sh.a., and KEDS, states that “*they have not adopted any decision on debt forgiveness for favouring the citizens of the state of the Republic of Kosovo or even for discriminating against the citizens of the state of the Republic of Kosovo, on this basis. As the citizens of the Republic of Kosovo, including its northern part, have the obligation to fulfil the legal contractual obligations for the payment of electricity consumed without exception. The contested Recommendations do not exempt, favor or even*

discriminate by any legal basis of constitutional or legal standards, any citizen of the Republic of Kosovo to be exempted, favored or on any basis discriminated for consumed electricity, to pay the constitutional and legal obligation of consumed electricity.”

151. Regarding the contested Act, KOSTT states that: *“With these contested recommendations, the constitutional guarantees of Article 3, Article 24, and even other provisions cited in the request of the PDK parliamentary group for their constitutional review are not violated by any constitutional legal basis.”*
152. With regard to the Applicants’ allegations, KOSTT reiterates *“[...] as well as the procedure followed and the substance of all features and elements of logical, grammatical, substantive understanding, but also the very purpose of the legislator unequivocally and safely results that the Assembly of the Republic of Kosovo has adopted the contested recommendations. From all paragraphs of this recommendation it is explicitly and clearly specified that their content has to do with giving advice, instructions, and orders on how to act in the current situation of legal, financial nature, such as the Public Enterprise KOSTT sh. a. as well as the Government of the Republic of Kosovo. With these recommendations of 06 May 2021 that do not have a mandatory normative character, the Assembly of the Republic of Kosovo addresses some legal issues of the Public Enterprise KOSTT sh.a., as well as the Government of the Republic of Kosovo by making those consultations and instructions.”*
153. In light of this, KOSTT alleges that the Applicants’ Referral regarding the contested Act under paragraph 3 of Article 39 of the Rules of Procedure of the Court is incompatible *ratione materiae* with Article 113, paragraph 5 of the Constitution.
154. Whereas, pertaining to the merits of the Referral, KOSTT, summarizing the above justifications, states that: *“If the coverage of these losses due to the deviation of electricity in the northern part of Kosovo is prevented or prohibited, then according to the Connection Agreement KOSTT-ENTSO-E, the procedural mechanisms, standards and practices are automatically activated for KOSTT to be punished in the amount of 5 million euro. Violation of the KOSTT-ENTSO-E Agreement would have implications and harmful consequences in respecting the standards and norms in European integration.”*
155. In this regard, KOSTT also added that *“Although the Applicant alleges that the provisions of Article 119, 121 and 122 of the Constitution of the Republic of Kosovo have been violated, but he does not present relevant facts and does not propose legally valid evidence to prove those allegations, the burden of proof lies with the Applicant and the same bears the risk of non-provability even according to the principle of prima facie in terms of the merits of the Referral. Likewise, the Applicant has failed to prove the causal link between the full factual situation and the correct application vis-a-vis the alleged constitutional norms that have been violated.”*

156. While, regarding the request for an interim measure by the Applicant, KOSTT states that: *“Although the Applicant requests the Constitutional Court to impose an interim measure regarding the suspension of the contested recommendations, he has not shown any relevant facts and legally valid evidence that the imposition of an interim measure is necessary to avoid risks and causing irreparable damages and the imposition of this interim measure is in the public interest as expressly required by the provision of Article 1116 of the Constitution of the Republic of Kosovo and Article 27 of the Law on the Constitutional Court and Rule 56 of the Rules of Procedure of this court.”*
157. Furthermore, KOSTT also underlines that *“The imposition of an interim measure is not of a theoretical and abstract nature as claimed by the Applicant but it is practical and concrete. In addition, the Applicant by not concretizing and specifying his request for interim measures against the paraphrasing of the provision of Article 116 paragraph 2 of the Constitution of the Republic of Kosovo and Article 27 of the Law on the Constitutional Court and Article 24 of the Rules of Procedure of the Constitutional Court, is of a prejudicial nature, unacceptable and consequently unfounded.”* Finally, KOSTT specifies that the Applicants have not indicated a *prima facie* case on the merits of the Referral, have failed to argue that failure to impose an interim measure would cause irreparable damage, and what damages they are; and have not proved that the imposition of this measure is in the public interest.

(v) Responses of Assembly Committees [received on 21 July 2021]

158. The Court recalls that on 21 July 2021, it received the responses of the Committee on Legislation and the Committee on Economy of the Assembly, respectively to its questions, of 8 July 2021, and submitted through the President of the Assembly.
159. Initially, the Court refers to the responses submitted by the Committee on Legislation of the Assembly, which with respect to the question what is the legal nature of the recommendations issued by the Assembly under Article 65, paragraph 1, of the Constitution and more specifically, whether the contested Act is legally binding on the entities to which it is addressed, stated the following: *“Regarding this question, the Committee notes that according to Article 65 point 1 of the Constitution of the Republic of Kosovo, it is determined that the Assembly of Kosovo adopts laws, resolutions and other general acts. Recommendation is as an act by which the Assembly expresses the view and presents the proposal for the work of the state and public body. Through recommendations, the Assembly of the Republic of Kosovo organizes its work in two aspects: internal, through the bodies of the Assembly, such as Committees, and external, such as the parliamentary oversight function. The legal effect of the recommendations in each case is the same. Through the recommendations in the internal functioning, the committees carry their assessment, ascertainment of the situation from the point of view of the Committee, which serves as the opinion of the Committee for the deputies (session) on an issue, act, legal initiative, working report, etc., but the deputies of the Assembly, respectively the plenary session is not obliged to take it as a basis,*

unless it agrees with it. This function of the committees is defined in Article 67, point 2 of the Rules of Procedure of the Assembly of the Republic of Kosovo, which states that the Committee makes reports and these reports must contain the recommendations of the Committee, together with the relevant reasoning. Moreover, according to the procedure, every time an issue is considered or voted in the plenary session, the opinion of the Committee is presented in advance through a recommendation, but the issue which is listed as an agenda item is voted and not the Committee's recommendation on that issue. The recommendation presents the general position of the Committee on a specific issue at a given time, on an issue which is not within its competence, but for which the Assembly of Kosovo, as the highest representative and decision-making body, bears indirect responsibility. Similar to the recommendations, the resolutions, and declarations do not have a direct binding effect, but express the position and will of the Assembly. Of course, recommendations, resolutions, and declarations, depending on the issue and the institution to which they are addressed, can serve as a guide for action."

160. To the question of the Court what the competencies of the Assembly of the Republic of Kosovo are, according to the legislation in force, in relation to the Public Enterprise KOSTT and more specifically, what is the legal basis, according to which the Assembly, as the sole shareholder of this Public Enterprise can authorize it to cover losses in the energy system, the Committee on Legislation specified the following:

"In accordance with the Law no. 05/L-085 on Electricity, adopted in 2016, the shareholder rights are exercised through the Assembly of the Republic of Kosovo. The Assembly as a shareholder of this enterprise, through the functional committee holds the enterprise responsible for management, including profits and losses and in this case the Committee exercising its mandate towards KOSTT has assessed that these recommendations can address the problem of losses mentioned in paragraph 3 of the recommendations. Pursuant to Article 10 of the Law on Publicly Owned Enterprises, "the shareholder has no formal obligation to the POE; and the Shareholder will not finance the POE, unless expressly authorized under an Annual Budget Appropriation Law or other law adopted by the Assembly of Kosovo". Considering this, we must also refer to Law no. 05/L-085 on Electricity, which stipulates that: energy enterprises have the obligation to provide public service, as defined by the License. Furthermore, taking into account that the KOSTT License provides for the coverage of expenses and in this regard the Assembly is the only shareholder that can authorize the coverage of such expenses, based on the Law adopted by the Assembly, it can be concluded beyond any doubt that the Assembly, through the recommendation, has created the conditions for action for KOSTT."

161. Whereas, to the question of the Court according to which legal basis are covered the losses of the electricity system from the date of entry into force of the Law on Electricity, respectively in the period 2016-2020, the Committee on Legislation of

the Assembly stated that *“Law no. 05/L-085 on Electricity has determined that the rights of the shareholder are exercised through the Assembly of the Republic of Kosovo and these rights are exercised through various forms. In this case, the Committee on Legislation does not comment on the actions of the Functional Committee on Economy, neither in the past nor now, because it is in its competence to respond in accordance with the law to each institution within its scope.”*

162. Second, the Court refers to the response submitted by the Committee on Economy of the Assembly, which responses to the first and second questions of the Court were identical to those prepared and submitted by the Committee on Legislation.
163. However, to the question of the Court on what legal basis the losses of the electricity system have been covered since the date of entry into force of the Law on Electricity, respectively during the period 2016-2020, the Committee on Economy specified the following:

“Law no. 05/L-085 on Electricity has determined that the rights of the shareholder are exercised through the Assembly of the Republic of Kosovo and these rights are exercised through various forms. Also, based on Law no. 05/L-081 on Electricity (LE) with Article 4 energy enterprises have the obligation to provide public service as defined by the License. Consequently, with one of the conditions set out in the License for Energy TSO with Article 5, KOSTT is obliged to compensate for electricity losses in the northern part of Kosovo, as well as ERO with the relevant provisions in the Rule on revenues of the TSO/MO has obliged KOSTT to cover consumption and losses in the northern municipalities of Kosovo.

- With the opening of the electricity market in April 2017, ERO transferred the responsibility for the supply of Serb-majority municipalities in the northern part of Kosovo from KESCO to KOSTT, naming it as a system loss, and based on Decision V_907 2017, of 13 April 2017, approves revenues to KOSTT to cover losses in the system (consumption of the northern part of Kosovo) for the tariff year 01.04.2017 - 31.03.2018.*
- Obligation for compensation of losses in the northern part of Kosovo set out in Article 5 of the License for the Energy Transmission System Operator as well as the relevant provisions in the Rule on Revenue of the TSO/MO, where ERO has decided that the obligation to cover of consumption and losses in the northern municipalities of Kosovo belongs to KOSTT, while it has not covered the revenues needed to meet this obligation.*
- Obligation from the Law on Electricity Article 16 paragraph 1.19 according to which KOSTT is responsible for balancing the electricity system in accordance with the Transmission Network Code and Market Rules in the Republic of Kosovo.*
- Connection agreement KOSTT - ENTSO, Article 4 according to which KOSTT must operate in full compliance with the regulations of the European Committee (System Operation Manual, or SOGL, Electrical Network of Emergency and Restoration (NCER), Guidelines for balancing the electricity system, the framework agreement - SAFA and any amendments to them in the*

future) and is obliged to balance the electricity system of Kosovo. KOSTT is not allowed to use the revenues generated from tariffs allowed by ERO to cover losses in four municipalities in the northern part of Kosovo, but KOSTT has the obligation to balance the electricity system of the Republic of Kosovo by activating balancing contracts of the system with the balancing service providers, therefore the coverage of losses for the northern part of Kosovo is necessarily done either through the balancing mechanism or the withdrawal of electricity from the electricity system of Continental Europe. In all cases KOSTT as a Regulatory Zone, respectively Kosovo, cannot avoid the costs of balancing the electricity system of Kosovo, including energy consumed in northern Kosovo. In the absence of financial resources to cover costs either for energy procurement to cover losses in northern Kosovo, or balancing costs or costs of deliberate deviations, then:

- The financial viability of KOSTT is endangered by operating at a loss
- The continuation of the KOSTT - ENTSO-E agreement is endangered
- KOSTT can be fined up to 5 million euros per year, in case of intentional deviations which are considered as a violation of the agreement KOSTT - ENTSO-E
- The reputation of KOSTT and Kosovo towards Continental Europe is endangered
- The performance of the TSO of Albania is endangered in the capacity of the leader of the Regulatory Block AK (Albania-Kosovo Regulatory Block)
- The functioning of the Albanian Electricity Exchange is endangered, where KOSTT is a Shareholder
- and all the benefits of operating KOSTT as an Independent Regulatory Zone
Thus, the costs of losses in the municipalities of northern Kosovo, whether in the form of energy purchase or in the form of the obligation to balance the system, will remain an obligation of KOSTT.
- Fulfilment of KOSTT Obligations as a Regulatory Zone within Continental Europe
- Fulfilment of the commitment of the Government of Kosovo to ENTSO-E for stopping of deviations and uninterrupted supply of electricity to the northern part of Kosovo (see the letter of 14.09.2017).
- Fulfilment of obligations by Resolution no. 06-R-008 of the Assembly of the Republic of Kosovo of 05 June 2018, which obliged the Government of the Republic of Kosovo to come up with a solution for the supply of the northern part of Kosovo.
- Continuation of the commitment of the Government of Kosovo in the temporary solution of the issue in implementation of this Resolution, where with the approval of the budget, to cover the supply of the northern part of Kosovo it had allocated a certain amount, funds which were sufficient by mid-April 2021, exactly the first ten days of April.
- ensuring financial standards and good practice, including compliance with Kosovo Budget rules, other applicable laws.

Taking into account the importance of energy independence of KOSTT, respectively the Republic of Kosovo in general on the occasion of signing the

Connection Agreement with ENTSO-E, fulfilment of legal obligations regarding the provision of balancing which derive from the LE [Law on Electricity], as well as from this agreement, the financial penalties that would follow in case of causing deviations as a result of losses caused in the north of Kosovo, in relation to the temporary use of funds from the own budget which will then be reimbursed, in light of the clarification of the article above, would mean that it would not have to cause any damage which would be difficult to repair, and moreover the endangerment of energy independence would be in complete contradiction with the public interest.”

(vi) Responses of the Applicants [received on 6 August 2021]

164. The Court recalls that on 6 August 2021 it received the Applicants’ responses to its questions, of 8 July 2021, addressed to the Assembly of Kosovo.
165. The Applicants initially elaborated on the competencies of the Assembly citing Article 65 of the Constitution, while regarding the contested Act they stated *“It is worth noting that the contested decision was deliberately adopted in the form of recommendations, although as a rule, issues reviewed and adopted by Parliamentary Committees are forwarded to the Assembly in the form of final decisions, as provided in Article 62 “Function of committees”. of the Rules of Procedure, paragraph 1 of which, explicitly stipulates “Committees shall proceed without delay the cases sent to them. The committees recommend to the Assembly final decisions relating only to the issues or matters referred to them, or to questions directly related to them. The committees can also deal with other issues within their scope.”*
166. In this respect, regarding the response to the question what is the legal nature of the recommendations issued by the Assembly according to Article 65, point 1, of the Constitution of the Republic of Kosovo and more specifically, whether the contested Act is legally binding on the entities to which it is addressed, the Applicants stated the following *“From a legal point of view and according to the rule, the legal nature of the act adopted by the Assembly determines the effect and the consequences that it causes. Article 80.1 of the Constitution defines how decisions are adopted by the Assembly, as follows: Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution. In this context, the contested decision has essential legal flaws. On the one hand, it is referred to as “recommendations”, and on the other hand, substantively, its provision causes great legal and financial consequences. So, we cannot assume that this is simply and only a “recommendation”, which as a rule, has no binding force. But it is a “decision” of the Assembly pursuant to paragraph 5 of Article 113 of the Constitution.”*
167. According to the Applicants, *“The term “decision” used by Article 113.5 refers to any action of the Assembly which produces legal consequences under its constitutional powers. Therefore, the term ‘decision’ includes not merely a legal act of the Assembly, but the decision of the latter by which its issuance was made.*

Therefore, it can be argued that any action of the Assembly that produces legal consequences (general or individual), whether issued in written or unwritten form, both in relation to substantive and procedural matters, may be subject to constitutional scrutiny.”

168. In this respect, the Applicants in essence claim that *“The contested decision obliges the public company KOSTT to pay for the electricity consumed by the inhabitants of the northern municipalities of Kosovo from its dividend, a dividend which under normal conditions would go to the Kosovo consolidated budget. So, practically the money is taken from the Kosovo consolidated budget. The fact that the contested decision is a “decision” of the Assembly in terms of substance and based on the effects it produces, is easily evidenced by the payment that KOSTT has made immediately, after this decision has been taken.”*
169. Throughout their response, the Applicants also point out that *“Regarding the above, we consider that in the circumstances of the concrete case, the court should not be limited in terms of the name of the act, but in the effect and legal consequences that the act causes. Moreover, the court has already built its practice, which is not limited to the constitutional review procedure, in the sense of naming the act, but in terms of the issue(s) it raises. Consequently, the adopted recommendations - the contested decision, fall into the category of decision adopted by the Assembly, in terms of the case-law of the Court, which can be applied mutatis mutandis to the specific case, as applied in case KO73/16, when it is raised an important constitutional issue, regardless of the title of the act. Regarding the above, and based on the case KO73/16, we consider that the contested decision, even though it is in the form of “Recommendations” raises constitutional issues, respectively, falls within the ambit of Constitutional norms. Taking into account points 43 and 49 of the judgment in case Ko73/16, we consider that neither the Committee, nor the Assembly, and even more so, the Constitutional Court, cannot/should not be limited to the name of the act, but on the issue that the same raises.”*
170. In support of the above allegations, the Applicants refer to the case-law of the Court, namely case KO73/16, Applicant: *the Ombudsperson Institution*, Judgment of 8 December 2016, paragraphs 43 and 49.
171. The Applicants further specified that *“KOSTT is the Operator of the System, Transmission and Electricity Market of Kosovo, a public company with 100% of state shares. According to the Law no. 05L-085 on Electricity adopted in 2016, the rights of the shareholder are exercised through the Assembly of the Republic of Kosovo. KOSTT dividend is part of Kosovo’s budget. This means that with the money of the Kosovo budget will be paid the electricity consumed by a part of the citizens of Kosovo - the citizens of the municipalities in the north of Kosovo. Dividend, according to the actions of ERO is unlawful because to be classified as Dividend, the process and financial report must go through ERO. So, KOSTT has no valid document from the Regulator that the dividend is legal and can use it. Dividend according to ERO is nothing but remains of non-invested funds of*

various capital projects because KOSTT was a long time without a Board, and these funds would have to be returned to investment. So, KOSTT has not dared and has no legal basis to pay other categories with these funds. Therefore, KOSTT has committed another violation that due to the lack of monitoring by ERO (lack of the Board), has started distributing these funds.”

172. The Applicants state that *“Another very important aspect is the fact that public enterprises and independent institutions are independent in the exercise of their competencies, while the intervention in their budget, revenues or expenditures, can be done only in accordance with legal rules. In this case, the contested decision could be taken only if the Assembly, by adopting the Law on Budget or supplementing and amending it, would allow KOSTT expenditures, respectively the use of its dividend, to cover the recorded losses.”*
173. According to the Applicants, *“The Assembly, as a shareholder, has no competence to interfere with the independent work of the institution through a decision (recommendation), much less to decide on the use and utilization of the dividend of an independent institution. Such a decision of the Assembly is not provided in any law in force, as a competence of the Assembly. On the contrary, it is the Assembly, the institution which according to Article 65.9 of the Constitution oversees the work of the Government and other public institutions, which, according to the Constitution and laws, report to the Assembly. The Electricity System, Transmission and Market Operator of Kosovo (KOSTT) reports to the Assembly, but the exercise of duties as an independent institution cannot be transferred to the Assembly, just because it reports to this institution. If KOSTT had a legally unfounded request, this does not mean that the decision approving or rejecting that request should or may be legally unfounded.”*
174. The Applicants further also emphasize that,

“On 10 March 2020, the Government of Kosovo adopted the draft law on budget allocations for 2020. In the draft law for the 2020 budget, the request of the Minister of Finance, Mr. Besnik Bislimi for the allocation of funds at the level of 10 million euros and this information is found in the Law on Budget, adopted by the Assembly. On 14 March 2020, in an extraordinary session of the Assembly of the Republic of Kosovo, the Draft Law on the 2020 budget was adopted in an accelerated procedure. According to this draft law supported by 63 deputies, the allocation of funds of 10 million euros for the Public Enterprise KOSTT is justified. Such a decision, however, was materialized by the law adopted by the Assembly and based on the responsibilities of the Assembly for the allocation of the state budget. Meanwhile, a year later, respectively on 28 April 2021, at the meeting of the Functional committee for Economy, Industry, Entrepreneurship and Trade, was reviewed the request of NP KOSTT to provide financial means to cover losses in the northern part of Kosovo, on which occasion with 6 votes in favour, the proposal of the deputy Mrs. Mimoza Kusari Lila was adopted and as a result, KOSTT will take responsibility for the payment of electricity for the four northern municipalities of Kosovo for the

next six months, thus relieving the Government of this obligation. Regarding the above, we confirm that since the entry into force of Law no. 05/L-085 on Electricity, during the period 2016-2020, it has never happened that electricity losses be covered with a decision or recommendation of the Assembly, according to the legal basis in force.”

175. The Applicants also clarified that *“In 2017, the Ombudsperson Institution of the Republic of Kosovo, ex officio, issued Report no. 265/2017 regarding the bills of electricity consumed by the four northern municipalities of the Republic of Kosovo. In the Report of the Ombudsperson Institution, the more expensive payment of 3.5% on electricity bill to cover the costs of electricity consumed by the citizens of the municipalities in northern Kosovo (North Mitrovica, Zubin Potok, Zvecan and Leposavic), is considered as discriminatory and thereby violates the constitutional rights guaranteed by the Constitution. Also, this report recommends to the Energy Regulatory Office (ERO) and the Government of Kosovo to urgently stop the illegal practice of billing electricity spent in the north of the Republic of Kosovo to consumers in the rest of the country.”*

(vii) Responses of KOSTT to the Court’s questions [received on 16 August 2021]

176. The Court recalls that on 16 August 2021 it received KOSTT’s responses to its questions of 2 August 2021 addressed to KOSTT.
177. Regarding the question as to what are the competencies of KOSTT based on the legislation in force regarding the issues that are defined in the provisions of the contested Act of the Assembly, KOSTT stated the following:

“[...] Pursuant to the legislation in force, the competencies of KOSTT in relation to the issues defined in the provisions of the Recommendations no. 08-R-01 of the Assembly of the Republic of Kosovo, of 6 May 2021 are provided in Law no. 05/L-085 on Electricity where Article 16 Duties and Responsibilities of the Transmission System Operator paragraph 1.19 paragraph 1.20 explicitly defines the issue of balancing the system as follows: 1.19., balancing the electricity system in accordance with the Transmission Network Code and Market Rules; 1.20. energy flow management, in the transmission system, taking into account exchanges with neighbouring systems, in order to maintain a balance between supply and demand and ensure the economic efficiency of energy flow management by treating all network users equally;

With the License of the Transmission System Operator of KOSTT, ERO has increased the obligation of the service for compensation of losses in the north of Kosovo, where Article 5 of the License defines:

“1. When required by any Decision or Instruction issued to the Licensee by the Regulator, the Licensee shall provide electricity to compensate for losses

arising from the energy used, but not paid, by consumers in the northern part of Kosovo;

Also, ERO with the relevant provisions in the Rule on TSO/MO Revenues, has obliged KOSTT to cover consumption and losses in the northern municipalities of Kosovo.

Furthermore, the Connection Agreement KOSTT - ENTSO-E entered into force on 28 October 2020 and implies the responsibility for the operation of the transmission system in terms of interconnection (cross-border), which until 14 December 2020 was impossible from Serbia. The Connection Agreement (CA), with Article 13 paragraph 2 provides as follows in case of a breach by a Party, caused by simple or gross negligence or intentional errors or fraud, the claiming Parties shall be entitled to seek compensation from the predetermined Party for any damage, payment fees, or expenses, which may be considered as direct damage arising from, or resulting from, the breach.”

178. According to KOSTT, “*Deviations caused in the northern part of the Republic of Kosovo, are categorized as intentional and predicted deviations, so as such, they result in damage to the parties, caused by the withdrawal of electricity from the interconnection system. With Article 13.4., of the Connection Agreement is defined as follows: except in the case of fraud or international infringement, the indemnity obligations of each predetermined Party shall always be limited to 5,000,000 EUR (five million euros) per year and for the predetermined Party, regardless of the number of violations. From this Article it is seen that the obligations for the payment of compensations for violations by KOSTT can reach up to 5 million euros per year. Also, from 01.06.2021 started the implementation of the mechanism FSCAR (Financial Settlement KM ACE Ramping Period) within ENTSO-E which has replaced the mechanism of the compensation program TSOs (in kind) with energy, with delivery of invoices on a monthly basis for deviations caused. KOSTT will not be able to avoid paying invoices issued by this mechanism. Consequently, we conclude that the legal provisions as well as the relevant acts cited above define the competencies of KOSTT in relation to the issues defined in the provisions of the Recommendations no. 08-R-01 of the Assembly of the Republic of Kosovo, of 6 May 2021.*”
179. To the question of the Court whether the recommendations constitute the only legal basis to take the actions defined in point 4 of the contested Act, namely the coverage of electricity deviations in the four (4) municipalities of Kosovo according to the solution presented and approved in the functional committee using the revenues from the own budget, funds which will be compensated by dividends or any other possible mechanism, KOSTT stated the following:

“[...] legal basis to act in accordance with the above cited point of the Recommendations is the fulfilment of legal obligations in accordance with the Law on Electricity, respectively Article 16 paragraph 1.19, paragraph 1.20 on the issue in terms of system balancing, within the tasks and KOSTT responsibilities, obligations set out in the License and the Market Rule, and

obligations deriving from the Connection Agreement. Therefore, it is important to emphasize that if KOSTT does not make the payment of unbalances for the account of losses in the northern part of Kosovo, KOSTT will fail to meet the obligations arising from market rules in managing the balancing mechanism and financial reconciliation with trading parties and as a result the electricity market in Kosovo will fail.

In connection with point 4 of the Recommendations regarding the part “assets which will be compensated by dividends or any other possible mechanism” with the Statute of the Joint Stock Company KOSTT sh.a., respectively Article 12 paragraph 12.1, it is determined that the Board of Directors of the organization determines the dividend. Also, based on Law no. 06/L -016 on Business Organizations, Article 150 provides for a Dividend where paragraph 1 of the same article stipulates “The Board of Directors of a Joint Stock Company, if authorized by statute or by decision of shareholders, may declare and pay dividends on shares of the Joint Stock Company. In the event of such a decision, the dividend must be paid on all shares issued in any type or category, and under no circumstances can it be declared and paid only on certain shares. The Board of Directors has the right to take this action at any time,” based on Article 151, the Procedure for Authorization of Dividends is defined.

1. The decision on the authorization and payment of dividends can be made only by the shareholders, unless the authorization for the decision in question has been given to the Board of Directors by the statute of the Joint Stock Company.”

180. Whereas, to the question of the Court what are the actions that KOSTT has taken in implementation of all provisions of the contested Act, adopted by the Assembly of the Republic of Kosovo, it stressed that,

“KOSTT in implementation of all provisions of the Recommendations, adopted by the Assembly of the Republic of Kosovo has taken the following actions: in the Extraordinary Meeting no. 121.1/21 of the Board of Directors of KOSTT SH.A., held in the KOSTT Building on 17 May 2021 as an item on the agenda reviewed the legal act no. 08-01 of 06.05.2021 adopted by the VIII Legislature of the Assembly of the Republic of Kosovo for the provision of financial means to cover the losses on electricity consumed in the northern part of Kosovo. Consequently, the System Operational Department has addressed to the Board of Directors, the request for the allocation of the budget line in the amount of 11,000,000 euros. After reviewing the request in question, the Board of Directors has adopted:

Decision 210517-11/2

1. According to the authorization from the Recommendations No. 08-01 of the Assembly of the Republic of Kosovo, of 06.05.2021, budget funds are allocated

in the amount of 8,200,000 euros from the profits held to cover the deviation of electricity for the northern part of Kosovo for 2021, funds which will be compensated by dividends or any other possible mechanism.”

181. Finally, KOSTT states that it has regularly informed the Committee on Economy of the Assembly through reports submitted regarding the deviations of electricity and financial costs to cover losses for municipalities in the northern part of the Republic of Kosovo.

(viii) Responses of KOSTT to the questions of the Court, received on 18 October 2021 and 26 October 2021, respectively

182. The Court recalls that on 8 October 2021, it received the responses of KOSTT to its questions, of 4 October 2021, addressed to KOSTT.
183. Regarding the first question as to what is the definition and meaning of the assets held according to the legislation in force, and also what is the legal basis for the compensation of these assets “*from dividends or any other possible mechanism*”, KOSTT responded as follows:

Definition of assets held - Profit/Loss accumulated from previous accounting periods that have neither been paid as dividends nor has been used for any other purpose by the reporting economic entity - is in accordance with International Accounting Standards. KOSTT is obliged to prepare financial statements according to International Accounting Standards, based on Article 7 paragraph 1 of the Law on Accounting, Financial Reporting and Auditing.

Based on the Code of Ethics and Corporate Governance for Publicly Owned Enterprises, Article 13.14 determines the Dividend “If the enterprises earn profit, (net tax), the Board is expected based on the advice of the management team, to determine how much of that profit shall be held for reinvestments and how much shall be paid as dividend. The Board will make its recommendations in declaring the dividend to the shareholders at the Annual General Meeting.”

KOSTT sh.a. is the Electricity System, Transmission and Market Operator of Kosovo, a publicly owned company with 100% of shares owned by the state. Based on Article 13 paragraph 2 of Law No. 13 of 05/L-085 on Electricity adopted in 2016, the shareholder rights are exercised through the Assembly of the Republic of Kosovo, a requirement which has been derived from Directive 2009/72/EC of the European Parliament and the Council. This Directive expressly prohibits the exercise of control rights by the entity which owns the transmission operator and in the enterprises performing generation or supply functions. Therefore, for KOSTT sh.a., since 2016, the shareholder rights are exercised by the Assembly of the Republic of Kosovo.

Compensation of assets from dividends or any other mechanism is in accordance with the recommendations bearing no. 08-01 dated 06.05.2021,

point 4, of the Assembly of Kosovo in the capacity of a shareholder of KOSTT, a right which is provided by Article 151, Procedures for Authorizing Dividends, paragraph 1 of Law No. 06 / L-016 on Business Organizations which explicitly provides that “A decision authorizing and paying dividends may only be made by the Shareholders unless the authorization to make that decision has been conferred to the board of directors in the Charter of the Joint Stock Company”.

Based on Article 4 of the Law No. 05/L-081 on Energy, energy enterprises have the obligation to provide public service as defined by the License.

Consequently, by Article 5.1 of the Electricity Transmission System Operator License ZRRE/Li15/17, KOSTT has been obliged to compensate electricity losses in the northern part of Kosovo: ‘/When required by any Decision or Instruction issued to the Licensee by the Regulator, the Licensee must provide electricity to compensate for losses arising from the energy used, but not paid, by consumers in the northern part of Kosovo’.

Fulfilment of duties and responsibilities of the Transmission System Operator defined by Article 16 of the Law on Electricity is a legal obligation, and failure to fulfil such obligations violates the security of supply of the electricity system of Kosovo. Therefore, KOSTT is responsible for balancing the Kosovo Electricity System.

Moreover, the Connection Agreement KOSTT - ENTSO-E entered into force on 28 October 2020 and implies the responsibility for the operation of the transmission system also in interconnection (cross-border) terms, which until 14 December 2020 has been disabled by Serbia.

The Connection Agreement (CA) as an international agreement signed by KOSTT and 28 TSOs of the countries of Continental Europe, in Article 13 paragraph 2 has provided that in case of a violation by a Party, caused due to simple or serious negligence or intentional errors or fraud, the Claimant Parties shall be entitled to claim compensation from the default Party for any damage, payment fee or expense which may be considered as direct damage arising out of, or resulting from, the breach.”

Deviations caused in the northern part of the Republic of Kosovo are categorized as intentional and predicted deviations therefore, as such, they result in damage to the parties, caused by the withdrawal of electricity from the European interconnection system.

Article 13.4. of the Agreement sets out as follows: except in the case of fraud or international breach, the indemnity obligations of each default Party shall always be limited to 5.000.000 EUR (five million Euros) per year and for the default Party, regardless of the number of breaches. This Article provides that the obligations for the payment of indemnity for breaches by KOSTT can reach up to 5 million euros per year.

184. Whereas, with regard to the second question of the Court as to how KOSTT defines the deviations of the electricity network, KOSTT responded:

Deviation of electricity is the difference between the contracted import and the actual import according to the measurements at the borders of Kosovo.

Deviations of electricity are deviations against the interconnection system of Europe and are not limited to deviations against the countries of the region (Albania, Montenegro and Macedonia) with which Kosovo is bordered. Regarding the deviations of electricity, there is an agreement at European level between the TSOs of Europe (Billing Agreement TSO-TOS (TIA) for the financial settlement of the unintentional exchange FSkar). All deviations are calculated by SWISSGRID (Synchronous Area Coordination Center of Southern Europe), for every hour of the respective month and the total monthly deviations is calculated in MWh. For this amount of deviations, KOSTT will be sent an invoice by JAO (Joint Allocation Office for Europe) which will cover the costs of electricity generation that Kosovo has received as a deviation.

Electricity deviations or losses in the four municipalities of Kosovo are defined by Article 5 of the Electricity Transmission System Operator License ZRRE/Li 15/17.

185. The Court further recalls that on 21 October addressed KOSTT the question as to what are the revenues and benefits of KOSTT as a result of KOSTT operating as an independent Regulatory Zone after the signing of the agreements mentioned above. To the latter, KOSTT responded, *among others*, as follows:

“After the signing the Connection Agreement with ENTSO-E, the revenues that KOSTT started to realize as an Independent Regulatory Zone are:

- Revenues from Capacity Allocation*
- Revenues/expenditures from energy transit - from the ITC mechanism*

Benefits of KOSTT/Kosovo as a result of signing the agreement with ENTSO-E are numerous.

- Recognition of Kosovo as an independent zone within the current borders in the European power system which until then was known as part of Serbia.*
- Opening the possibility for the formation of a joint Kosovo-Albania Regulatory Zone, which took place on 26 November 2019 upon the signing of the agreement between the two Parties. This agreement was supported by RGCE (Regional Group Continental Europe) and is now known as the AK Regulatory Zone.*
- Optimization of two electricity systems Kosovo-Albania which complement each other and as a result we have cost optimization which translates into tariffs for the consumer.*
- Opening the way for the establishment of a joint energy stock exchange, which was established on 5 October 2020 where KOSTT is a joint shareholder with the TSO (Albania), where later a branch for Kosovo was established.*
- Opening the possibility of KOSTT’s membership to ENTSO-E as an equal member with all other TSOs.*
- Opening the possibility for KOSTT to become a member in other European and world energy organizations and associations*

Benefits of the AK (Albania-Kosovo) regulatory zone include these components

- Joint system balancing*

- Decrease of reserve quantity by both TSOs
- The annual financial benefit for the balancing electricity from the Joint Operation Agreement with the TSO of Albania within the Kosovo-Albania Regulatory Zone is in the amount of 2,234,016 t.
- Operation performance of both TSOs in relation to ENTSO-E
- The possibility for KOSTT to become a member of ENTSO-E without having any balancing reserves within Kosovo
- Possibility of integration of Renewable Energy Sources”

(ix) Responses of the Committee on Budget, Labor and Transfers of the Assembly [received on 1 November 2021]

186. To the question of the Court whether, before reviewing and adopting the contested act, the Recommendation of the Committee on Economy, Industry, Entrepreneurship and Trade, of 28 April 2021 for opinion, was sent to the Committee on Budget, Labor and Transfers, the latter responded as follows: *“No provision of the Rules of Procedure of the Assembly sets out that the functional Committee receives an opinion from other Committees, in this case the Committee on Budget, Labor and Transfers and/or the Committee on Public Finance Oversight. Except in the cases when it reviews draft laws, which is an obligation of Committee, in accordance with the procedure, to submit amendments for review in terms of the budget, see Article 57 paragraph 5 of the Rules of Procedure of the Assembly. While the Committee on Public Finance Oversight reviews audited reports and issues recommendations in that regard, which means that in this case the Committee on Economy, Industry, Entrepreneurship and Trade did not need in any case to send the recommendations of 28 April 2021 to be reviewed by this Committee.*
187. While regarding the response of KOSTT submitted to the Court on 18 October 2021, this Committee responded as follows: *“[...] As a Committee, we agree with the responses given by this publicly owned enterprise, because it is the competent party to this case due to the responsibilities arising from Law no. 05/L-085 on Electricity. In this regard see, based on Article 4 of Law No.05/L-081 on Energy, energy enterprises have the obligation to provide public service as defined by the License. Consequently, one of the conditions set out in the License of the TSO in Article 5, KOSTT is obliged to compensate electricity losses in the northern part of Kosovo, and ERO, with the relevant provisions in the Rule on revenues of the TSO/MO has obliged KOSTT to cover the consumption and losses in the northern municipalities of Kosovo. In both questions of the Court, we consider that KOSTT has provided adequate responses by clarifying the distribution of dividends based on International Accounting Standards and based on applicable legislation on accounting, financial reporting and auditing. And explanations given in relation to the second question, regarding the definition about the deviation of electricity, where KOSTT does this on the basis of agreements at European level for billing related to financial settlement of the unintentional exchange. Based on Law No. 05/L-081 on Energy, it is worth mentioning that the publicly owned enterprise KOSTT Sh.A. is not subject to financing from the budget lines which need to be approved by the Committee on Budget, Labor and Transfers and/or the one on*

Public Finance Oversight, the budget of KOSTT Sh.A. is approved by the Board of Directors in accordance with the Law on Publicly Owned Enterprises and is based on the maximum revenues approved by ERO and profits retained from own source revenues.

(x) Responses of the Committee on Public Finance Oversight of the Assembly [received on 1 November 2021]

188. The response of this Committee is as follows:

“The Committee on Public Finance Oversight has not reviewed the Recommendations of the Committee on Economy, Industry, Entrepreneurship and Trade, because it has not received nor was charged by the Assembly to review those recommendations. No provision of the Rules of Procedure of the Assembly stipulates that the functional Committee receives an opinion from other committees for recommendations.

The Committee on Public Finance Oversight, according to the Rules of Procedure of the Assembly, has within its scope the oversight of legality of expenditures of public funds based on audited reports and statements by the National Audit Office. The National Audit Office has not audited the annual financial statements of KOSTT, therefore as a Committee we have not had the opportunity to review the legality of spending of the budget of KOSTT.”

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

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

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

**Article 24
[Equality Before the Law]**

- 1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
- 2. No one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation*

to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

Article 55 **[Limitations on Fundamental Rights and Freedoms]**

1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.

2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.

3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.

4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.

5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.

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

The Assembly of the Republic of Kosovo:

(1) adopts laws, resolutions and other general acts;

[...]

(5) approves the budget of the Republic of Kosovo;

[...]

(9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law;

[...]

(14) decides in regard to general interest issues as set forth by law

Article 80 **[Adoption of Laws]**

Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.

Article 119

[General Principles]

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

Article 120 [Public Finances]

- 1. Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency and transparency.*
- 2. The conduct of fiscal policy at all levels of government shall be compatible with the conditions for low-inflationary and sustainable economic growth and employment creation.*
- 3. Public borrowing shall be regulated by law and shall be compatible with economic stability and fiscal sustainability.*

Article 122 [Use of Property and Natural Resources]

- 1. The people of the Republic of Kosovo may, in accordance with such reasonable conditions as may be established by law, enjoy the natural resources of the Republic of Kosovo, but they may not infringe on the obligations stemming from international agreements on economic cooperation.*
- 2. Natural resources such as water, air space, mineral resources and other natural resources including land, flora and fauna, other parts of nature,*

immovable property and other goods of special cultural, historic, economic and ecologic importance, which have been determined by law to be of special interest to the Republic of Kosovo, shall enjoy special protection in accordance with law.

3. Limitations on owners' rights and other exploitation rights on goods of special interest to the Republic of Kosovo and the compensation for such limitations shall be provided by law.

The Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

Article 14 Prohibition of discrimination

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

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11

Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1 General prohibition of discrimination

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

Rules of Procedure of the Assembly

CHAPTER II COMPETENCIES OF THE ASSEMBLY

Article 6 Competencies of the Assembly

The Assembly of the Republic of Kosovo shall exercise its competencies in accordance with Article 65 of the Constitution of the Republic of Kosovo:

1. Adopts the Constitution, laws, resolutions, declarations and other general acts.

[...]

5. Approves the budget of the Republic of Kosovo.

[...]

CHAPTER XIV ASSEMBLY COMMITTEES

Article 62 Function of committees

1. Committees shall process matters referred to them without delay. Committees shall recommend to the Assembly final decisions that relate only to the matters or works referred to them, or questions directly related to them. Committees may also handle other issues within their scope of activity.

2. Committees may create their own rules of procedure, in accordance with the Rules of Procedure of the Assembly.

3. Committees shall have a special budgetary line for their functions, within the budget of the Assembly.

4. In the absence of rules describing the procedures within committees, the procedures within committees shall apply in analogue manner with those of plenary session.

Article 67 Committee reports

1. Committee reports to the Assembly shall be made in writing. The reports of the lead - reporting Committee may be supplemented orally by the Chairperson of the lead – reporting Committee or a member or its rapporteur.

2. The reports shall contain the recommendations of the committee together with the relevant reason.

ANNEX NO. 1. DEFINITIONS OF TERMS USED IN THESE RULES OF PROCEDURE [...]

Official document of the Assembly: parliamentary question, motion, draft law, written response to a question, recommendation and committee report, minutes as well as other material submitted for consideration by the Assembly or any of its committees. It does not include the records/transcripts of assembly proceedings.

ANNEX NO. 2.

SCOPE OF ACTIVITIES AND RESPONSIBILITIES OF THE PARLIAMENTARY COMMITTEES

Committee for Budget and Finance

The Committee, within its scope of work and responsibilities discusses all matters relating to the budget and finances in Kosovo. The scope of work of the committee includes:

- Revising the annual budget of Kosovo;*
- Dealing with budgetary and financial issues;*
- Budgetary implications of draft laws for their first year after entering into force and for all consecutive years and giving recommendations to other functional committees;*
- Reviewing periodical reports of the Ministry of Economy and Finance regarding the expenditures of Kosovo institutions and other budgetary organizations that report to the Assembly;*
- Reporting to the plenary session at its own initiative or upon a request from the Assembly for matters falling within the scope of work and responsibilities of the Committee;*
- Reviewing the Government's work plan, its application with respect to financial matters and giving recommendations to the Assembly;*
- Overseeing the application of the Law on Managing Public Finances and other laws regulating public finances;*

[...]

Reviewing of legislation on areas related to budgeting and finance;

- The right to initiate and draft laws;*
- Reviewing of draft laws and motions relating to budgetary implication and budgetary costs of all activities of the Assembly and other Kosovo institutions that fall within the scope of work and responsibilities of the Committee;*

[...]

7. Committee for Economy, Trade, Industry, Energy, Transport and Communications

Committee for Economy, Trade, Industry, Energy, Transport and Communications is a functional committee.

The Committee, within its scope of work and responsibilities, reviews all issues related to economy, industry, transport by land, waters and air in Kosovo, and reviews all issues related to communications, such as postal services, internet, television and radio frequencies and broadcast, and all other issues of communications.

The scope of activities of the committee includes:

- Reviewing draft legislation within its scope of activities;*
- Conceptualizing general strategy regarding the development of economic activities between Kosovo and other countries, by making recommendations for the Assembly and corresponding ministry, etc;*
- Creating legal infrastructure and a safe environment for investments, commercial agreements and concessions in infrastructure, energy, mineral resources in order to develop these economic branches.*
- Engaging in determining and monitoring the application of general policies in the field of economy, trade, industry, energy and transport;*
- Reviewing the draft budget and budgetary mid year review of the respective ministry and makes recommendations to the budget and finance committee in reviewing the budget and adoption of the budget by the Assembly including proposed amendments;*
- Overseeing the implementation of laws within its scope of activities;*
- Reviewing other issues set forth in these rules of procedure and reviewing issues which, by specific decision of the Assembly, are delegated to the Committee;*

In exercising its functions, the Committee cooperates with the corresponding ministry, and all other ministries, from which it may request concrete data including direct reports from ministers or other responsible officials, when required by the Committee.

Law No. 03/L-087 on Publicly Owned Enterprises [published in the Official Gazette on 15 June 2008, as supplemented and amended by Law No. 04/L-111 and Law No. 05/L-009]

Article 4 **Shares**

4.1 Every POE shall be organized as a joint stock company under the applicable law on business organizations.

4.2 If a POE is not organized as a joint stock company as of the effective date of the present law, its owner(s) shall be required to effect such organization within one hundred and fifty (150) days after such date. If the owner(s) fail to effect such organization within such time period, the Minister shall have the authority to effect such organization on their behalf; in such event the Minister shall, under the authority of the present law, be the lawful agent of the owners having the authority to do whatever may be necessary to effect such organization. If the POE is a Local POE, the Minister shall exercise such authority only after consulting with Government and the mayors of the concerned municipalities.

4.3 All ownership interests in a POE shall be represented by shares, and all such shares shall be registered.

4.4 The POE Policy and Monitoring Unit at the Ministry shall be the custodian of all physical certificates representing shares in POEs that are owned by the Republic of Kosovo or any public authority.

Article 5

Exercise of Shareholder Rights

5.1 The Government shall have exclusive competence in the exercise of shareholder rights of the Republic of Kosovo in Central POE's. The Government shall decide on such matters by a simple majority vote. In order to prepare the debate in the Government, a select committee of Ministers shall present proposals or observations on such matters. Secondary legislation promulgated by virtue of Article 42 shall set forth rules on the procedures of the select committee. The select committee shall always include the Minister of Economy and Finance; Minister of Energy and Mining; Minister of Trade and Industry; Minister of Transport and Telecommunications; and Minister of Environment and Spatial Planning. The decisions of Government shall be implemented by the Minister, who shall, to such end, be entitled to act on behalf of the Republic of Kosovo and shall act in compliance with the Law on Business Organizations.

5.2 Where a municipality is a shareholder of a Local POE, its shareholder rights shall be exercised by a Municipal Shareholder Committee, which shall consist of (i) a member appointed by the mayor and (ii) two other members appointed by the Municipal Assembly. To such end, the Municipal Shareholder Committee shall be entitled to act on behalf of the relevant Municipality and shall act in compliance with the Law on Business Organizations. Each Municipal Shareholder Committee shall, by a simple majority vote, determine how to exercise the municipality's shareholder rights on any particular matter.

Article 14

Financial Reporting

14.1 A POE shall comply with any and all financial reporting requirements and accounting principles established for joint stock companies by the law on business organizations.

14.2 A POE shall comply with administrative instructions issued by the Treasury for the purpose of preparing financial reports required by the Law on Public Financial Management and Accountability.

14.3 The financial accounts of every POE shall separately identify, in accordance with the accounting principles referred to in Section 14.1, all expenditures and revenues incurred or received in connection with fulfilling its public service obligations, if any. Upon the approval of its annual financial statements, a POE shall prepare and publish on its publicly accessible web-site a comprehensive statement on its realised performance in relation to the targets set in its business plan.

Law No. 05/L-084 on the Energy Regulatory [published in the Official Gazette on 14 July 2016]

Article 1

Purpose

- 1. The law defines the powers, duties and functions of the Energy Regulatory Office, including the conditions for issuing licenses to carry out energy activities, certification of transmission system operators, procedures for granting authorizations for the construction of new generating capacity, the creation and efficient functioning of competitive energy markets, and the criteria for regulating tariffs and the conditions of energy supply.*
- 2. This law is partially in compliance with the Directive 2009/72/EC on common rules for the internal market in electricity, the Regulation No.714/2009/EC on conditions for access to the network for cross-border exchanges in electricity, Directive No. 2009/73/EC on common rules of the internal European natural gas market Regulation No 715/2009/EC on conditions of access to natural gas transmission networks, and Directive No. 2009/28/EC concerning promotion of use of energy from renewable energy sources.*

Article 2 Scope

The provisions of this Law are applied by the Energy Regulatory Office that shall exercise the powers of an independent agency within the institutions of Republic of Kosovo, subject to applicable legislation, except as, in specific way, provided to the contrary

Law No. 05/L-081 on Energy [published in the Official Gazette on 13 July 2016]

Article 4 Public Service Obligation

- 1. Energy enterprises charged with public service obligations shall ensure the discharge of the public service in accordance with the terms determined in their respective licenses.*
- 2. Duties and obligations of energy enterprises charged with public service obligations are set in the Law on Energy Regulator*

Law No. 05/L-085 on Electricity [published in the Official Gazette on 21 July 2016]

Article 10 Transmission System Operator

- 1. Transmission System Operator manages the transmission system property and is responsible for the operation of the transmission system in Kosovo in line with the licence issued by the Regulatory.*

2. Transmission System Operator shall operate under the energy enterprise, organized as an independent joint stock company.

Article 11

Unbundling

1. The Transmission System Operator will own the transmission system which must be independent from generation and supply operations of electricity and conducted in accordance with the principles and requirements as set forth in the provisions of this law.

2. The independence of the Transmission System Operator shall be considered ensured, in accordance with this law, when:

2.1. person or persons that exercise direct or indirect control over enterprises that perform generation or supply functions do not exercise control or exercise any right, directly or indirectly, over the Transmission System Operator or over a Transmission System

2.2. person or persons that exercise direct or indirect control over the Transmission System Operator or over a Transmission System do not exercise control or exercise any right, directly or indirectly, over enterprises that perform generation or supply functions

2.3. the person or persons that appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking of a Transmission System Operator are not entitled to directly or indirectly exercise control or exercise any right over an undertaking performing any of the functions of generation or supply.

2.4. the same person is not entitled to be a member of the supervisory board, Administrative Board or other bodies that legally represent enterprises that perform functions of generation or supply and of bodies of the Transmission System Operator or a Transmission System.

2.5. rights referred to in sub-paragraph 2.1., 2.2. and 2.3. of this Article, shall include, in particular:

2.5.1. authority to exercise voting rights;

2.5.2. authority to appoint members of the supervisory board, administrative board or bodies legally representing the enterprise; or

2.5.3. holding majority shares.

3. Enterprises of energy that perform functions of generation or supply shall not have the right to directly or indirectly exercise control or any right over the Transmission System Operator and vice versa.

4. When the person referred to in sub-paragraph 2.1., 2.2. and 2.3. of this Article is a public body, then the same public body may not exercise control over active undertakings in the production and/or supply of electricity.

5. Before an enterprise is defined as a Transmission System Operator under provisions of this Article, it should be certified in accordance with the procedures stipulated in the Law on Energy Regulatory.

Article 12

Certification of the Transmission System Operator

- 1. With the aim of implementing Article 11 of this Law, the Transmission System Operator shall be certified.*
- 2. Certification is performed by the Regulatory, in compliance with the Law on Energy Regulator and its Rule for Certification Procedure adopted by it.*

Article 13

Corporate governing, competencies, reporting

- 1. Transmission System Operator functions as public enterprise in accordance with the Law on Public Enterprises and respective legislation in force.*
 - 2. The rights of shareholder for Transmission System Operator shall be exercised by the Assembly of the Republic of Kosovo.*
 - 3. The shareholder at the annual meeting of the Board shall be represented by the authorized person by the President of the Assembly of Kosovo.*
 - 4. The competences of the Board of Directors of the Transmission System Operator are set out in the Law on Public Enterprises.*
 - 5. Board of Directors on the activities of the Transmission System Operator reports to the Assembly of the Republic of Kosovo on a regular annual basis and whenever required to do so by the Assembly. The annual report is submitted at latest by 30 June of the current year for the previous year.*
- [...]*

Article 16

Tasks and responsibilities of the Transmission System Operator

- 1. Tasks and responsibilities of the Transmission System Operator shall be:*
 - 1.1. electricity transmission, in accordance with conditions specified in the license, in an objective, transparent and non-discriminatory manner, throughout the territory of the Republic of Kosovo, maintaining the safety and security of the electricity system and in compliance with this law;*
 - 1.2. operation, maintenance and development of the transmission system of the Republic of Kosovo and cross-border lines with other systems, in order to provide long-term security of system operation and safe supply of electricity, while paying due consideration to environmental protection;*
 - 1.3. operation of transmission system in compliance with the Transmission Grid Code and all other applicable codes and rules, in order to achieve security of electricity supply and economic utilization of the transmission network;*
 - 1.4. planning of electricity system operation, in cooperation with the Market Operator and neighbouring transmission system operators and the Distribution System Operator and network users;*
 - 1.5. publication of rules for network security, operation and planning, approved by the Regulatory. Transmission System Operator shall comply with operational rules and maintain defined level of operational network security. Published rules shall include the general scheme for the calculation of total transmission capacities and transmission security margin;*
- [...]*

1.15. preparation of annual and long-term electricity demand forecasts, in compliance with the Law on Energy and the methodology for preparation of such balances, which are approved by the Regulatory;

[...]

1.19. balancing the electricity system in line with the Transmission Grid Code and Market Rules;

1.20. management of energy flows in the transmission system, taking into consideration exchanges with neighbouring systems, with the aim of maintaining balance between supply and demand and ensuring economically efficient management of energy flows ensuring equal treatment for all network users;

[...]

1.22. procurement of balancing services, based on market principles and principles of transparency and non-discrimination;

1.23. utilization of balancing power in compliance with the Market Rules, as per the list of economic principle bids;

1.24 ensuring the availability of all necessary ancillary services including demand side management process;

[...]

1.42. congestion management for all transactions in interconnection lines with neighbouring systems, based on market rules and mechanisms, which are determined and implemented commonly with other operators in the regional electricity market; [...]

1.45. carrying out other actions envisaged in this law and other applicable laws.

2. Transmission System Operator makes activation of bids of balancing energy with parties that have provided support services and all determined imbalances with balance responsible parties.

3. The Transmission System Operator shall have available all necessary human, technical, physical and financial sources for safe, reliable and long-term operation of the transmission system;

[...]

8. The Transmission System Operator shall be responsible for collecting incomes from allocation of interconnection capacities and payments under the compensation mechanism between TSOs.

9. The Transmission System Operator is responsible for payments for executed contracts, other services provided, including expenses related to its participation in international organizations, which may be mandated through international agreements and European Union legislation.

Article 19

Procurement of Electricity and Capacities from the Transmission System Operator

1. The Transmission System Operator may engage in electricity and capacity procurement according to transparent, non-discriminatory and market-based procedure only for the following purposes:

- 1.1. transmission network losses;*
- 1.2. system balancing;*
- 1.3. provision of ancillary services according to transparent, non-discriminatory and market-based procedure.*
- 2. The Transmission System Operator shall purchase energy required for covering losses in the transmission network in the electricity market. If it provides evidence for each individual case to the Regulatory that such purchases are physically not possible, the Regulatory may demand from producers to offer the electricity required for covering transmission network losses. The Regulatory, based on reports of the Transmission System Operator, may require from the Transmission System Operator, generators and other entities to implement public service obligations to ensure that transmission losses are covered.*
- 3. The Transmission System Operator ensures system services in compliance with market principles and service provision contracts. At the request of the Transmission System Operator, services provided by ancillary service and balancing service providers may be utilized.*
- 4. Rules for electricity system balancing shall be objective, transparent and non-discriminatory, including all rules on imbalance costs for system users. Balancing rules shall be submitted for approval to the Regulatory by the Transmission System Operator. The terms and conditions, including the rules and tariffs for the provision of such services by the Transmission System Operator shall be established pursuant to a methodology approved by the Regulatory in a nondiscriminatory and cost-reflective way and shall be published.*

Article 21

Promotion of Regional Cooperation

- 1. The Transmission System Operator represents Kosovo in the European Network of Transmission System Operators of Electricity.*
- 2. The Transmission System Operator, with prior consent of the Regulatory, takes part in the operation of one or more integrated systems within one or more regions that are covered by one or more Parties to the Energy Community, with the aim of coordinated calculation of crossborder capacities and coordinated allocation of cross-border capacities and verifying operational security and with the aim of establishing and developing regional electricity markets and their liberalization.*
- 3. The Transmission System Operator shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanism.*
- 4. Transmission System Operator shall take into account the opinions, recommendations and shall implement the decisions of institutions established*

in the Energy Community, or the European Union, where such organizations are mandated by regulations or international agreements binding on Kosovo;
5. The Transmission System Operator cooperates with organizations as per paragraph 4. of this Article in ensuring the necessary information regarding network development plans, use and development of interconnection lines and regional cooperation.

Article 24

Electricity market participants

[...]

4. The Transmission System Operator, Distribution System Operator and Closed Distribution System Operator, are electricity market participants only for electricity purchases for covering losses in the transmission and distribution network, and purchases and sale of balancing energy. With the view of achieving energy market competition and with the aim of meeting electricity demand in Kosovo, under the provisions of this law and other laws in force, electricity market participants may execute contracts for the sale and purchase of electricity with:

4.1. other energy enterprises and customers within Kosovo;

4.2. other energy enterprises and customers in the system of another Contracting Party of the Energy Community, as long as the supplier follows the applicable trading and balancing rules.

Article 55

Billing and Payment

1. Customers shall pay for the electricity consumed in accordance with General Conditions of Energy Supply or other applicable contractual conditions.

2. Conditions and procedures for billing, collection and payments shall be determined by the Rule on General Conditions of Energy Supply, issued by the Regulatory.

Law No. 06/L-016 on Business Organizations [published in the Official Gazette on 24 May 2018]

Article 151

Procedure for Authorizing Dividends

1. A decision authorizing and paying dividends may only be made by the Shareholders unless the authorization to make that decision has been conferred to the board of directors in the Charter of the Joint Stock Company.

2. Each decision for distribution of dividends must specify the amount of dividend, date of specification of Shareholders who have the right to receive dividends which date must be later than the date of the decision authorizing the distribution, and the date in which the dividends must be paid, and the date

in which the Joint Stock Company must notify persons who have the right to receive these dividends on the decision and other relevant issues.

Article 162

Authority and Competence of the Board of Directors

1. The competence of a board of directors shall include making decisions on all matters except decisions which are reserved for the shareholders by law or by the Joint Stock Company's charter. Subject to such reservations, the following matters are included within the exclusive competence of the board of directors:

1.1. approving overall business strategy plans for the Joint Stock Company, its internal control, audit and risk management procedures;

1.2. convening annual and extraordinary shareholder assembly sessions;

[...] and

1.12. deciding any other matters which are referred to the exclusive competence of the board of directors in the Joint Stock Company's charter.

Charter of the "Transmission System and Market Operator" Joint Stock Company, KOSTT no. 1888, of 23 November 2020

[...]

Article 14

Board of Directors

14.2.2 The Board of Directors, in accordance to its collective responsibility, shall:

[...]

14.2.2.5 Approve the annual business plan and the annual budget prepared by the CEO based on such long-term plan..

[...]

ERO Licence to Electricity Transmission System Operator granted to: Transmission System and Market Operator (KOSTT) sh.a
Licence Number: ZREE/Li_15/17 [13 April 2017]

Article 1

Purpose

Energy Regulatory Office- ERO (hereinafter "the Regulator"), in line with the authority vested under Article 36 of the Law on Energy Regulator (Law No. 05/L-084), the Law on Energy (Law no. 05/L-081), the Law on Electricity (Law No. 05/L-085) and Rule on Licensing of Energy Activities in Kosovo (ERO/Rule/No. 07/2017) as well as based on Decision of the Government of Kosovo on designating Transmission System and Market Operator (KOSTT) as the only electricity transmission system operator, in its session held on 13

April 2017, amends (modifies) to the Transmission System Operator and Market Operator (KOSTT) JSC., the License for Electricity Transmission System Operator, granted to Transmission System Operator and Market Operator (KOSTT) JSC., with registration number ZRRE/Li_15/17, having its address at St. "Iliaz Kodra" nn. 10 000, Pristina, Republic of Kosovo (hereinafter "the licensee").

The amendment/modification of this license comes as a result of changes in the primary legislation of the energy sector: Law on Energy Regulator (Law No.05/L-084, which entered into force in July 2016); Law on Electricity (Law No.05/L-085, which entered into force in August 2016); Law on Natural Gas (Law No.05/L-082, which entered into force in July 2016); as well as Rule on Licensing of Energy Activities in Kosovo (ERO/RuleNo.07/2017, which entered into force on 31 March 2017).

[...]

Article 3

Rights and Obligations

- 1. The Licensee shall comply with the Articles specified in this license, the Law on Electricity and other applicable laws, regulation, rules and codes.*
- 2. The Licensee shall, inter alia:*
 - 2.1 perform effectively obligations prescribed by the License;*
 - 2.2 operate, maintain and develop the transmission system and cross border lines in an efficient, economic and coordinated manner;*
 - 2.3 balance the system and implement the arranged agreements by enhancing its efficiency, in conformity with Market Rules;*
 - 2.4 perform other functions assigned by the Law on Electricity, Market Rules and this license.*
- 3. The territory covered by this license is the entire territory of the Republic of Kosovo.*
- 4. The Licensee may not be issued a license for any other electricity activity except to the extent that the Licensee complies with the independence and unbundling requirements of Article 11.2 of the Law on Electricity and other applicable legislation.*

Article 5

Compensation for the losses in the North of Kosovo

- 1. Where so required by any Decision or Instruction issued to the Licensee by the Regulator, the Licensee shall procure electrical energy to compensate for losses arising from energy used, but not paid for, by customers in Northern Kosovo.*
- 2. In its regulatory accounts the Licensee shall ensure that it records separately any costs incurred by it in energy purchase under paragraph 1 above.*

[...]

Article 39
Entry into force

1. *In line with Article 36 of Law on Energy Regulator, this amended (modified) license, with registration number ZRRE/Li_15/17 is issued to Transmission System Operator and Market Operator (KOSTT) JSC., for the activity of electricity transmission, and shall enter into force on 13.04.2017.*
2. *The license issued on 04 October 2006 (License No. ZRRE/Li_15/06), modified on 18.07.2012 (License No. ZRRE/Li_15/12), modified again on 13.04.2017 (License No. ERO/Li_15/17) shall continue to be valid for a period of thirty (30) years, namely until 04 October 2036.*

Interconnection Agreement of the Kosovo Power System with the Continental Europe Synchronous Area [Signed in July 2020]

BETWEEN
ON ONE SIDE:

[...]

AND, ON THE OTHER SIDE:

Kosovo Electricity Transmission, System and Market Operator (System, Transmission and Market Operator sha - "KOSTT"), a joint stock company incorporated under the laws of Kosovo, which [...]

Prishtina, Kosovo

Each of the above 30 companies and KOSTT will be referred to as "Parties" collectively and as "Party" individually;

This Agreement is referred to as the "Agreement";

WHEREAS

A. The European Network of Transmission System Operators for Electricity ("ENTSO-E") is an association of 43 European Transmission System Operators ("TSO") from 36 countries, including synchronously interconnected TSOs in Continental Europe, TSOs of the Nordic countries, TSOs operational systems in Great Britain and the Republic of Ireland as well as Baltic TSOs;

B. Continental Europe Electricity Transmission Systems are synchronously interconnected and constitute the so-called Continental European Synchronous Area (hereinafter "CESA");

C. Within ENTSO-E, the Regional Group of Continental Europe ("RGCE") coordinates the operation and maintenance between Continental European TSOs, decides on the expansion of CE SA by setting technical preconditions and

monitoring the compatibility and performance of the candidate system prior to connection;

[...]

F. The Interconnection Agreement of the Kosovo Power System Connection Agreement with the Continental Europe Synchronous Area, which was signed on 10 December 2015, but has not entered into force as the precedent condition in Article 16 (1) b), which aims to ensure the compatibility of the Kosovo Power System with the previous Multilateral Agreement of 2005 - Operation Manual (hereinafter "MLA OH") has not been met.

[...]

Taking into account the above, and taking into account the necessity for a secure operation of the system and the integrity of all CE SA, on 23 May 2019, RG CE requested to prepare a new Interconnection Agreement with the Kosovo Power System including (i) updates to the Catalogue of Measures, (ii) replacement of all references in MLA OH with references in SAFA and (iii) appropriate rewording (including consideration of annulment or setting of a time limit latest by 14 April 2020) of Condition 16 (1) b);

G. KOSTT is authorized by the law of Kosovo to perform respective functions of the TSO for the Kosovo Power System ("Kosovo Power System), including system operation, maintenance and development;

H. The Kosovo Power System is defined as the entire transmission system infrastructure operated by KOSTT in accordance with the license of operation of the Transmission System and Market Operation obtained from the Energy Regulatory Office ("ERO") of Kosovo

I. The System of KOSTT is currently interconnected synchronously with CE SA and, as a result, is part of the CE SA system. Therefore, because of this connection, operational relationships and risks arise with the OSTs of CE SA. Therefore, it is legally necessary to ensure the compatibility and compliance with the Operational Framework by KOSTT vis-a-vis the TSOs of CE SA;

J. The Parties recognize that bilateral and multilateral operations performed by a single TSO or between TSOs in relation to their respective transmission systems may materially affect the security, reliability and efficiency of transmission systems of TSOs not directly involved in such actions;

K. KOSTT acknowledges that currently the Kosovo Power System is not fully compatible with the Operational Framework; KOSTT recognizes and approves the Operational Framework and operational principles and their future upgrades and undertakes the responsibility to implement these progressively in the operation of the Kosovo Power System;

L. The Parties are prepared to protect the interests of TSOs of CESA and to provide its security by applying the same rules and principles as set out in the Operational Framework;

M. In this context, the purpose of this Agreement is to list the technical measures that must be fulfilled before KOSTT can start operating as a separate LFC Area. Furthermore, the Agreement lists all other measures that KOSTT must implement in order to be compatible with the technical standards of the Operational Framework. All these technical measures, which KOSTT must implement, are listed in the "Catalogue of Measures" (Annex I) for KOSTT;
N. KOSTT acknowledges that it has all the financial means to satisfy the obligations of the Agreement;

*O. The Treaty establishing the Energy Community of South East Europe ("the Energy Community Treaty" - "ECT") is an international Treaty between the European Union ("EU") on one side and eight jurisdictions from Eastern and Southeastern Europe ("SEE"), including Kosovo. ECT, which creates a European Energy Community, aims to create a single regulatory framework for energy trade (including electricity) across the SEE and the EU under the same conditions. It ensures that ECT Parties, including Kosovo, adopt regulations for the EU single market in relation to energy, which is the *acquis communautaire* in the relevant fields of energy (including electricity), environment and competition law;*

P. OSTs of the Regional Group of Continental Europe ("OSTs of RG CE") have been designated by public authorities in their respective countries as electricity transmission network operators. As a result, they have acquired an exclusive right or other special rights and therefore must act in an objective, transparent and non-discriminatory manner to guarantee all market actors access to electricity networks. In this context, they must adhere to the rules of confidentiality and professional secrecy, generally or entirely or partially laid down in the applicable legal and/or regulatory provisions, in particular the national provisions implementing Article 41 of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/271 EU, according to which: "Without prejudice to Article 55 or another legal requirement to disclose information, the distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. [...]". Therefore, the preserving of confidentiality of information/exchange of data between TSOs of RO CE and/or other TSOs, companies, authorities or bodies is of great importance;

Q. The Agreement is considered as an interim solution, whereas the final status of KOSTT within ENTSO-E will be considered after KOSTT fully fulfils the obligations arising from the Agreement;
[...]

Article 13 **Responsibility**

1. *The Parties agree that each Party shall be liable to another Party for its relevant commitments under this Agreement. The Party (Parties) suffering from the damage will take reasonable steps to mitigate the damages.*

2. *In case of a violation by a Party, caused due to simple or serious negligence or intentional errors or fraud, the Claimant Parties shall be entitled to claim compensation from the default Party for any damage, payment fee or expense which may be considered as direct damage arising out of, or resulting from, the breach.”*

Assessment of admissibility of the Referral

189. The Court must examine first whether the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure have been fulfilled by the Applicants.

190. In this respect, the Court refers to paragraph 1 of Article 113 of the Constitution which provides:

Article 113
[Jurisdiction and Authorized Parties]

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

191. The Court notes that the Applicants have filed their Referral pursuant to Article 113.5 of the Constitution, which provides as follows:

Article 113
[Jurisdiction and Authorized Parties]

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

192. In addition, the Court takes into account Articles 42 (Accuracy of the Referral) and 43 (Deadlines) of the Law which provide as follows:

Article 42
(Accuracy of the Referral)

“1. In a referral made pursuant to Article 113, Paragraph 5 of the Constitution the following information shall, inter alia, be submitted:

1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;

1.2. provisions of the Constitution or other act or legislation relevant to this referral; and

1.3. presentation of evidence that supports the contest”.

Article 43
(Deadlines)

1. A law or decision adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation after the expiry of the deadline prescribed by Article 113, Paragraph 5 of the Constitution”.

193. The Court also refers to Rule 74 [Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law] of the Rules of Procedure, which provides:

Rule 74
[Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law]

“[...]

(2) In a referral made pursuant to this Rule, the following information shall, inter alia, be submitted:

(a) names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;

(b) provisions of the Constitution or other act or legislation relevant to this referral; and

(c) evidence that supports the contest.

(3) The applicants shall attach to the referral a copy of the contested law or decision adopted by the Assembly, the register and personal signatures of the Deputies submitting the referral and the authorization of the person representing them before the Court”.

194. Based on the above and in the following, the Court will assess: (i) whether the Referral has been filed by an authorized party, as provided in paragraph 5 of Article 113 of the Constitution, Article 42 of the Law and Rule 74 of the Rules of Procedure;

(ii) the nature of the contested Act, namely whether it is qualified as a “*decision of the Assembly*”, as defined in paragraph 5 of Article 113 of the Constitution; (iii) accuracy of the Referral, as required by point 1.2 of Article 42 of the Law and point (b) of paragraph 1 of Rule 74 of the Rules of Procedure; and (iv) whether the Referral has been filed within 8 (eight) days after the adoption of the contested Act, as defined in paragraph 5 of Article 113 of the Constitution.

(i) Regarding the Authorized Party

195. In the present case, the Court notes that the Referral was filed by thirteen (13) deputies of the Assembly, which is more than the minimum required by Article 113, paragraph 5 of the Constitution and, consequently, the criterion for an authorized party was fulfilled.

(ii) Regarding the nature of the contested act of the Assembly

196. In the circumstances of the present case, before the Court is contested Act [no. 08-R-01] adopted by the Assembly on 6 May 2021, titled “*Recommendations*”, which contains five (5) provisions.
197. Based on the above mentioned provisions of the Constitution, the Court emphasizes that referrals filed with the Court based on paragraph 5 of Article 113 of the Constitution must meet the following constitutional criteria: (i) ten (10) or more deputies have the right to challenge the constitutionality of any law or decision adopted by the Assembly; and (ii) the law or decision may be contested both as regards its substance and the procedure followed. Consequently, the deputies of the Assembly, in the capacity of Applicants, may challenge the constitutionality of a law or decision, adopted by the Assembly.
198. In order to assess the admissibility of the Referral, the Court must first assess whether a “*decision*” of the Assembly is contested before it, and if the answer is affirmative then, it must assess and consider the fulfillment of additional criteria, namely the accuracy of the Referral by the Applicants and filing of the Referral within the deadline set by the Constitution, before assessing and concluding whether the relevant decision has been issued in violation of the constitutional provisions as alleged by the Applicants.
199. In the circumstances of the present case, the Court reiterates that the contested Act of the Assembly is entitled “*Recommendations*”, and was approved by the Assembly in its plenary session, on 6 May 2021, with sixty-one (61) votes in favor, none against and no abstentions. The contested Act of the Assembly is supported and contains the Recommendations issued on 28 April 2021 by the Committee on Economy of the Assembly, which were proposed to the Assembly for approval in its plenary session of 6 May 2021. Therefore, the Court shall assess whether the Act of the Assembly contested by the Applicants may qualify as “*decision of the Assembly*”.

200. In this context, the Court emphasizes that decision-making of the Assembly falls within the scope of “acts” of the Assembly, as provided in Articles 65 [Competencies of the Assembly] and 80 [Adoption of Laws] of the Constitution. In this regard, Article 65 of the Constitution provides that: *“The Assembly of the Republic of Kosovo: (1) adopts laws, resolutions and other general acts [...]”*. Whereas, paragraph 1 of Article 80 of the Constitution provides: *“Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution”*.
201. The Court further recalls that paragraph 1 of Article 62 of the Rules of Procedure of the Assembly provides that *“1. Committees shall process matters referred to them without delay. Committees shall recommend to the Assembly final decisions that relate only to the matters or works referred to them, or questions directly related to them. Committees may also handle other issues within their scope of activity.”*
202. Through its case-law, the Court has determined that regardless of the formal designation of decisions issued by public authorities, they are subject to constitutional control, taking into account the legal effects they produce and whether they raise constitutional issues and always taking into consideration whether they have been filed with the Court in the manner provided by the Constitution and the Law (see cases of the Court, KO73/16, Applicant: *The Ombudsperson*, Constitutional Review of Administrative Circular No. 01/2016 issued by the Ministry of Public Administration of the Republic of Kosovo on 21 January 2016, Judgment of 16 November 2016, paragraph 49; KO12/18, Applicant: *Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo*, regarding the constitutional review of the Decision of the Government of the Republic of Kosovo, no. 04/20, of 20 December 2017, Judgment of 29 May 2018, paragraphs 88-90; KO58/19, Applicant: *Bilall Sherifi and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of the decisions of the President of the Republic of Kosovo, no. 57/2019, no. 58/2019, no. 59/2019, no. 60/2019, no. 61/2019, no. 62/2019, no. 63/2019 and 65/2019, of 28 March 2019, Judgment of 29 July 2019; KO54/20, Applicant: *President of the Republic of Kosovo*, Constitutional review of Decision No. 01/15 of the Government of the Republic of Kosovo, of 23 March 2020, Judgment of 31 March 2020, paragraphs 162-165; and KO61/20, Applicant, *Uran Ismaili and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, on declaration of the Municipality of Prizren “quarantine zone”; and Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipalities of Prizren, Dragash and Istog, Judgment of 5 May 2020, paragraphs 92 to 98 and other references used therein).
203. In this context, the Court refers to Judgment KO54/20 whereby, by declaring the Referral for constitutional review of Decision No. 01/15 of 23 March 2020 of the Prime Minister admissible, had also stated that (i) in determining whether a “decree” of the Prime Minister is contested, within the meaning of sub-paragraph 1

of paragraph 2 of Article 113 of the Constitution, *“it should not focus only on the name of an act but on its content and effects”* (see paragraph 161 of Judgment KO54/20); and (ii) if the Court were to focus only on the formal designation of the contested acts, namely “decree of the Prime Minister” or even “regulation of the Government”, the decision-making of the Government would be left out of constitutional control, based solely on the designation which they have decided to assign to the relevant act (see paragraphs 162-163 of Judgment KO54/20). This case-law was also confirmed in the case of the Court, namely in Judgment KO61/20, whereby the Court, by declaring the Referral for constitutional review of the contested decisions of the Ministry of Health admissible, concluding that they qualify as “regulations of the Government”, and as such are subject to the Court’s constitutional review.

204. Furthermore, returning to the Referral of the Applicants, the Court recalls that in procedural terms, the procedure for approval of this Act started after a request submitted by KOSTT on 6 April 2021, the Committee on Economy of the Assembly, on 28 April 2021, had approved the Recommendations, which contained five (5) points, same as those in the contested Act of the Assembly. Subsequently, in the plenary session of the Assembly, of 6 May 2021, the Recommendations of the Committee on Economy of the Assembly were included as an item of the agenda for consideration and adoption by the Assembly. On the same day, after presenting the Recommendations by the Deputy Chair of the Committee on Economy of the Assembly and after reviewing them in the plenary session of the Assembly, the contested Act was proposed for adoption. Consequently, the contested Act was adopted by sixty-one (61) votes for, none against, and no abstentions. On 6 May 2021, the act bearing number no. 08-R-01, as an act adopted by the Assembly, was signed by the President of the Assembly.
205. With regard to the issue whether the contested act constitutes a decision of the Assembly, the Applicants state that *“In legal terms and based on the rule, the legal nature of the act adopted by the Assembly determines both the effect and consequences it causes”*. In this context, the Applicants underline that on one hand the contested Act is referred to as “recommendations”, and on the other hand, in terms of substance, it *“causes huge legal and financial consequences”*. In the context of this allegation, the Applicants specify that the contested Act constitutes a *“decision”* of the Assembly within the meaning of paragraph 5 of Article 113 of the Constitution. Following this, the Applicants also state that *“points 4 and 5 of this Act, which from the legal point of view make it absolutely a decision with legally binding character and by no means a “recommendation” in the legal terms of the act, as it is titled”*.
206. The Court further recalls that it received comments and responses of the interested parties, namely of the Parliamentary Group of LVV of 1 June 2021, the Ministry of Economy of 1 June 2021 and KOSTT of 14 June 2021, whose responses relate to the admissibility of the Referral and have been reflected in this Judgment.

207. The Court recalls that, to its question addressed to the Assembly on 8 July 2021 as to what is the legal nature of the recommendations issued by the Assembly according to Article 65, paragraph 1, of the Constitution and more specifically, whether the contested Act, namely Recommendations [no. 08/R-01], is legally binding for the entities to which it is addressed, the Committee on Legislation in its response, dated 2 July 2021, sent through the President of the Assembly to the Court, in essence, stated that: “[...] *Through recommendations, in the internal functioning, Committees provide their assessment, ascertainment of the situation from the point of view of the Committee, which serves as the opinion of the Committee for the deputies (session) on a matter, act, legal initiative, work report, etc., however, the deputies of the Assembly, namely the plenary session is not obliged to take it into account, unless it agrees with it. This function of the Committees is defined in Article 67, point 2 of the Rules of Procedure of the Assembly of the Republic of Kosovo, which states that the Committee makes reports and these reports must contain the recommendations of the Committee, together with the relevant reasoning. Moreover, according to the procedure, whenever an issue is reviewed or voted in the plenary session, the opinion of the Committee is presented in advance through the recommendation, however the matter listed as an item of the agenda is voted rather than the recommendation of the Committee regarding that matter. The recommendation presents a general position of the Committee on a specific matter at a given time, on a matter which is not within its competence, but for which the Assembly of Kosovo, as the highest representative and decision-making body, holds indirect responsibility. Similar to recommendations, neither resolutions and statements do have a direct binding effect, but they express the position and will of the Assembly. Of course, the recommendations, resolutions and statements, depending on the issue and the institution to which they are addressed, may serve as an action guide.*
208. The Court also recalls that on 6 August 2021, to the above-mentioned responses submitted through the President of the Assembly, regarding the legal nature of the contested act, the Applicants raised the following three essential issues: (i) According to them “*Term “decision” used in Article 113.5 refers to any action of the Assembly which produces legal consequences under its constitutional competencies. Therefore, the term “decision” includes not simply a legal act of the Assembly but rather a decision of the latter through which it was issued. Therefore, it can be argued that any action of the Assembly that produces legal consequences (general or individual), whether issued in writing or not, both in relation to substantive and procedural matters, may be subject to constitutional control.*”; (ii) The contested Act of the Assembly “*obliges the publicly owned enterprise KOSTT to pay for the electricity consumed by the inhabitants of the northern municipalities of Kosovo from its dividend, which under normal conditions would go to the consolidated budget of Kosovo; and (iii) in their letter, of 6 August 2021, reiterate that the Court “should not be limited in the sense of the designation of the act, but on the effect and legal consequences that the act causes”.* In context of the latter, the Applicants emphasize the case-law of the Court, namely case KO73/16. Consequently, the Applicants specify that the contested act of the

Assembly, “*although in the form of “Recommendations”, it raises constitutional issues, respectively, falls within the ambit of constitutional norms. [...]”*.

209. When considering the nature of the contested Act of the Assembly, the Court notes that in the contested act of the Assembly, the legal basis for the issuance of this Act is paragraph 1 of Article 65 of the Constitution and Article 62.1 of the Rules of Procedure of the Assembly.
210. Based on the above, the Court below will put emphasis on the substance of the contested Act of the Assembly.
211. In terms of the substance of the contested Act of the Assembly, the Court notes that through this Act, in points 4 and 5 thereof, KOSTT and the Government of the Republic of Kosovo are authorized and obliged, respectively, to undertake concrete actions and obligations. Namely, KOSTT is authorized to (i) cover deviations in electricity in the four (4) municipalities of the Republic of Kosovo through own funds to be covered by dividends or any other possible mechanism; and (ii) the Government is obliged, within six (6) months, to ensure the entire process of including in the billing system according to the rules and laws in force in cooperation with the responsible parties for customer billing in the four (4) municipalities of the Republic of Kosovo.
212. Also, based on the response and documentation received from KOSTT on 16 August 2021, the Court notes that after the issuance of the contested Act of the Assembly, the Board of Directors of KOSTT, on 17 May 2021, issued Decision [210517/II-22], whereby it decided to allocate 8,200,000 euros “*from the profits held to cover the deviation of electricity for the northern part of Kosovo for 2021. These funds will be compensated by dividends or any other possible mechanism*”. In its decision, the Board of Directors referred to the contested act of the Assembly.
213. Furthermore, and based on the above, the Court notes that after the issuance of the contested Act of the Assembly, the public authorities in charge (i) have taken concrete action, namely submission of the above mentioned reports from KOSTT to the Committee on Economy of the Assembly; and (ii) have issued a decision, namely the Decision of the Board of Directors, for the purpose of implementing points 1, 3 and 4 of the contested Act of the Assembly.
214. Having said that, the Court considers that the contested Act of the Assembly has produced legal effects for the relevant authorities to which it is addressed. More specifically, these obligations stemming from the contested Act of the Assembly, resulted in actions and decisions of the competent public authorities to cover electricity deviations in the four (4) municipalities of the Republic of Kosovo. Furthermore, based on point 5 of the contested Act, the Assembly has obliged the Government, “*within the timeline of six (6) months to ensure the entire process of inclusion in the billing system, based on rules and laws in force, in cooperation with the responsible parties, for billing of the consumers in the 4 (four) municipalities of the Republic of Kosovo [...]”*. In relation to the latter, the Court

notes that the contested Act of the Assembly also produces an obligation for the Government to establish a mechanism to regulate and resolve the deviation in electricity as a result of non-billing/non-payment of electricity by consumers in the four (4) municipalities of the Republic of Kosovo.

215. Consequently, based on the explanations provided, including those related to its case-law, the Court considers that the contested Act of the Assembly falls within the scope of the “*decision of the Assembly*”, as defined in paragraph 5 of Article 113 of the Constitution because: (i) it was adopted by a majority vote of members of the Assembly as a result of the Recommendation of the Committee of the Assembly; (ii) it includes specific guidelines and obligations that KOSTT and the Government of the Republic of Kosovo are obliged to implement; (iii) after the issuance of the contested Act, KOSTT has taken actions to implement point 4 of the contested Act, among others, by issuing the decision on allocation of own budget funds to cover deviations in electricity in the four (4) municipalities of the Republic of Kosovo; and (iv) consequently, it may also have an impact on the violation of constitutional norms, including restriction of the rights and freedoms of the citizens of the Republic of Kosovo.
216. Finally, based on the above, the Court finds that the “Recommendations” adopted by the Assembly on 6 May 2021, as an Act contested by the Applicants, are qualified as a “decision of the Assembly”, and as such are subject to constitutional review of the Court.

(iii) Conclusion regarding the accuracy of the Referral

217. The Court finds that in addition to the names and signatures of the deputies who filed the Referral, they also mentioned the contested Act and the relevant provisions of the Constitution, and submitted arguments to support their allegations.

(iv) Regarding the deadline

218. Regarding the deadline, the Court notes that the contested Act of the Assembly was adopted by the Assembly on 6 May 2021 while the Referral was filed with the Court on 14 May 2021.
219. Taking into account Rule 30 (1) of the Rules of Procedure, the deadline for submitting the referral is calculated as follows: “*When a period is expressed in days, the period is to be calculated starting from the following day after an event takes place*”. Based on this, the Court finds that the Referral was filed within the constitutional deadline of 8 (eight) days.

(v) Conclusion regarding the admissibility of the Referral

220. The Court finds that the Applicants: (i) are an authorized party before the Court; (ii) challenge an act, which constitutes a decision of the Assembly within the meaning of paragraph 5 of Article 113 of the Constitution; (iii) have specified the

relevant constitutional provisions, which they allege to have been violated by the contested Act, by presenting arguments to substantiate their allegations; and (iv) have filed their Referral within the time limit specified in paragraph 5 of Article 113 of the Constitution.

221. Consequently, the Court declares the Referral admissible and below will review its merits.

Merits of the Referral

I. Introduction

222. The Court notes that the constitutional issue contained in the Referral in question is the constitutional review of the contested Act of the Assembly, which was issued in the form of Recommendations and by which the Public Enterprise KOSTT was authorized by the Assembly to cover electricity deviations in four (4) municipalities of the Republic of Kosovo due to non-billing/non-payment of electricity. More specifically, the Public Enterprise KOSTT, through point 4 of the contested Act, is authorized to cover the deviations in electricity in the four (4) above-mentioned municipalities by *“using the own budget revenues, funds which will be compensated by dividends or any other possible mechanism”*.
223. More precisely, the subject of the constitutional review of the contested Act, according to the referral of the Applicants, is whether the coverage of electricity deviations in the four (4) municipalities of the Republic of Kosovo, as provided by the contested Act, has violated articles: 3 [Equality Before the Law]; 22 [Direct Applicability of International Agreements and Instruments]; 24 [Equality Before the Law]; 119 [General Principles]; 120 [Public Finances]; 122 [Use of Property and Natural Resources] of the Constitution and Article 14 (Prohibition of discrimination) of the ECHR; Article 1 (Protection of property) of Protocol no. 1 and Article 1 (General prohibition of discrimination) of Protocol No. 12 to the ECHR, as well as Articles 2 and 7 of the UDHR.
224. In this context, the Court recalls the essence of the Applicants’ allegations, and states that the latter do not contest the obligation of the Public Enterprise KOSTT to cover electricity deviations in the four (4) municipalities of the Republic of Kosovo until such time that they are included in the electricity billing system according to applicable laws in the Republic of Kosovo. In fact, the Applicants specify that *“[...] so far there is no case when the Assembly has decided by a decision the allocation of funds from the budget of KOSTT or any other institution”*. However, the Applicants emphasize that KOSTT obligation to cover deviations in the four (4) respective municipalities should be defined and regulated through the adoption of the Law on Budget, while at the same time, they emphasize that the coverage of these deviations in energy electricity in the respective municipalities constitutes discrimination within the meaning of Article 24 of the Constitution.

225. In this context, the Applicants allege that the contested Act of the Assembly “*has no legal basis, violates a fundamental constitutional right - equality before the law, is contrary to the principles of the democratic order of the state of the Republic of Kosovo, violates the independence of independent institutions, while its enacting clause is arbitrary*”.
226. More specifically, and first of all, the Applicants state that the request of the Publicly Owned Enterprise KOSTT submitted to the relevant functional Committee on Economy of the Assembly, is of a financial nature and consequently, cannot be decided by the Assembly, by another act, except by law. Within the meaning of this allegation, the Applicants in relation to point 4 of the contested Act, allege that such a decision determining the compensation of coverage of electricity deviations by the own funds of the Public Enterprise KOSTT, which funds will be compensated “*through dividend*”, can be made by the Assembly only through the Law on Budget or by its supplementation and amendment.
227. Secondly, and within the meaning of Article 24 [Equality Before the Law] of the Constitution, the Applicants allege that the contested Act of the Assembly “*places directly in a discriminatory position all citizens who fulfill their obligation to pay electricity service tariffs, in relation to citizens who do not do so.*” In terms of this allegation, the Applicants specify that their allegation refers to discrimination of citizens of Kosovo, who do not live in four (4) municipalities of the Republic of Kosovo, specifying that discrimination of citizens of Kosovo is alleged on the basis of residence.
228. Finally, the Applicants allege that the contested Act of the Assembly is not in accordance with paragraphs 1, 7, 8, 9 and 10 of Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution. In this regard, the Applicants, in general, state that “*The Assembly has violated the constitutional obligation for every person to pay taxes and other contributions provided by law. The contested decision justifies the exemption of these citizens from paying the costs of electricity services, as guaranteed in paragraph 8 of this article*”.
229. The Court, within the meaning of the substance of the Applicants’ allegations, reiterates that the subject of the constitutional review contained in the Applicants’ Referral is the compliance with the Constitution of the contested Act of the Assembly, namely if upon its issuance, the Assembly:
- (i) has acted in (non) compliance with its competence for decision-making as provided by the Constitution and by law; and
 - (ii) has limited the fundamental rights and freedoms of consumers of electricity who do not live in the four (4) municipalities of the Republic of Kosovo, contrary to Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 of this Convention.

230. Before analyzing the substantive issues entailed in the Applicants' Referral, the Court considers it necessary to clarify that (i) before the Court has been contested only the constitutionality of the contested Act of the Assembly, of 6 May 2021, and consequently the Court, based on the competencies established in the Constitution, will focus only on the assessment of this Act; (ii) the laws, decisions and other acts of public authorities, which were rendered before the approval of the contested Act of the Assembly and which constitute the legal basis for exercising the competencies of the Assembly as well as the legal authorizations of state authorities, such as KOSTT and ERO in the field of energy, namely the Law on Energy, the Law on Electricity, the Law on the Energy Regulatory Office, the Law on Business Organizations and Licenses [ZRRE/Li_15/17] of 13 April 2017 for the Public Enterprise KOSTT, issued by ERO, have not been contested before the Court; and (iii) before the Court have not been contested the decisions of the regular courts, as a result of the lawsuit of the Ombudsperson, which are related to the Decision of the ERO Board of 6 February 2012 and subsequently repealed on 13 April 2017, through which, in order to cover losses of the four (4) above-mentioned municipalities, the additional amount of 3.5% was billed to electricity consumers in other municipalities of Kosovo.
231. Therefore, the Court will focus only on the constitutional review of the contested Act of the Assembly, through which KOSTT is authorized to use its own funds to cover electricity deviations in four (4) municipalities for a period of six (6) months, and in this context, will be limited to the substance of the allegations contained in the Referral of the Applicants, namely: if the Assembly, in issuing the contested Act, has acted in (non) compliance with its decision-making competence defined by the Constitution and the law; and; and (ii) whether the Assembly, in issuing the contested Act within the meaning of Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 to the ECHR, has treated differently "*persons in analogous or relatively similar situations*", namely has treated differently consumers of electricity who do not live in four (4) municipalities of the Republic of Kosovo, without any "*objective and reasonable justification*", as established in Article 55 of the Constitution and the case-law of the Court and the ECtHR.

I. Regarding whether the Assembly with the issuance of the contested Act has acted in (non)-compliance with its competence for decision-making established in the Constitution and law

232. In terms of assessing the respective allegations raised by the Applicants, the Court once again recalls that the latter in their Referral, in essence, allege that the request of the Publicly Owned Enterprise KOSTT submitted to the Committee on Economy of the Assembly, is of a financial nature and that such an issue cannot be decided by the Assembly, by any other act, except by law, namely the Law on Budget. In this regard, the Court also recalls that in support of their allegation, the Applicants underline that an allocation of funds for the losses incurred "*in electricity was made by the Government, in 2020, through the proposal of the Draft Law on Budget Appropriations*".

233. Subsequently, the Applicants add that the Publicly Owned Enterprise KOSTT and ERO are “*independent institutions*” that exercise or must exercise their public work and duties according to the legislation in force. Thus, according to the Applicants’ allegations, the relationship of the Public Enterprise KOSTT with the Assembly is a legal relationship defined by law and it cannot be understood that the Assembly, as an institution to which KOSTT reports, has the right to interfere, except by law, with financial management of its dividend. In this regard, the Applicants state that: “*With the recommendation of the Assembly, an authorization for an independent institution cannot be transferred, especially since through it, it is allowed to spend millions of euro from the budget, in complete contradiction with the law in force (Article 8) on Budget Appropriations for 2021, as well as in violation of the Law on Public Financial Management and Accountability*”.
234. In order to address this allegation of the Applicants, the Court will first elaborate: (i) competencies and responsibilities of the Public Enterprise KOSTT; (ii) KOSTT obligation to cover deviations in electricity; (iii) the rights and obligations of the Public Enterprise KOSTT in relation to the ENTSO-E Connection Agreement; (iv) the constitutional and legal powers of the Assembly to adopt the Law on Budget and responsibilities related to public finances; (v) the procedure followed in the Assembly and the competence of the latter in issuing the contested Act; and finally, (vi) ascertainment as to the constitutionality of the procedure followed in the Assembly in relation to the contested Act.

(i) Regarding the Public Enterprise KOSTT

235. Initially, the Court, before proceeding with the elaboration of the competencies and responsibilities of the Public Enterprise KOSTT, recalls the above-mentioned allegation of the Applicants that the Public Enterprise KOSTT and ERO are “*independent institutions*” that they exercise their public work and duties, or must exercise them according to the legislation in force. Thus, according to them, the relationship of the Public Enterprise KOSTT with the Assembly is a legal relationship regulated by law and in terms of financial management of its dividend cannot be understood so that the Assembly, as an institution to which KOSTT reports has the right to interfere, except by law. In this context, the Court reiterates the Applicant’s allegation stating that “*As can be seen, point 4 authorizes KOSTT to cover recorded losses from its multimillion revenues. On the recommendation of the Assembly, an authorization for an independent institution cannot be transferred, especially since through it, it is allowed to spend millions of euro from the budget, in full contradiction with the law in force (Article 8) on Budget Appropriations for 2021, as well as in violation of the law on Public Financial Management and Accountability.*”
236. In this regard, the Court will elaborate below on the competence and responsibilities of the Publicly Owned Enterprise KOSTT, as provided by the Law on Energy, the Law on Electricity and the Law on Publicly Owned Enterprises and the Law on Business Organizations.

237. The Court recalls that the Public Enterprise KOSTT, based on Law no. 05/L-085 on Electricity, promulgated on 21 July 2016, is a Public Enterprise. KOSTT is the Electricity System, Transmission and Market Operator of Kosovo, which, based on paragraph 2 of Article 10 of the above law, operates “*under the energy enterprise, organized as an independent joint stock company*” and “*operates as a public enterprise in accordance with the Law on Public Enterprises, and the relevant legislation in force.*”
238. Furthermore, the Court notes that based on the relevant legal provisions in force, namely paragraph 2 of Article 13 of the Law on Electricity, the shareholder rights of KOSTT as a Public Enterprise with 100% of state shares are exercised through the Assembly.
239. In this context, the Court notes that the designation of the Assembly as the sole shareholder of KOSTT derives from “Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 on common rules for the internal energy market” (hereinafter: Directive 2009/72). Article 9 of Directive 2009/72 has been transposed into Article 11 (Unbundling) of the Law on Electricity. According to the above-mentioned Directive, “*the exercise of control rights by the entity which owns the transmission operator and in the enterprises performing generation or supply functions is prohibited.*” In this regard, the Court recalls that the Public Enterprise KEK performs the function of generation and supply of electricity, and that the shareholder of this enterprise is the Government. On the other hand, KOSTT as a Publicly Owned Enterprise according to the laws in force and the ERO License is responsible for the transmission of electricity. As a result of the transposition of the above-mentioned Directive 2009/72 in the Law on Electricity, namely in its Article 11, it is determined that “*2.1. person or persons that exercise direct or indirect control over enterprises that perform generation or supply functions do not exercise control or exercise any right, directly or indirectly, over the Transmission System Operator or over a Transmission System*”. Consequently and as a result of this provision, by paragraph 2 of Article 13 of the Law on Electricity, it is determined that the shareholder of the Public Enterprise KOSTT be the Assembly of the Republic of Kosovo.
240. Based on the above, the Court states that in order to harmonize the legislation of the Republic of Kosovo with the *acquis communautaire*, namely based on the provision of the Directive 2009/72, has been accomplished the separation of the exercise of rights and control (i) by the entity which is a shareholder of the enterprise, which performs the functions of generation and supply of energy, namely the Government as a shareholder of the Public Enterprise KEK; and (ii) by the entity which is the owner of the electricity transmission operator, namely the Assembly, as a shareholder of the Public Enterprise KOSTT.
241. In addition, the Court also notes that based on Article 14 of the Law on Electricity, the decision-making of KOSTT is carried out through the Board of Directors, whose members are elected and appointed by the Assembly. Whereas, according to

paragraph 5 of Article 13 of the Law on Electricity: *“Board of Directors on the activities of the Transmission System Operator reports to the Assembly of the Republic of Kosovo on a regular annual basis and whenever required to do so by the Assembly”*. The shareholder, namely the Assembly, in the annual meeting of the Board of KOSTT, based on paragraph 3 of Article 13 of the Law on Electricity, is represented by the authorized representative of the President of the Assembly, while the competencies of the Board of Directors of the Transmission System Operator, are established in the Law on Public Enterprises. Further, KOSTT owns the transmission system and is responsible for the operation of this system in Kosovo in accordance with the License issued by the Regulator, namely ERO, based on paragraph 1 of Article 10 of the Law on Electricity.

242. More precisely, the duties and responsibilities of KOSTT are stipulated in Article 16 (Duties and responsibilities of the Transmission System Operator) of the Law on Electricity. As mentioned above, the operation of KOSTT is authorized through a License issued by ERO. In this regard, the Court notes that KOSTT operates based on License [ZREE/Li_15/17] of 13 April 2017. In accordance with Article 3 of this License, among others, it is determined that KOSTT is authorized (i) to operate, maintain and develop the transmission system and cross-border lines in an efficient, economic and coordinated manner; and (ii) balance the system and implement the arranged agreements by enhancing its efficiency, in conformity with market rules.
243. Based on this elaboration, the Court states that the Public Enterprise KOSTT is a publicly owned enterprise, which competencies and responsibilities are regulated by the Law on Energy, the Law on Electricity, the License issued by ERO and the Law on Publicly Owned Enterprises and the Law on Business Organizations. More specifically, according to the Law on Electricity, it is specifically defined that KOSTT is organized as a joint stock company and operates as a public enterprise in accordance with the Law on Public Enterprises, which competencies and responsibilities are specified by applicable laws and the ERO License.

(ii) Regarding KOSTT obligation to cover deviations in electricity

244. The Court, in the context of KOSTT obligations to cover deviations in electricity, initially notes that based on Article 4 (Public Service Obligation) of the Law on Energy, energy enterprises have an obligation to provide public service as defined by ERO license.
245. The Court further states that KOSTT obligation to balance electricity in the Kosovo power system is set forth in the provisions of the Law on Electricity, namely Articles 16, 19, 24 and 28 of this law.
246. More precisely, Article 16 of the Law on Electricity, lists in detail all the duties and responsibilities of KOSTT related to the provision of electricity system and balancing of electricity system of the Republic of Kosovo. Specifically, paragraph 1.19 of Article 16 of the Law on Electricity, stipulates that KOSTT is responsible for

“balancing the electricity system in line with the Transmission Grid Code and Market Rules.” Whereas, Article 19 (Procurement of Electricity and Capacities from the Transmission System Operator) of the Law on Electricity, among others, stipulates that KOSTT can be engaged in the procurement of electricity in order to cover losses in the transmission network and balancing of the system. The responsibility for loss coverage and balancing is defined in paragraph 1 of the Article 24 (Electricity market participants) of the Law on Electricity, which stipulates that: *“The Transmission System Operator, Distribution System Operator and Closed Distribution System Operator, are electricity market participants only for electricity purchases for covering losses in the transmission and distribution network, and purchases and sale of balancing energy [...]”*.

247. The Court also recalls that Article 10 (Transmission System Operator) of the Law on Electricity stipulates that KOSTT owns the transmission system and is responsible for operating this system in line with the license issued by ERO. Within the meaning of this provision, the Court recalls that KOSTT operates on the basis of the License issued, namely the License [ZREE/Li_15/17] of 13 April 2017. Pursuant to this License, KOSTT, among other things, is obliged to “[...] 2.3. *balance the system and implement the arranged agreements by enhancing its efficiency, in conformity with Market Rules.*” and “3. *The territory covered by this license is the entire territory of the Republic of Kosovo. [...]”*
248. Furthermore, based on item 3 of Article 2 of the License, it is determined that KOSTT is responsible to operate the transmission system throughout the territory of Kosovo, while Article 5 (Compensation for the losses in the North of Kosovo) of the License specifically determines that KOSTT:

“1. Where so required by any Decision or Instruction issued to the Licensee by the Regulator, the Licensee shall procure electrical energy to compensate for losses arising from energy used, but not paid for, by customers in Northern Kosovo.” and

“2. In its regulatory accounts the Licensee shall ensure that it records separately any costs incurred by it in energy purchase under paragraph 1 above.”

249. This authorization or obligation determined by ERO, according to the response of KOSTT of 18 October 2021, is based on Article 16 of the Law on Electricity, according to which the balancing of the electricity system throughout the territory of the Republic of Kosovo is the responsibility of KOSTT.

(iii) Regarding the rights and obligations of the Public Enterprise KOSTT under the Connection Agreement with ENTSO-E

250. The Court notes that, based on the files submitted to the Court by KOSTT and ERO, the Connection Agreement with the European Network of Transmission System Operators for Electricity, namely ENTSO-E, started to be implemented on 14 December 2020. KOSTT as the Transmission System Operator represents the

Republic of Kosovo in ENTSO-E. ENTSO-E is an association of European Transmission System Operators (TSOs) from thirty-six (36) countries, including synchronously interconnected Transmission System Operators (TSOs). An interconnection system operates within Continental Europe, which includes Kosovo and a system of TSOs of the Nordic countries, where the systems of Great Britain, the Republic of Ireland and the TSOs of the Baltic countries operate (point A of Agreement).

251. The Court further notes that the Connection Agreement with ENTSO-E and the membership of the Publicly Owned Enterprise KOSTT in this body, for the first time enabled the Republic of Kosovo to be recognized as an independent area within the current borders within the electricity system of Europe. Recognition of the Republic of Kosovo as an independent regulatory area enables the exercise of sovereignty in the electricity system with all the rights and obligations set out in the Connection Agreement with ENTSO-E.
252. The Court further notes that the Connection Agreement with ENTSO-E enables the implementation of the Bilateral Agreement concluded between the Government of the Republic of Kosovo and the Republic of Albania of 30 March 2016 and ratified by the Assembly on 30 March 2017, for the formation of a joint regulatory block, known as the AK Regulatory Block. As a result of the Connection Agreement with ENTSO-E, KOSTT has been enabled to become an equal member with all other transmission operators, which are members of the Regional Group of the Continental Europe, namely RGCE [Regional Group of the Continental Europe]. Furthermore, as a result of the implementation of the Connection Agreement, KOSTT and the Republic of Kosovo, in addition to energy independence, for the first time have been recognized the right and enabled the collection of revenues from the allocation of cross-border capacities, which result also in financial benefits for the Republic of Kosovo.
253. Within the meaning of the provisions of the Connection Agreement with ENTSO-E, the Regional Group of the Continental Europe, namely RGCE, coordinates the operation and maintenance between the Transmission System Operators of Continental Europe and decides on the expansion of CESA [Continental Europe Synchronous Area], defining the technical preconditions and monitoring the compliance and performance of the candidate system prior to connection (Point C of the Agreement).
254. The Court also refers to points G and H of the Connection Agreement with ENTSO-E and which specify that: *“KOSTT is authorized by the law of Kosovo to perform the respective functions of the TSO [Transmission System Operator] for the Kosovo Power System (Kosovo Power System), including system operation, maintenance and development; and the Kosovo Electricity System is defined as the entire transmission system infrastructure operated by KOSTT according to the Transmission System Operation and Market Operation licenses obtained from the Kosovo Energy Regulatory Office”*.

255. Whereas, according to points I, J and K of the Connection Agreement with ENTSO-E, respectively, it is determined that:

I. The KOSTT system is currently synchronously interconnected with CESA [Continental Europe Synchronous Area] and, as a result, is part of the CESA system. Therefore, because of this connection, operational relationships and risks arise with CESA TSOs. Therefore, it is legally necessary to ensure compatibility and compliance with the Operating Framework by KOSTT vis-a-vis CESA TSOs;

J. The Parties recognize that bilateral and multilateral operations performed by a single TSO or between TSOs in relation to their respective transmission systems may materially affect the safety, reliability and efficiency of transmission systems of TSOs that are not directly involved in such actions;

K. KOSTT acknowledges that currently the Kosovo Power System does not fully comply with the Operating Framework; KOSTT recognizes and approves the Operating Framework and operating principles and their future updates and assumes the responsibility to implement these progressively in the operation of the Kosovo Power System;

256. Consequently, and based on the clarifications above, the Court notes that, as a result of the signing of the Connection Agreement with ENSTO-E: (i) the recognition of the Republic of Kosovo as a state on the energy maps of Europe, according to its borders has been achieved; (ii) The Republic of Kosovo, namely KOSTT, is recognized the right to operate as an Independent Regulatory Area within the synchronous zone of Continental Europe; (iii) the implementation of the Regulatory Block-AK, established between KOSTT and the TSO of Albania, which operates between the Republic of Kosovo and the Republic of Albania has started; (iv) it is possible to realize the benefits from the functioning of the Albanian Electricity Exchange in which KOSTT is a shareholder, and (v) it is enabled for KOSTT to collect revenues from the allocation of cross-border capacities, from which financial benefits it was deprived before reaching the Connection Agreement with ENTSO-E.
257. In addition to the rights and benefits arising from the Connection Agreement with ENTSO-E, the Court also notes that this Agreement also defines the responsibilities of KOSTT for its operation in the transmission system in terms of interconnection (cross-border). In this regard, the Court recalls that KOSTT commitments to balance the electricity system are defined in point K of the Connection Agreement with ENTSO-E.
258. The Court also notes that, based on Article 13 (Responsibility) of the Connection Agreement with ENTSO-E, the responsibility of KOSTT is determined that in case of a “breach by a Party, caused by simple or gross negligence or intentional error or fraud, the claiming parties shall be entitled to claim compensation from the predetermined party for any damage, payment fee or expense which may be considered as direct damage arising from, or resulting from, the breach”.

259. In the following, the Court also refers to point Q of the Connection Agreement with ENSTO-E, through which it is determined that: *“the agreement is considered as a temporary solution while the final status of KOSTT within ENSTO-E will be considered after KOSTT fully fulfills the obligations arising from this agreement”*.
260. As explained in the response of KOSTT of 18 October 2021, deviations in electricity caused in four (4) municipalities of the Republic of Kosovo, are considered as *“intentional and predicted deviations”*, and according to KOSTT, these deviations have resulted in *“damage to the parties, caused by the withdrawal of energy from the European interconnection system”*, for which damages KOSTT is held liable under Article 13 of the Connection Agreement with ENSTO-E.
261. Based on the above, the Court concludes, in a summarized manner that the Connection Agreement with ENSTO-E enables the recognition of Kosovo on the energy maps of Europe and as a result of its signing, Kosovo has established sovereignty in the electricity system, namely, has been recognized as an independent regulatory area in the power system of Continental Europe. Furthermore, as a result of KOSTT membership in ENSTO-E, other financial benefits have been provided for the Republic of Kosovo.
262. However, the Court reiterates that in addition to the rights in the Connection Agreement with ENSTO-E, the obligations and commitments that KOSTT has undertaken through the signing of this Agreement are also provided in detail. More specifically, non-compliance with the obligations arising from the aforementioned Agreement may result in: (i) an obligation to pay compensation for breach of the Connection Agreement; and (ii) reconsideration of KOSTT status within ENSTO-E.
263. Subsequently, and in the context of the Applicants’ allegation that the Assembly did not issue the contested Act in accordance with its decision-making powers, as defined in the Constitution and law, and that such a decision could be issued only through the Law on Budget, the Court will initially refer to the constitutional and legal competence of the Assembly to adopt the Law on Budget.

(iv) Regarding the constitutional and legal competencies of the Assembly for the adoption of the Law on Budget and responsibilities related to public finances

264. In this case, the Court refers to paragraph 5 of Article 65 [Jurisdiction of the Assembly] of the Constitution, which stipulates that *“The Assembly of the Republic of Kosovo: (5) approves the budget of the Republic of Kosovo.”* On the other hand, Article 22 of the Law on Public Financial Management stipulates that the Assembly approves the Law on Budget and amendment and supplementation of the Law on Budget. Paragraph 1 of Article 19 (Preparation of Medium Term Expenditure Framework) of this law stipulates that *“As soon as practicable during fiscal year 2008, and no later than April 30 beginning in fiscal year 2009, the Government shall have submitted to the Assembly a Medium Term Expenditure Framework*

(“MTEF”) covering the next fiscal year and estimates for the two following fiscal years (the “MTEF Budget Period”). In addition, Article 25 of the Law on Public Financial Management, supplemented and amended by Law 03/L-221 on Supplementing and Amending the Law on Public Financial Management, stipulates that *“The Minister of Economy and Finance may prepare proposed amendments to the Kosovo Consolidated Budget and an Appropriations Law [....]”*, while more precisely, paragraph 4 of Article 25 of this law, stipulates that *“Any such proposed amendment to an Appropriations Law or to the Budget of Republic of Kosovo shall not result in any increase in current year expenditure that is not at least equally offset by a reduction in expenditure and/or measures to increase revenue”*.

265. Furthermore, the Court also refers to the Rules of Procedure of the Assembly, namely paragraph 5 of its Article 57 (Review of the draft-law in the committees), which with regards to the Committee on Budget stipulates:

“The proposal of amendments, which have budgetary implications, is sent to the Committee on Budget and Finance, which must be declared with a report, within five (5) working days from the day of receipt”.

266. In the following, annex no. 2 of the Rules of Procedure of the Assembly, defines the function and responsibilities of the Committee on Budget and Finance, as a standing committee of the Assembly, which is, among others, responsible for:

- *Revising the annual budget of Kosovo;*
- *budgetary and financial issues;*
- *Budgetary implications of draft laws for their first year after entering into force and for all consecutive years and giving recommendations to other functional committees or in the Assembly;*
- *Reviewing periodical reports of the Ministry of Finance regarding the expenditures of Kosovo institutions and other budgetary organizations that report to the Assembly;*
- [..]
- *Overseeing the application of the Law on Public Financial Management and Accountability and other laws regulating public finances;*
- [...]
- *Reviewing of legislation on areas related to budgeting and finance;*
- *The right to initiate and draft laws;*
- *Reviewing of draft laws and motions relating to budgetary implication and budgetary costs of all activities of the Assembly and other Kosovo institutions that fall within the scope of work and responsibilities of the Committee;*
- [...]

267. After elaborating on the competencies of the Assembly set out in paragraph 5 of Article 65 of the Constitution and the relevant provisions of the Law on Public Financial Management, the Court will further assess the procedure followed in the Assembly regarding the contested Act of the Assembly.

(v) Regarding the procedure followed in the Assembly and the competence of the Assembly in issuing the contested Act

268. The Court first recalls that the issuance of the contested Act of the Assembly was preceded by the request of KOSTT submitted to the Committee on Economy of the Assembly, on 6 April 2021, by which it requested to: (i) address the problem of supply of electricity; and (ii) to provide financial resources to cover losses in the four (4) municipalities of the Republic of Kosovo, for the period April - December 2021.
269. The Court notes that the contested Act, in its preamble, is based on paragraph 1 of Article 65 of the Constitution, according to which the Assembly adopts laws, resolutions and other general acts. The Court also notes that based on paragraph 14 of Article 65 of the Constitution, the Assembly has the competence to “*decide in regard to general interest issues as set forth by law.*”. Also, based on the documents submitted to the Court by the interested parties and which were presented in the proceedings before the Court of this Judgment, the Court notes that the contested Act was issued in accordance with the provisions of the Law on Electricity, respectively Article 13, which determines that the Assembly is a shareholder of the Public Enterprise KOSTT. Whereas, the competencies of the shareholder regarding the dividend, are defined by Article 151 (Procedures for Authorizing Dividends) of Law no. 06/L -016 on Business Organizations, through which it is determined that the decision on the authorization and payment of dividends can be made by shareholders. More precisely, the interconnection of Article 13 of the Law on Electricity and Article 151 of the Law on Business Organizations, determines that the shareholder has rights regarding the authorization and payment of dividends. More specifically, Article 151 of the Law on Business Organizations stipulates that:
- “1. A decision authorizing and paying dividends may only be made by the Shareholders unless the authorization to make that decision has been conferred to the board of directors in the Charter of the Joint Stock Company.*
- 2. Each decision for distribution of dividends must specify the amount of dividend, date of specification of Shareholders who have the right to receive dividends which date must be later than the date of the decision authorizing the distribution, and the date in which the dividends must be paid, and the date in which the Joint Stock Company must notify persons who have the right to receive these dividends on the decision and other relevant issues.*
270. Based on the clarifications above and in terms of the procedure followed in issuing the contested Act by the Assembly, the Court refers to the actions taken by the Committee on Economy, which have resulted in proposing the latter's recommendations as an item on the agenda in the plenary session of the Assembly, of 6 May 2021 and subsequently, the approval of these Recommendations, through the approval of the contested Act, by the Assembly.

271. The Court also refers to the responses of the Committee on Budget, Labor and Transfers and the Committee on Public Finance Oversight, respectively to the questions of the Court: (i) whether before reviewing and approving the contested Act in the plenary session of the Assembly of 6 May 2021, the Recommendation of the Committee on Economy, Industry, Entrepreneurship and Trade, of 28 April 2021, has been sent for opinion to the Committees on Budget, Labor and Transfers and/or to the Committee on Public Finance Oversight; and (ii) if these two Committees have not given an opinion on the contested Act then, within and depending on their competence and within the meaning of the Law on Public Financial Management, to clarify to the Court, whether during the decision-making process regarding the request of KOSTT, their recommendation/opinion was necessary before the issuance of the contested Act.
272. In response to the questions above, the Committee on Budget, Labor and Transfers of the Assembly, among others, stated that: (i) this committee does not provide opinions and recommendations to functional committees, except in cases where according to paragraph 5 of Article 57 of the Rules of Procedure of the Assembly to review the amendments to the Draft Law, for which a recommendation is provided in terms of budget; and added that (ii) based on Article 5 of the ERO License, KOSTT is obliged to compensate electricity losses in four (4) municipalities of the Republic of Kosovo, and also based on the Law on Electricity *“public enterprise KOSTT JSC is not subject to financing from budget lines which must be approved by the Committee on Budget, Labor and Transfers and/or the one for Public Finance Oversight, the budget of KOSTT JSC is approved by the Board of Directors according to law on public enterprises and is based on the maximum revenues approved by ERO and the profits retained from own source revenues”*.
273. In addition, the Assembly Committee on Oversight of Public Finances also stated that: (i) based on the provisions of the Rules of Procedure of the Assembly, this committee does not provide opinions and recommendations to the functional committees; and (ii) *“The Committee for Oversight of Public Finances, according to the Rules of Procedure of the Assembly, in its scope has the oversight of the legality of expenditures of public money based on reports and statements audited by the National Audit Office. The National Audit Office has not audited the annual financial statements of KOSTT, therefore as a committee we have not had the opportunity to review the legality of spending the budget of KOSTT”*.
274. The Court also recalls that KOSTT in response to the Court’s question as to what is the definition and meaning of assets held under applicable law, and also what is the legal basis for the compensation of such assets by *“dividends or any other possible mechanism”*, the latter has replied that, *“Profit/Loss accumulated from previous accounting periods that have neither been paid as dividends nor has been used for any other purpose by the reporting economic entity - is in accordance with International Accounting Standards*. According to KOSTT, the latter is obliged to prepare financial statements in accordance with International Accounting Standards, pursuant to paragraph 1 of Article 7 (Implementation of standards for

the preparation of financial statements for large companies) of the Law on Accounting, Financial Reporting and Auditing.

275. In this regard, KOSTT in its response of 18 October 2021, refers to paragraph 14 of Article 13 of the Law on Publicly Owned Enterprises, which stipulates that *“If the enterprises earns profit, (net tax), the Board is expected based on the advice of the management team, to determine how much of that profit shall be held for reinvestments and how much shall be paid as dividend. The Board will make its recommendations in declaring the dividend to the shareholders at the Annual General Meeting”*. Following this, KOSTT specifies that *“Compensation of assets from dividends or any other mechanism is in accordance with [item 4 of contested Act of the Assembly] in the capacity of a shareholder of KOSTT, a right which is provided by Article 151, Procedures for Authorizing Dividends, paragraph 1 of Law No. 06/L-016 on Business Organizations which explicitly provides that “A decision authorizing and paying dividends may only be made by the Shareholders unless the authorization to make that decision has been conferred to the board of directors in the Charter of the Joint Stock Company”*”.
276. In light of the clarifications above, the Court also recalls that after the adoption of the contested Act of the Assembly, on 17 May 2021, the Board of Directors of the Public Enterprise KOSTT issued Decision [210517/II-22] by which *“according to the authorization from the Recommendations of the Assembly of the Republic of Kosovo [of 6 May 2021] allocated budget funds in the amount of 8 200 000, 00 euro from the profits held to cover the deviation of electricity for the north part of Kosovo for 2021, these funds which will be compensated by dividends or any other possible mechanism”*.

(vi) Findings regarding the procedure followed in the Assembly

277. From the elaboration above, the Court considers that (i) despite the allegations of the Applicants, the issuance of the contested Act of the Assembly does not relate to the competencies of the Assembly established in paragraph 5 of Article 65 of the Constitution regarding the state budget and that such a finding, as discussed above, is also supported by the explanations given by the relevant Committees of the Assembly before the Court; whereas the Court notes that (ii) in the course of the procedure of approval of the contested Act, the Assembly has issued an act, based on paragraph 1 of Article 65 of the Constitution and has exercised its competence to decide *“in regard to general interest issues as set forth by law”*, as provided in paragraph 14 of Article 65 of the Constitution. Specifically, the Assembly has exercised its competence as a shareholder of the Public Enterprise KOSTT, defined in Article 13 of the Law on Electricity.
278. Further, the Court also clarifies that the Assembly, based on its constitutional competence, provided by paragraph 14 of Article 65 of the Constitution, to issue decisions in the areas set forth by law, has exercised its competences set forth in Article 13 of the Law on Electricity, and through the contested Act, has authorized the relevant enterprise to cover electricity deviations in four (4) municipalities of

the Republic of Kosovo, using own budget revenues and which will be compensated by “*dividends or any other possible mechanism*”. The Court recalls that the authorization of the shareholder, in this case to the Assembly, regarding the dividend is defined in paragraph 1 of Article 151 of the Law on Business Organizations, which stipulates that “*A decision authorizing and paying dividends may only be made by the Shareholders unless the authorization to make that decision has been conferred to the board of directors in the Charter of the Joint Stock Company*”. Following the issuance of the contested Act, based on the authorizations defined in the law, the Board of Directors of KOSTT, on 17 May 2021, issued the Decision on the allocation of budget funds from own-source funds, also stipulating that regarding the compensation of these funds the Board of Directors of KOSTT “*will decide at its annual general meeting taking care of the profitability of the company, protection of the public interest in terms of rights and obligations arising from the Connection Agreement of KOSTT with ENTSO-E.*”

279. In this context, the Court considers that (i) based on paragraph 1 of Article 65 of the Constitution, the Assembly adopts laws, resolutions and acts; (ii) based on paragraph 14 of Article 65 of the Constitution, the Assembly decides “*in regard to general interest issues as set forth by law*”; (iii) in exercising its competencies set forth by law, namely based on paragraph 2 of Article 13 of the Law on Electricity, the Assembly of the Republic of Kosovo exercises the rights of the shareholder of KOSTT; (iv) moreover, based on paragraph 1 of Article 13 of the Law on Electricity, KOSTT operates as a Publicly Owned Enterprise in accordance with Law No. 03/L-087 on Publicly Owned Enterprises and relevant legislation in force; (v) based on Article 4 (Shares) of Law No. 03/L-087 on Publicly Owned Enterprises, the latter are organized as joint stock companies, in accordance with the applicable Law on Business Organizations; and that (vi) based on Article 151 (Procedure for Authorizing Dividend) of Law no. 06/L-016 on Business Organizations, among others, the decision on the authorization and payment of dividends may be made by the shareholders.
280. Based on the above, the Court notes that by issuing the contested Act, the Assembly, *inter alia*, authorized KOSTT to cover deviations of electricity in four (4) municipalities “*using revenues from its own budget, funds which will be compensated by dividends or any other possible mechanism*” and that this decision was issued (i) by exercising its competence as a shareholder of the Publicly Owned Enterprise KOSTT; and (ii) while exercising the shareholder’s competence, it decided with regard to the dividend of KOSTT; whereas the exercise of this competence (i) is not related to the competence of the Assembly defined in paragraph 5 of Article 65 of the Constitution regarding the budget of the Republic of Kosovo, as explained before the Court by the relevant Committees of the Assembly, respectively the Committee on Budget, Labor and Transfers and the Committee on Oversight of Public Finance; but (ii) it is based on the exercise of the competencies of the Assembly set forth in paragraphs 1 and 14 of Article 65 of the Constitution, according to which the Assembly may issue acts in regard to general interest issues as set forth by law.

281. Consequently, the Court finds that the contested Act of the Assembly is in compliance with paragraph 1, 5 and 14 of Article 65 of the Constitution.
282. As a result of this finding, in the following Court will examine and assess whether the contested Act has violated the right to equality before the law guaranteed by Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 of the ECHR. In this regard, in the following Court will elaborate: (i) whether the contested Act constitutes a limitation of the right to equality before the law guaranteed by Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol No. 12 of the ECHR; (ii) the application of Article 55 of the Constitution; (iii) referring to the general principles of Article 55 of the Constitution based on the case-law of the ECHR and of the Court, will apply them in the circumstances of the present case, analyzing and assessing whether: (a) the limitation is prescribed by law; (b) there is a **legitimate aim**; and (c) there is a relationship of proportionality between the limitation of the right and the purpose to be achieved.

II. Regarding whether the contested Act has violated Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 of the ECHR

283. The Court recalls that the Applicants allege that the contested Act “*places directly in a discriminatory position all citizens who fulfill their obligation to pay electricity service tariffs, in relation to citizens who do not do so*”. Within the meaning of this allegation, the Applicants allege that the contested Act of the Assembly was rendered in violation of Article 24 of the Constitution, and in this regard specify that the discrimination of the citizens of Kosovo was made on the basis of residence. More specifically, the Applicants allege that the contested Act of the Assembly results in discrimination of electricity consumers who do not live in these four (4) municipalities of the Republic of Kosovo. The Court also recalls that the Applicants relate their allegation that the contested Act of the Assembly was rendered in violation of their right to equality before the law to Article 14 of the ECHR and Article 1 of Protocol no. 12 of the ECHR.
284. In the following, the Court first refers to Article 24 [Equality Before the Law] of the Constitution, which stipulates that:
- 1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
 - 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*
 - 3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*

285. The Court also recalls the respective articles of the ECHR, namely Article 14 (Prohibition of Discrimination) of the ECHR which stipulates that:

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

286. Finally, the Court also refers to Article 1 (General Prohibition of Discrimination) of Protocol 12 to the ECHR, which stipulates that:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

287. In the context of the provisions above, the Court first recalls that Article 14 of the ECHR guarantees protection against discrimination in the enjoyment of the rights guaranteed by the ECHR. According to the case-law of the ECtHR, the principle of non-discrimination is of a “fundamental” nature and relates the Convention to the rule of law and the values of tolerance and social peace (see, *inter alia*, the case of the ECHR *SAS v. France* [GC], Judgment, of 1 July 2014 paragraph 149). The protection against discrimination set out in Article 14 of the ECHR has been further completed and strengthened by Article 1 of Protocol No. 12 to the ECHR, which prohibits discrimination in a more general way, beyond the rights guaranteed by the ECHR, even in the enjoyment of any right provided by law.

288. The Court, based on the case-law of the ECtHR, notes that the latter, in principle, has held that Article 14 of the ECHR does not have autonomous existence, but in order for this Article to be applicable it must be related also with the allegation of a violation of another right or freedom guaranteed by the provisions of the ECHR. However, the ECtHR in its case-law has emphasized that the prohibition of discrimination also applies in relation to other additional rights, which fall within the general scope of one of the articles of the ECHR, for which rights, states have decided to guarantee their protection (see, in this context, *Fábián v. Hungary*, [GC], Judgment of 5 September 2016, paragraph 112; *Biao v. Denmark*, [GC], Judgment of 24 May 2016, paragraph 88; *İzzettin Doğan and Others v. Turkey* [GC], Judgment of 26 April 2016, paragraph 158; and *Carson and Others v. the United Kingdom* [GC], Judgment of 10 March 2010, paragraph 63).

289. Having said that, Article 1 of Protocol no. 12 of the ECHR, has expanded the scope of protection against discrimination in the level of the ECtHR, defining a general prohibition of discrimination, and consequently including the rights defined by law.

290. More precisely, Article 1 of Protocol no. 12 of the ECHR expands the scope of protection against discrimination of “*any rights prescribed by law*” (see, *inter alia*, cases of ECtHR; *Alliance of churches “Riječ života” and others v. Croatia*, Judgment of 9 December 2010, paragraph 103; and *Sejdić and Finci v. Bosnia and Herzegovina* [GC] Judgment of 22 December 2009, paragraph 53). According to the ECtHR, this article includes the general prohibition of discrimination. The ECtHR, moreover, through the relevant case-law, emphasized that this general prohibition of discrimination derives from paragraph 2 of this Article, which stipulates that no one can be discriminated against by a public authority. According to paragraph 22 of the Explanatory Report of Protocol no. 12 of the ECHR, adopted by the Council of Europe on 4 November 2000, the scope of Article 1 of this Protocol includes four categories of circumstances “*when an individual is discriminated against*”, as follows: (i) the enjoyment of every right guaranteed specifically for an individual under domestic law; (ii) the enjoyment of rights, which derive from a clear obligation of public authority under domestic law, where the public authority is obliged to behave in a certain way; (iii) by public authority in the exercise of discretionary power; and (iv) on the basis of an act or omission of a public authority.
291. Based on the case-law of the ECtHR, the Court notes that paragraphs 1 and 2 of Article 1 of Protocol no. 12 of the ECHR, are complementary and that their combined effect results in the fact that all four elements or circumstances mentioned above, are covered by the protection of this article. In the application of these guarantees, namely the application of Article 1 of Protocol no. 12, the ECtHR, in its case *Sejdić and Finci v. Bosnia and Herzegovina* [GC], examined, *inter alia*, the impossibility of the respective Applicants, who identified themselves as members of the Roma community and of Jewish origin respectively, to compete for elections to the House of Representatives and the Presidency of the State, because they had not declared their affiliation with one of the “*constituent peoples*”, as required by the provisions of the Constitution. The ECtHR found that the constitutional provisions, which prevented the Applicants from running in the State Presidency elections, were discriminatory under Article 1 of Protocol No. 12 of the ECHR. In another case, in the application of Article 1 of Protocol no. 12 of the ECHR, respectively in the case of *Alliance of churches “Riječ života” and others v. Croatia*, the ECtHR assessed discrimination at the level of domestic law. More precisely, and among other things, in this case, the ECtHR examined the rights defined by Croatian law and putting the latter in the context of the four categories mentioned above and defined through the Explanatory Report regarding Article 1 of Protocol no. 12 of the ECHR, rejected the allegations of the respective Applicants holding that Article 1 of Protocol no. 12 of the ECHR was not applicable.
292. Within the meaning of Article 24 of the Constitution, the Court also points out that the scope of this article is wide and extends to guarantee the prohibition of discrimination, not only in terms of the rights guaranteed by the Constitution, but also by law. Consequently, the assessment of allegations of violation of this Article must be made beyond the guarantees of Article 14 of the ECHR, and must include the guarantees set forth in Article 1 of Protocol No. 12 of the ECHR.

293. Following this, the Court within the meaning of Article 24 of the Constitution and applying the position of the ECtHR through its case-law regarding Article 1 of Protocol no. 12 of the ECHR, also refers to legal provisions, which establish the rights and obligations of electricity consumers for the payment of electricity.

294. Initially, the Court refers to Article 4 (Public Service Obligation) of the Law on Energy, which stipulates that:

1. Energy enterprises charged with public service obligations shall ensure the discharge of the public service in accordance with the terms determined in their respective licenses.

2. Duties and obligations of energy enterprises charged with public service obligations are set in the Law on Energy Regulator.

295. Whereas, Article 55 (Billing and Payment) of the Law on Electricity, establishes that:

1. Customers shall pay for the electricity consumed in accordance with General Conditions of Energy Supply or other applicable contractual conditions.

2. Conditions and procedures for billing, collection and payments shall be determined by the Rule on General Conditions of Energy Supply, issued by the Regulatory.

296. Based on these two provisions, it turns out that electricity consumers, who are provided with the public electricity supply service and who are included in the billing system, are obliged to pay for electricity consumption. Consequently, the Court will assess and determine whether the contested Act of the Assembly, respectively its point 4, is contrary to Article 24 of the Constitution and Article 1 of Protocol no. 12 of the ECHR.

297. In this regard, the Court also refers to Article 55 [Limitations on Fundamental Rights and Freedoms], of the Constitution which stipulates that:

1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.

2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.

3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.

4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.

5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.

298. Furthermore, in terms of the test applied to ascertain whether an act issued by a public authority is contrary to Article 14 of the ECHR and Article 1 of Protocol no. 12 of the ECHR, the ECtHR in its case-law has set out the following criteria:
- (i) If there has been a difference in the treatment of persons in analogous or relatively similar situations - or a failure to treat persons differently in relatively different situations.
 - (ii) If this is the case, then it is assessed whether such a difference - or lack of difference - is objectively justified, respectively:
 - (a) If the limitation has pursued a legitimate aim;
 - (b) The measure taken was proportionate to the aim pursued.
299. Whereas, based on the case-law of the Court, the constitutional test to ascertain whether the act or action constitutes discrimination, contains the following criteria (see, inter alia, the cases of the Court: KO01/17, *Applicant Aida Dërguti and 23 other deputies of the Assembly*, Judgment, of 28 March 2017; and KO157/18, *Applicant Supreme Court*, Judgment of 13 March 2019):
- (i) Determine if there is a difference in treatment; and
 - (ii) If this is the case, to assess:
 - (a) Whether the difference in treatment is prescribed by law;
 - (b) Whether the difference in treatment has pursued a legitimate aim; and
 - (c) Whether there is a relationship of proportionality between the difference in treatment and the purpose to be achieved.
300. Based on the above, and taking into account the case-law of the ECtHR and that of the Court, in cases where the latter has assessed whether the right to equality before the law, guaranteed by Article 24 of the Constitution is limited, the Court also applied Article 1 of Protocol no. 12 of the ECHR and taking into account the rights and obligations of consumers in the payment of electricity consumption, will assess whether there has been a difference in the treatment of electricity consumers; and if this is the case, in the following it will apply the test of Article 55 of the Constitution and its case-law and the ECtHR, assessing whether the difference in treatment has been (a) prescribed by law; (b) has pursued a legitimate aim; and (c) whether there is a relationship of proportionality between the limitation of the right and the aim pursued to be achieved.
- (i) if there was a difference in treatment**
301. In the context of assessing whether the contested Act of the Assembly is discriminatory, the Court first reiterates that based on Article 24 of the Constitution and the aforementioned Articles of the ECHR, and as further clarified through the case-law of the ECtHR but also of the Court, not every difference in treatment

constitutes discrimination. The difference in treatment results in discrimination if the same does not have “*an objective and reasonable justification*”. Therefore, in assessing whether the circumstances of a case have resulted in discrimination, the case-law of the ECtHR and the Court first determines whether it is necessary to assess whether there is a difference in the treatment of persons in “*analogous or relevantly similar situations*”. (See, *inter alia*, the Judgment of the Court in case KO01/17, Applicant *Aida Dërguti and 23 other deputies of the Assembly*, of 4 April 2017, paragraph 74).

302. Consequently, in assessing the Applicants’ allegations, the Court must first assess whether, in the circumstances of the present case, a difference in the treatment of persons in “*analogous or relatively similar situations*”, and if this is the case, to proceed further, by applying the test of the ECtHR and the Court, to ascertain whether such a difference in treatment has an “*objective and reasonable justification*” or not.
303. In this context, the Court recalls that the essence of the Applicants’ allegation is that consumers of electricity, who do not live in the four (4) municipalities of the Republic of Kosovo and pay for electricity, are discriminated against in relation to citizens who live in four (4) municipalities of the Republic of Kosovo and which consumers do not pay for electricity.
304. Furthermore, based on the chronology of facts in the circumstances of the present case, the Court recalls that as a result of non-billing/non-payment by consumers of electricity in the four (4) municipalities of the Republic of Kosovo, the electricity consumption in these four (4) municipalities is registered as a deviation. For this purpose, KOSTT requested the allocation of budget funds for the purpose of procurement of electricity to cover deviations in four (4) municipalities of the Republic of Kosovo.
305. Therefore, in terms of its finding whether the adoption of the contested Act of the Assembly has resulted in a difference in the treatment of electricity consumers, the Court will examine (i) the circumstances or approval procedure; (ii) the substance of the contested Act; and (iii) the effect of this Act upon its adoption.
306. The Court notes that as a result of the lack of (i) a permanent solution in terms of electricity billing in four (4) municipalities of the Republic of Kosovo; (ii) continuous deviation in the power grid; and (iii) the process related to the independence of KOSTT and its operation as an Independent Regulatory Area within the AK Block with the Republic of Albania, within the synchronous zone of Continental Europe; and taking into account (iv) the rights and obligations arising from the Connection Agreement with ENTSO-E, KOSTT, on 6 April 2021 addressed the functional Committee of the Assembly on Economy for the allocation of eleven (11) million euro for coverage of electricity deviations in four (4) municipalities of the Republic of Kosovo.

307. As a result of the adoption of the contested Act by the Assembly, namely, through its point 4, KOSTT is authorized to cover the deviation of electricity in four (4) municipalities of the Republic of Kosovo from its own budget revenues, funds which “*will be compensated by dividends or any other possible mechanism*”. On the other hand, point 5 of the contested Act of the Assembly, has determined that, “*the Government of the Republic of Kosovo is obliged to ensure the entire process of including in the billing system according to the rules and laws in force in cooperation with the responsible parties for customer billing in the four municipalities of the Republic of Kosovo [...]*”.
308. Based on points 4 and 5 of the contested Act of the Assembly, it results that as a result of the authorization given to KOSTT to cover deviations in electricity due to non-billing/non-payment of electricity for consumers of four (4) municipalities of the Republic of Kosovo, up to the beginning of the implementation of the process of entering the electricity consumption billing system for consumers of these four (4) municipalities, the latter enjoy a different treatment from consumers of other municipalities of the Republic of Kosovo.
309. Consequently, the Court, referring to the factual circumstances related to the contested Act of the Assembly, notes that consumers who do not live in (4) municipalities of the Republic of Kosovo, according to the legal provisions in force, are included in the billing system, there are conditions for collecting bills, they receive the power supply service and according to the law, they are obliged to pay for electricity consumption. This is not the case for the consumers living in the four (4) municipalities of the Republic of Kosovo and who, according to the files submitted to the Court by the interested parties, are not included in the billing system and do not pay for electricity consumption.
310. In this context, the Court considers that it is not disputed that (i) in terms of legal provisions regarding electricity consumers in the Republic of Kosovo, consumers in all municipalities of Kosovo are in “*analogous or relatively similar situations*”; and (ii) that there is a difference in treatment between consumers living and those not living in the four (4) municipalities of the Republic of Kosovo. However, as explained above, in order to determine whether this difference in treatment results in discrimination contrary to Article 24 of the Constitution, the Court, based on its case-law and that of the ECtHR, must assess whether this difference in treatment has “*an objective and reasonable justification*”.
311. In the light of this finding, in the following, the Court must examine whether the contested Act of the Assembly was issued in violation of Article 24 of the Constitution in conjunction with Article 1 of Protocol no. 12 of the ECHR, and in this context must assess and apply the criteria of the ECtHR and Article 55 of the Constitution, respectively whether the relevant difference in treatment: (a) is prescribed by law; (b) has pursued a legitimate aim; and (c) whether there is a relationship of proportionality between the limitation of the right and the purpose pursued to be achieved. For each of these criteria, the Court will first present the general principles and then apply them to the circumstances of the case.

(a) If the difference in treatment is “prescribed by law”

312. Based on paragraph 1 of Article 55 of the Constitution, the limitation of the rights guaranteed by the Constitution is possible, but this limitation must be done “*only by law*”, which means, among other things, that the authorities responsible to implement a law where limitations are provided, can apply the limitation only to the extent that is ‘*prescribed by law*’. This paragraph therefore presents the first and essential requirement which must be met to determine whether a “*limitation*” of fundamental rights and freedoms is constitutional (see, specifically, the Court's position in case KO54/20, cited above, paragraph 192). As explained above, the Court will present the general principles regarding this criterion and apply the latter in the circumstances of the case.

(i) General principles

313. The Court will further present the cases of the ECtHR, where through the case-law the criterion “*prescribed by law*” is elaborated and the way the ECtHR analyzes whether a limitation or “*interference*” undertaken is defined by/in the law or not. Although the factual issues of those cases differ from the circumstances of the present case, the general interpretation of the criterion “*prescribed by law*” that the ECtHR refers to in its case-law remains important. This interpretation of the ECtHR is also affirmed in the case-law of the Court itself (see, *inter alia*, the cases of the Court cited KO131/12, KO108/13, KO01/17, KO157/18 and KO54/20).

314. The ECtHR, in principle and *inter alia*, stated that: “*The expression “in accordance with law” not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the persons concerned and foreseeable as to its effects*”. The ECtHR further stated that: “*a rule is “foreseeable” when it affords a measure of protection against arbitrary interferences by the public authorities*” and that a law “*which confers a discretion must indicate the scope of that discretion, although the detailed procedures and conditions to be observed do not necessarily have to be incorporated in rules of substantive law*” (See, *Tommaso v. Italy*, application no. 43395/09, Judgment of 23 February 2017, paragraphs 106-109 and references cited therein).

315. The Court in the context of the assessment of “*prescribed by law*”, referring to the case-law of the ECtHR, notes that this criterion should contain at least the following elements: (i) the existence of a clear legal basis; (ii) the predictability of the relevant limitation (see the case of *Kudrevičius and Others v. Lithuania*, cited above, paragraph 109); (iii) the existence of safeguards against interference, namely the limitation of rights by public authorities; and (iv) sufficient clarity in the law as to the discretion of the public authority regarding the possibility of limitation and the manner of exercising this discretion (see, the case of the ECtHR, *Navalnyy v. Russia*, Judgment of 15 November 2018, paragraphs 115-119).

316. In Case KO01/17 of the Court, in paragraph 90, regarding the requirement that the limitation should be prescribed by law, the Court stated that: *“the alleged limitation of the KLA Veteran's right to a pension is foreseen by Article 3 (2) of the challenged Law adopted by the Assembly, which is the state institution vested by the Constitution with the exercise of the legislative power. Thus, the Court considers that such limitation complies with the requirements contained in Article 55 (1) of the Constitution. Therefore, the Court concludes that the limitation of the KLA Veteran's right to pension has been foreseen by law.”* (see, KO01/17, Applicant Aida Dërguti and 23 other deputies of the Assembly, cited above, paragraph 90).
317. In case KO157/18, paragraphs 93-96, regarding the requirement that the limitation must be prescribed by law, the Court stated that *“the Constitution in Chapter II has given special importance to human rights and freedoms and has also provided for cases where such rights may be restricted by law, if this is required by the general interest of society and State.”* However, in the following paragraphs where it conducted the analysis as to whether for the circumstances of that case the limitation was prescribed by law, the Court stated that: *“With regard to the limitation provided by law, the Court notes that the limitation of the rights in the present case was foreseen by Article 14, paragraph 1.7 of the challenged Law, which was approved by the Assembly on 10 June 2010, an institution in which the Constitution vested the exercise of legislative power. Therefore, given that a right guaranteed by Chapter II of the Constitution may be limited by law, where this is required by the general interest, the Court considers that the limitation of the rights is in accordance with the requirements of paragraph 1 of Article 55 of the Constitution. The Court finds that the obligation of the insurance companies to pay one percent (1%) of the prim from vehicle insurance in the present case, was provided for by law.”* (see case KO157/18, Applicant the Supreme Court of the Republic of Kosovo, cited above, paragraphs 95-96).
318. In case KO108/13, in paragraphs 133-134, regarding the requirement that the limitation must be prescribed by law, the Court referred to the ECtHR case, *Centro Europa 7 S.R.L. and di Stefano v. Italy* (ECtHR Judgment of 7 June 2012), and reiterated that: *“a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. [...]”* (see case KO108/13, Applicant Albulena Haxhiu and 12 other deputies of the Assembly, Judgment of 3 September 2013).
319. In case KO131/12, in paragraph 130, regarding the requirement that the limitation must be prescribed by law, the Court stated that *“the alleged limitation on the right to work is included in a law approved by the Assembly of Kosovo, which is a state institution vested with legislative power by the Constitution. As such, the limitation complies with the requirement that the limitation is granted by law, as described in paragraph 1 of Article 55.”* (see case KO131/12, Applicant Shaip Muja and 11 deputies of the Assembly, Judgment of 15 March 2013).

(ii) *Application of abovementioned principles in present case*

320. The Court first recalls that it has already found that the Assembly during the issuance of the contested Act has exercised its powers as a shareholder of the Public Enterprise KOSTT, based on paragraph 2 of Article 13 of the Law on Electricity, according to which the Assembly exercises all shareholder rights to this enterprise.
321. Furthermore, the Court notes that the obligation to balance the electricity system of the Republic of Kosovo and, consequently, the coverage of energy losses by the Public Enterprise KOSTT, is defined by (i) Articles 16, 19, 24 and 28 of Law on Electricity; and (ii) the License issued to KOSTT, namely the License, [ZRRE/Li_15/17, 13 April 2017], which in its Article 5, stipulates that KOSTT is responsible for covering electricity losses in the four (4) municipalities of the Republic of Kosovo.
322. These two acts of public authorities, namely the Law on Electricity and the License issued by ERO, are necessary to determine whether the Assembly had the authority, in the capacity of shareholder of the Public Enterprise KOSTT, in a “law” to authorize KOSTT to cover electricity deviation in four (4) municipalities of the Republic of Kosovo. Therefore, the Court will focus its analysis, initially on the Law on Electricity, to determine whether the limitation of human rights and freedoms, namely the limitation of the right not to be discriminated against of the electricity consumers based on residence, is “*prescribed by law*”, as established in paragraph 1 of Article 55 of the Constitution.
323. In this context, the Court reiterates that item 1.19 of paragraph 1 of Article 16 of the Law on Electricity, stipulates that KOSTT is responsible for balancing the electricity system in accordance with the Transmission Network Code and Market Rules in the Republic of Kosovo. In this regard, the Court notes that the Committee on Economy of the Assembly also referred to this provision in their response to the Court, by which they justified the legal obligation of KOSTT to cover deviations in electricity in four (4) municipalities of the Republic of Kosovo.
324. The Court further notes that the Law on Electricity, paragraphs 2 and 3, respectively Article 19 (Procurement of Electricity and Capacities from the Transmission System Operator), stipulate that:

2. The Transmission System Operator shall purchase energy required for covering losses in the transmission network in the electricity market. If it provides evidence for each individual case to the Regulatory that such purchases are physically not possible, the Regulatory may demand from producers to offer the electricity required for covering transmission network losses. The Regulatory, based on reports of the Transmission System Operator, may require from the Transmission System Operator, generators and other entities to implement public service obligations to ensure that transmission losses are covered.

3. Rules for electricity system balancing shall be objective, transparent and non-discriminatory, including all rules on imbalance costs for system users. Balancing rules shall be submitted for approval to the Regulatory by the Transmission System Operator. The terms and conditions, including the rules and tariffs for the provision of such services by the Transmission System Operator shall be established pursuant to a methodology approved by the Regulatory in a nondiscriminatory and cost-reflective way and shall be published.

325. In addition, item 21 of paragraph 1 of Article 28 [Responsibilities and Rights of the Distribution System Operation] of the Law on Electricity, stipulates that KOSTT is responsible to *“1.21. provide electricity for covering losses in the distribution system and for ancillary services in the distribution network, in accordance with the principles of electricity market, transparency and non-discrimination.”*
326. Also, based on Article 4 (Electricity sector activities) of the Law on Electricity, energy enterprises assigned with public service obligation must ensure the provision of public service, in accordance with the conditions set forth in the License. One of the conditions stipulated in the License for KOSTT is the compensation of electricity losses in the four (4) municipalities of the Republic of Kosovo.
327. More precisely, according to the License [ZRRE/Li_15/17] of 13 April 2017, it is determined that KOSTT is responsible for: *“Planning, operation, maintenance and development of the Electricity Transmission System in Kosovo; Efficient, economical and coordinated operation of the transmission system, including cross-border flows; System balancing; Providing non-discriminatory access to transmission system users; Promoting effective competition for electricity generation and supply; Promoting economic efficiency in the implementation of Market Rules and performs activities in accordance with Market Rules; Administration of the centralized electricity market in Kosovo and Management of the final settlement process.”*
328. Furthermore, Article 5 of the License specifically defines the compensation for electricity losses in four (4) municipalities of the Republic of Kosovo. More specifically, according to this article it is determined that KOSTT is obliged to:
- “1. Where so required by any Decision or Instruction issued to the Licensee by the Regulator, the Licensee shall procure electrical energy to compensate for losses arising from energy used, but not paid for, by customers in Northern Kosovo.*
- 2. In its regulatory accounts the Licensee shall ensure that it records separately any costs incurred by it in energy purchase under paragraph 1 above.”*
329. Based on the abovementioned legal provisions, the Court notes that the latter, especially Articles 16, 19 and 28 of the Law on Electricity as well as Article 5 of the ERO License, assign KOSTT the obligation to balance the electricity system and

consequently, the obligation to cover electricity losses in four (4) municipalities of the Republic of Kosovo.

330. The Court recalls that the Assembly as a shareholder of this enterprise and as the approving body of the contested Act, in point 4 of this Act, authorizes KOSTT to “*to cover electricity deviations in the four municipalities of the country (North Mitrovica, Leposavic, Zubin Potok and Zvecan), according to the solution presented and approved by the functional committee using own budget revenues, funds which will be compensated by dividends or any other possible mechanism*”.
331. In light of the above, the Court concludes that differences in the treatment of electricity consumers in the four (4) municipalities of the Republic of Kosovo, are “*prescribed by law*”. This is because, (i) based on Article 16 (Tasks and responsibilities of the Transmission System Operator) of the Law on Electricity, KOSTT is obliged to balance the electricity system in accordance with the Transmission Network Code and Market Rules; (ii) based on Article 19 (Procurement of Electricity and Capacities from the Transmission System Operator) of the Law on Electricity, among others, KOSTT is obliged to cover losses in the transmission network through the procurement of electricity; and (iii) based on Article 28 (Responsibilities and Rights of the Distribution System Operation) of the Law on Electricity, among others, KOSTT has the responsibility to provide electricity to cover losses in the distribution network. Whereas, based on Article 10 (Transmission System Operator) of the Law on Electricity, the transmission system operator owns the transmission system and is responsible for its operation in accordance with the license issued by the Regulator. Based on the License of KOSTT, namely Article 5 (Compensation for the losses in the North of Kosovo), the possibility of KOSTT to “*provide electricity to compensate the losses arising from the energy used, but not paid, by consumers in the northern part of Kosovo.*”, is explicitly provided.
332. Following this finding, the Court should proceed with the assessment of whether the limitation pursued a legitimate aim, and if this is the case, should proceed with the assessment of whether the measures taken were proportionate to the aim pursued to be achieved.

(b) If there is a legitimate aim

333. The third paragraph of Article 55 of the Constitution states that the rights and freedoms guaranteed by the Constitution “*may not be limited for purposes other than those for which they were provided.*” This paragraph implies that the purpose of a limitation must be clearly determinable and no public authority may limit any right or freedom on the basis of another purpose beyond that which is already specified in the law of the Assembly in which the limitation is permitted in accordance with Article 55 of the Constitution (see, in this regard, the case of Court KO54/20, cited above, paragraph 193). As explained above, the Court will present the general principles regarding this criterion and apply the same in the circumstances of the present case.

(i) *General principles*

334. The Court emphasizes that in order to justify the difference in treatment, according to the ECtHR the limitation or difference in treatment must have an “*objective and reasonable justification*”, namely be based on a legitimate aim (see, *inter alia*, the case *Molla Sali v. Greece*, [GC], Judgment cited above, paragraph 135; and *Fabris v. France* [DHM], Judgment, 2 February 2013, paragraph 56). Furthermore, according to the ECtHR, states must prove that there is a relationship between the legitimate aim pursued and the difference in treatment alleged by the relevant applicants (see case *Ünal Tekeli v. Turkey*, Judgment of 16 November 2004, paragraph 66).
335. The ECtHR has identified that the legitimate aim may include, but is not limited to: (i) the restoration of peace (see case *Sejdić and Finci v. Bosnia and Herzegovina*, para. 45); (ii) the defense of national security (see case *Konstantin Markin v. Russia*, cited above, paragraph 137); or (iii) maintaining economic stability and debt restructuring in the context of a serious political, economic and social crisis (see case *Mamatas and Others v. Greece*, Judgment of 21 July 2016, paragraph 103).

(ii) *Application of the abovementioned principles in the present case*

336. From this point of view, the Court will assess whether the authorization to cover electricity deviations in the four (4) municipalities of the Republic of Kosovo, is established in point 4 of the contested Act of the Assembly, has an “*objective and reasonable justification*”.
337. In terms of legitimate purpose, the Court returns once again to the fact that KOSTT request, of 6 April 2021, addressed to the Assembly is based on two essential reasons (i) that this Publicly Owned Enterprise has a legal obligation to balance the electricity system and pursuant to this obligation, by the License, is obliged to procure energy for four (4) municipalities of the Republic of Kosovo; and (ii) the reasoning related to the status of KOSTT in relation to the rights and obligations arising from the Connection Agreement with ENTSO-E.
338. Specifically, by its request submitted to the Committee on Economy of the Assembly, KOSTT had emphasized that this Public Enterprise with the signing of the Connection Agreement has committed that the electricity supply will be uninterrupted and there will be no further deviations. In this context, the Court also notes that Article 13 of the Connection Agreement with ENTSO-E, stipulates that in case of deviations in the electricity system of Kosovo, KOSTT would face financial penalties by ENTSO-E, as well as in case of non-fulfillment of the commitments to ENTSO-E, the status of the Connection Agreement with ENTSO-E could be reconsidered.

339. In the context of the legitimate aim, the Court initially, in a specific manner, places emphasis on the effects of the membership of the Publicly Owned Enterprise KOSTT in ENTSO-E and its status in this mechanism as a result of the Connection Agreement with ENTSO-E.
340. The Court, referring to the effects of the membership of the Public Enterprise KOSTT in ENTSO-E, recalls that as a result of the signing of the Connection Agreement, the Republic of Kosovo has gained energy independence from the regulatory Block Serbia, Montenegro, North Macedonia (EMS) and this enabled KOSTT to operate as an Independent Regulatory Area within the Albania-Kosovo AK Regulatory Block. Furthermore, this Agreement enables the implementation of the Bilateral Agreement concluded between the Government of the Republic of Kosovo and the Republic of Albania, of 30 March 2016 and ratified by the Assembly on 30 March 2017, for the formation of a joint regulatory block, now known as Regulatory Block AK, as well as the functioning of the Albanian Power Exchange, where KOSTT is a shareholder. Also, as a result of the membership in the ENTSO-E mechanism, KOSTT is enabled to collect revenues from the allocation of cross-border capacities, from which revenues will benefit the Republic of Kosovo, including all electricity consumers of the Republic of Kosovo.
341. Also in terms of assessing whether by the contested Act of the Assembly, a legitimate aim has been pursued, the Court based on the documentation submitted by interested parties, notes that during several years and until 14 December 2020, when the Interconnection Agreement with ENTSO-E started, continuous institutional and state steps have been taken, which made possible the operation of KOSTT as an Independent Regulatory Area. In this regard, the Court also recalls that the signing of the Connection Agreement with ENTSO-E was preceded by the ratification in the Assembly of the bilateral Agreement concluded on behalf of the Government of the Republic of Kosovo and the Government of the Republic of Albania for the exchange and/or share of regulatory reserves between the Transmission System Operator TSO JSC of the Republic of Albania and KOSTT.
342. In the context of the facts elaborated above, the Court considers that in addition to the benefits that KOSTT enjoys from the signing of the two above-mentioned Agreements, namely the Bilateral Agreement with the Republic of Albania and the Connection Agreement with ENSTO-E, specifically within the implementation of the Connection Agreement with ENTSO-E as well as maintaining the status of KOSTT as a member in this mechanism, the latter requires responsible behavior of KOSTT to cover the synchronous area and balance the deviations in the power system and in case of non-compliance of these obligations, KOSTT risks facing financial penalties and reconsideration of KOSTT status in ENTSO-E.
343. Regarding the latter, the Court also recalls the response of KOSTT, of 16 August 2021, by which it stated that: *“Deviations caused in the northern part of the Republic of Kosovo, are categorized as intentional and predicted deviations, so as such, they result in damage to the parties, caused by the withdrawal of electricity from the interconnection system. By Article 13.4. of the Connection Agreement is*

defined as follows: except in the case of fraud or international infringement, the indemnity obligations of each predetermined Party shall always be limited to 5,000,000 euro (five million euro) per year and for the predetermined Party, regardless of the number of violations. Under this Article it is seen that the obligations for the payment of compensations for violations by KOSTT can reach up to 5 million euro per year. Also, from 01.06.2021 has started the implementation of the mechanism FSCAR (Financial Settlement KM ACE Ramping Period) within ENTSO-E which has replaced the mechanism of the compensation program TSOs (in kind) with energy, with delivery of invoices on a monthly basis for deviations caused. KOSTT will not be able to avoid paying the invoices issued by this mechanism. Consequently, we conclude that the legal provisions as well as the relevant acts cited above define the competencies of KOSTT in relation to the issues defined in the provisions of the Recommendations of the Assembly of the Republic of Kosovo, no. 08-R-01, 6 May 2021.”

344. Based on the above, the Court finds that the legitimate aim pursued through the contested Act of the Assembly, serves; (i) energy independence of Kosovo as a public interest; (ii) guaranteeing the supply of electricity throughout the territory of Kosovo; (iii) interest in maintaining and strengthening the status of KOSTT in the international mechanism, namely the Connection Agreement with ENTSO-E, which Agreement has enabled this enterprise to operate as an Independent Regulatory Area within the AK Block with the Republic of Albania, within the synchronous zone of Continental Europe; and (iv) prevents the financial penalty from ENTSO-E as a result of non-fulfillment of the commitment for balancing in the energy network system or avoidance of deviations in the energy system by KOSTT.
345. As a result and finally, the Court finds that the contested Act of the Assembly has pursued a legitimate aim. Following this, and given that the difference in treatment of electricity consumers is “*provided by law*” and has pursued a legitimate aim, the Court further has to consider whether this difference in treatment is proportionate to the legitimate aim pursued or not.

(c) If there is a relationship of proportionality between the limitation of the right and the aim to be achieved

346. The fourth paragraph of Article 55 of the Constitution emphasizes the fact that in cases of limitation of fundamental rights and freedoms, constitutional responsibility is created for public authorities, that during the interpretation and decision in cases before them, pay attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the aim to be achieved, and to consider the possibility of achieving the purpose with a lesser limitation (see, *inter alia*, the case of the Court, KO157/18, Applicant *Supreme Court of the Republic of Kosovo*, cited above, paragraph 102). As explained above, the Court will present the general principles regarding this criterion and apply the same in the circumstances of the case.

(i) *General principles*

347. The Court emphasizes the importance of the purpose of the limitation and the relationship of proportionality between the limitation and the aim to be achieved. In light of this criterion, the Court also refers to the case-law of the ECtHR, through which it has emphasized that the difference in treatment requires a fair balance between the protection of the interests of the community and respect for the rights of individuals. Consequently, the ECtHR specified that the difference in treatment requires a reasonable relationship of proportionality between the measure taken and the aim to be achieved (see, ECtHR cases: *Molla Sali v. Greece* [GC], cited above, para. 135; *Fabris v. France* [GC], Judgment, 17 February 2013, paragraph 56; *Mazurek v. France*, Judgment, 1 February 2000, paragraphs 46 and 48; and *Larkos v. Cyprus* [GC], Judgment, 18 February 1999, paragraph 29). Along this line of argument, the ECtHR in case *Sejdić and Finci v. Bosnia and Herzegovina* stated that: “[...] *discrimination means unequal treatment, without an objective and reasonable justification, of persons in similar circumstances. Lack of objective and reasonable justification, means that the difference does not pursue a legitimate aim, or that there is no reasonable relationship of proportionality between the means employed and the goals that are desired to be achieved*”(see ECtHR Judgment *Sejdić and Finci v. Bosnia and Herzegovina*, cited above, paragraph 42).
348. The Court also recalls that the ECtHR has also pointed out that it is not its role to replace the competent local authorities in assessing the extent to which differences in similar situations have justified a difference in treatment and that in such cases states enjoy a margin of appreciation. The scope of this margin of appreciation, according to the ECtHR, will depend on the circumstances, the object of the assessment and the specifics of the case (see, *Molla Sali v. Greece*, cited above, paragraph 136; and *Carson and others v. The United Kingdom* [GC], cited above, paragraph 61).
349. On the one hand, the ECtHR has specified several areas, where the scope of assessment continues to be broad. For example, the ECtHR pointed out that, due to the knowledge of the society and its needs, domestic authorities are in principle in a better position than international judges to assess what is in the public interest in economic and social terms, and the ECtHR will respect the choice of legislator unless it is clearly without a reasonable ground (see, ECtHR cases *Belli and Arquier-Martinez v. Switzerland*, Judgment, 11 December 2018, paragraph 94; *Burden v. the United Kingdom* [GC], Judgment, 29 April 2008, paragraph 60; and *Carson and Others v. the United Kingdom* [GC], cited above, paragraph 61).
350. Therefore, according to the ECtHR, a wide margin or space is usually allowed when it comes to general economic or social strategy measures, unless they are manifestly without any reasonable basis (see *Burden v. The United Kingdom*, cited above, paragraph 60, and case KIO1/17, cited above, paragraph 76).

(ii) *Application of the above mentioned principles to the present case*

351. The Court shall, subsequently and for the purpose of assessing whether there is a relationship of proportionality between the limitation and the aim to be achieved, refer to (i) the interim nature of the contested Act; (ii) the commitments undertaken by KOSTT through the Connection Agreement with ENTSO-E which are also related to the obligation to implement this agreement in the field of balancing the power system; (iii) the benefits created by KOSTT membership in ENTSO-E; but also (iv) the issue of electricity procurement audit, in the sense of public financial management, internal audit, through the Audit Committee, according to Article 15 of the Law on Electricity and external audit by the Auditor General of the Republic of Kosovo.
352. The Court initially recalls that in terms of point 4 of the contested Act, the Assembly in exercising its competencies as a shareholder of the Publicly Owned Enterprise KOSTT, has authorized the latter that by its own means to cover the losses in electricity in four (4) municipalities of the Republic of Kosovo for April - December 2021. As highlighted above, this point of this Act has started to be implemented as a result of the issuance of the Decision of the Board of Directors of the Public Enterprise KOSTT, of 17 May 2021, on the allocation of funds to cover these losses.
353. Furthermore, the Court also refers to point 5 of the contested Act of the Assembly, by which *“The Government of Kosovo is obliged, within six (6) months, to ensure the entire process of including in the billing system according to the rules and laws in force in cooperation with the responsible parties for customer billing in the four municipalities of Kosovo (North Mitrovica, Leposavic , Zubin Potok and Zvecan) with electricity”*.
354. In this context and initially, the Court in terms of assessing whether there is a relationship of proportionality between the limitation and the purpose to be achieved, emphasizes the temporary character of the contested Act of the Assembly, to cover deviations in electricity in four (4) municipalities of the Republic of Kosovo. In relation to the latter, the Court also notes (i) the authorization given to the Public Enterprise KOSTT to cover deviations in electricity in the four (4) municipalities of the Republic of Kosovo for the period April-December 2021, through point 4 of the contested Act; and (ii) the obligation of the Government to ensure the entry into the billing system of electricity consumers in the four (4) municipalities of the Republic of Kosovo through point 5 of the contested Act.
355. Based on the above, the Court notes that the contested Act of the Assembly, namely the authorization given to KOSTT to cover losses in electricity, is of a temporary character and in the context of covering deviations aims at the process of including in the billing system, the electricity consumers in the four (4) municipalities of the Republic of Kosovo.
356. Further, the Court, within the meaning of paragraph 9 of Article 65 of the Constitution, which prescribes that the Assembly *“oversees the work of the Government and other public institutions that report to the Assembly in*

accordance with the Constitution and the law” as well as point 5 of the contested Act, recalls that the Assembly has obliged the Government “that within six (6) months, to ensure the entire process of including in the billing system according to the rules and laws in force in cooperation with the responsible parties for customer billing in the four municipalities of Kosovo (North Mitrovica, Leposavic, Zubin Potok and Zvecan) with electricity”.

357. Based on the latter, and within the meaning of Articles 24 and 55 of the Constitution, the Court notes that through points 4 and 5 of the contested Act of the Assembly, it is intended to authorize the coverage of electricity losses in four (4) municipalities of the Republic of Kosovo only until the introduction in the electricity billing system of electricity consumers in the four (4) municipalities of the Republic of Kosovo.
358. Moreover, the Court has elaborated above the commitments and obligations arising from the Connection Agreement with ENTSO-E, which refer to the obligation of KOSTT to balance the power system. As a result of this commitment, which has the consequence of preserving the status of KOSTT in ENTSO-E, there are long-term and sustainable advantages in the energy sector, from which all electricity consumers can directly benefit, without exception, in the Republic of Kosovo.
359. Furthermore, in terms of the criterion of proportionality, the Court specifically highlights the benefits arising from the implementation of the Connection Agreement with ENTSO-E. In this regard, the Court specifically refers to the content of KOSTT response, of 21 October 2021, by which, among other things, it clarified and specified what are the benefits of KOSTT from operating as an Independent Regulatory Area and which the Court will recall as follows: (i) capacity allocation revenues; (ii) revenues/expenditures from energy transit - from the ITC mechanism (Inter TSO –Compensation); (iii) opening the possibility for the formation of a joint Kosovo-Albania Regulatory Block based on the Bilateral Agreement between the Republic of Kosovo and the Republic of Albania, which was supported by RGCE and is now known as the AK Regulatory Block; (iv) optimization of two power systems Kosovo-Albania which systems complement each other and as a result we have optimization of costs which translate into tariffs to the consumer; (v) paving the way for the establishment of a joint Energy Exchange, established on 5 October 2020, in which KOSTT is a joint shareholder with the TSO (Albania) and in which the branch for the Republic of Kosovo is established; and (vi) opening the possibility of KOSTT membership in other European and world energy organizations and associations.
360. The Court also notes the obligation to comply with the laws relating to the management of public finances, the laws which regulate the internal audit procedure, based on Article 15 (Audit Committee) of the Law on Electricity, which are related to the issue of procurement of electricity to cover deviations in electricity, external audit by the Auditor General of the Republic of Kosovo, as well as oversight by the Assembly Committee on Oversight of Public Finances.

361. Finally, the Court notes that as a result of KOSTT's membership to ENTSO-E, the Republic of Kosovo is enabled to operate as an independent regulatory zone within the power system of continental Europe, a status for which, based on the case file, it results that continuous institutional actions and efforts have been undertaken.
362. From the abovementioned elaborations, the Court, taking into account the temporary character of the contested Act of the Assembly which (i) relates to the coverage of electricity losses in the four (4) municipalities of the Republic of Kosovo on the one hand; and (ii) the obligation given to the Government of the Republic by the Assembly to ensure, within the period specified in this Act, the including in the electricity billing system of all customers in these four (4) municipalities of the Republic of Kosovo, on the other hand, considers that the contested Act of the Assembly reflects a reasonable relationship of proportionality between the measure taken and the aim pursued.
363. Therefore, the Court notes that the difference in treatment of electricity consumers based on residence, by the contested Act of the Assembly, has an "*objective and reasonable justification*", because (a) it is prescribed by law; (b) has pursued a legitimate aim; and (c) is proportionate, namely reflects a proportionality between the limitation and the aim it pursues to achieve.
364. Finally, the Court finds that the issuance of the contested Act of the Assembly (i) results in a difference in treatment based on residence, namely a difference in treatment of electricity consumers who live and do not live in four (4) municipalities of the Republic of Kosovo, but, however, this difference in treatment (ii) has an "*objective and reasonable justification*" because (a) it is prescribed by law; (b) has pursued a legitimate aim; and (c) is proportionate, and consequently, has not been issued in non-compliance with Article 24 and Article 55 of the Constitution in conjunction with Article 1 of Protocol No. 12 to the ECHR.

Request for interim measure

365. The Court recalls that the Applicants also requested the Court to issue a decision on imposing an interim measure, requesting the Court to act in accordance with Article 43 of the Law, thus referring to the *ex-lege* suspensive effect of law enforcement or the decision of the Assembly. The Applicants, (i) requested the Court to notify the parties involved that the contested decision is suspended *ex-lege* and is not sent for implementation until the final decision of the Court; and (ii) to consider that it is not necessary to expressly request the suspension of the implementation of the act, since the latter should in accordance with law be subject to the suspensive effect in the implementation, as it has been contested before this Court, pursuant to paragraph 5 of Article 113 of the Constitution.
366. The Court reiterates that Article 43 of the Law stipulates that in case the law or decision adopted by the Assembly is contested under Article 113, paragraph 5 of the Constitution, such law or decision may be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities set out in the final

decision of the Court in the contested case (see, the case of Court KO127/21, Applicant *Abelard Tahiri and 10 other deputies of the Assembly*, Decision on Interim Measure, of 21 October 2021, paragraph 53).

367. However, with regard to the category of decisions of the Assembly, as in the circumstances of the present case, which in procedural terms after the decision-making in the Assembly, in order to produce legal consequences, does not provide for its sending to the President, the Court clarifies that this category has no *ex-lege* suspensive effect. Consequently, in such cases, the Court, when assessing that the relevant criteria established in the Constitution, Law and Rules of Procedure have been met, has approved/imposed the interim measure (see, the case of Court KO119/14, Applicant: *Xhavit Haliti and 29 other deputies of the Assembly of the Republic of Kosovo*, Decision on Interim Measure, of 23 July 2014, see case KO127/21, with Applicant *Abelard Tahiri and 10 other deputies*, cited above, paragraph 55).
368. However, given that the Court has already found that the contested Act of the Assembly is in compliance with the Constitution, the Court notes that it is unnecessary to further consider the request for an interim measure (see the case of Court KI207/19, Applicant *NISMA Social Democratic, Alliance Kosovo New Party and the Justice Party*, Judgment of 10 December 2020, paragraph 237).

Request for a hearing

369. The Court also recalls that the Applicants requested that a hearing be held.
370. The Court recalls paragraph 2 of Rule 42 (Right to Hearing and Waiver), paragraph 2 of the Rules of Procedure provides that “*The Court may order a hearing if it believes a hearing is necessary to clarify issues of fact or of law*”
371. The Court notes that the abovementioned Rule of the Rules of Procedure is of a discretionary nature. As such, that rule only provides for the possibility for the Court to order a hearing in cases where it believes it is necessary to clarify issues of fact or law. Thus, the Court is not obliged to order a hearing if it considers that the existing evidence in the case file are sufficient, beyond any doubt, to reach a decision on merits in the case under consideration (see the case of the Constitutional Court, KI34/17, Applicant *Valdete Daka*, Judgment of 1 June 2017, paragraphs 108-110 - which states that “*The Court considers that the documents that are part of the Referral are sufficient to decide in the case [...]*”).
372. In the present case, the Court does not consider that there is any uncertainty regarding the “*evidence or law*” and therefore does not consider it necessary to hold a hearing. The documents included in the referral are sufficient to decide the merits of this case.
373. Therefore, the Court rejects the Applicants’ request to hold a hearing as ungrounded.

Conclusions:

374. In the circumstances of the present case, the Court reviewed the constitutionality of the Recommendations [No. 08-R-01] of 6 May 2021, of the Assembly of the Republic of Kosovo, based on the referral submitted to the Court by thirteen (13) deputies of the Assembly, according to the authorizations established in paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution. In reviewing the constitutionality of the contested Act of the Assembly, the Court unanimously decided that (i) the referral is admissible; (ii) the contested Act of the Assembly of 6 May 2021 is in compliance with paragraphs 1, 5 and 14 of Article 65 [Competencies of the Assembly] of the Constitution of the Republic of Kosovo; (iii) the contested Act of the Assembly of 6 May 2021, is in compliance with Article 24 [Equality Before the Law] in conjunction with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo and Article 1 (General Prohibition of Discrimination) of Protocol no. 12 of the European Convention on Human Rights; (iv) to reject the request for Interim Measure; and (v) to reject the request for a hearing.

(i) Scope of the Referral

375. The Court initially clarifies that the subject of the constitutional review in this case, is only the constitutionality of the contested Act of the Assembly of 6 May 2021, through which (i) KOSTT is authorized to cover electricity deviations in four (4) municipalities of the Republic of Kosovo, using revenues from its own budget, funds which will be subsequently compensated “*from dividends or any other possible mechanism*”; and (ii) the Government of Kosovo is obliged to ensure, within a period of six (6) months and according to the rules and applicable laws, in cooperation with the responsible parties, the entire process of including in the electricity billing system, the consumers in the four (4) respective municipalities.

376. The Court, in this context, also notes that the following have not been contested through this referral: (i) laws, decisions and other acts of public authorities, which were issued before the adoption of the contested Act of the Assembly and which constitute the legal basis for the exercise of competencies of the Assembly as well as the legal authorizations of other state authorities in relation to the Public Enterprise KOSTT; nor (ii) the decisions of regular courts, as a result of proceedings conducted based on the lawsuit of the Ombudsperson pertaining to the Decision of the Board of the Energy Regulatory Office of 6 February 2012 and repealed on 13 April 2017, through which, in order to cover the losses/deviations in the energy network in the four (4) respective municipalities, the additional amount of 3.5% was billed to electricity consumers in other municipalities of the Republic of Kosovo.

377. The Court further clarifies that, based on the documents received from the interested parties, the electricity losses as a result of non-billing/non-payment of electricity for electricity consumers in the four (4) municipalities of the Republic of Kosovo, are recorded “*as a deviation of Kosovo from the Continental European*

system". After the repeal of the abovementioned decision of ERO and until April 2021, these losses, namely the deviations in the electricity system of the Republic of Kosovo, were covered by the Budget of the Republic of Kosovo. In order to balance the electricity system and cover the relevant deviations for the upcoming period, as provided in the applicable laws of the Republic of Kosovo and especially as a result of the implementation of the Connection Agreement with ENTSO-E, namely the European Network of Transmission System Operators for Electricity, as a body of the Regional Group of Continental Europe, the Public Enterprise KOSTT, requested from the Assembly of Kosovo, namely the Functional Committee on Economy, Industry, Entrepreneurship and Trade, among others, to provide financial support to cover the losses in the four (4) municipalities of the Republic of Kosovo, for the period April – December 2021.

378. In this regard, the Court, based on documents submitted by KOSTT and ERO, notes that the implementation of the KOSTT Connection Agreement with ENTSO-E began on 14 December 2020. The Connection Agreement with ENTSO-E was preceded by the ratification in the Assembly of the International Agreement between the Republic of Kosovo and the Republic of Albania on 30 March 2017, which enabled the formation of a joint regulatory block, known as the Regulatory Block-AK. The latter and the above-mentioned Agreement with ENTSO-E, enabled the Republic of Kosovo (i) to gain energy independence from the regulatory block Serbia, Montenegro, North Macedonia; (ii) to operate as an independent regulatory zone within the AK-Block, within the synchronous zone of the Continental Europe; and (iii) to gain recognition on the energy maps of Europe, whereby the sovereignty of the independent regulatory zone in the continental European electricity system is recognized. In return, Kosovo institutions committed, inter alia, to guarantee the balancing of the electricity system within its regulatory zone by addressing, as a consequence, the respective losses/deviations; whereas, in case of breach of the obligations arising from this Agreement, the Republic of Kosovo would face: (i) financial consequences; and (ii) reconsideration of the KOSTT status within ENTSO-E.
379. Consequently, on 6 May 2021, based on the recommendation of the Assembly Committee on Economy, at the request of KOSTT *"for securing financial means to cover losses"*, the Assembly, beyond the specific reporting requirements for KOSTT, decided to (i) *"authorize KOSTT to cover electricity deviations in four municipalities of the country (North Mitrovica, Leposavic, Zubin Potok and Zvecan), according to the solution presented and approved by the functional committee, using the revenues from the own budget, funds which will be compensated by dividends or any other possible mechanism"*; and (ii) *"oblige the Government of Kosovo, within six (6) months, to ensure the entire process of including in the billing system according to the rules and laws in force, in cooperation with the parties responsible for customer billing in four municipalities of the Republic of Kosovo (North Mitrovica, Leposaviq, Zubin Potok, and Zvecan) with electricity"*.

(ii) *Allegations of the parties*

380. Thirteen (13) deputies of the Assembly of the Republic of Kosovo have contested the constitutionality of this Act of the Assembly. The Applicants first allege that despite the fact that the contested Act of the Assembly is entitled Recommendations, the latter is a decision of the Assembly with legal consequences and, consequently, must be subject to constitutional control as defined in paragraph 5 of Article 113 of the Constitution. Secondly, the Applicants allege that the contested Act of the Assembly was issued in violation of the Constitution, as a result of both the procedure followed and its substance. Pertaining to the procedure, the Applicants, in essence, allege that the contested Act of the Assembly, is contrary to paragraph 5 of Article 65 of the Constitution, because it was issued without a legal basis, stating, inter alia, that such a decision could have been taken only through the Law on Budget or its amendment/supplementation. Whereas, pertaining to the substance of the contested Act of the Assembly, the Applicants state that the latter is contrary to Articles 3 and 24 of the Constitution in conjunction with Article 14 (Prohibition of Discrimination) of the European Convention on Human Rights and Article 1 (General Prohibition of Discrimination) of Protocol no. 12 to this Convention, because in discrimination of electricity consumers who do not live in the four (4) above-mentioned municipalities, the contested Act of the Assembly has authorized the covering of electricity deviations for electricity consumers living in the four (4) respective municipalities of the Republic of Kosovo. The Applicants, in fact, do not contest the obligation of the Public Enterprise KOSTT to cover electricity deviations in these four (4) municipalities until such time that they are included in the electricity billing system according to applicable laws in the Republic of Kosovo. However, they contest the procedure through which the contested Act was issued, alleging at the same time, that the coverage of these deviations in electricity in the respective municipalities, constitutes discrimination within the meaning of Article 24 of the Constitution in conjunction with the relevant articles of the European Convention on Human Rights.
381. Comments and responses to the Court were also submitted by (i) the Parliamentary Group of Vetëvendosje Movement; (ii) Ministry of Economy; (iii) ERO; and (iv) KOSTT. Responses to the Court have also been submitted by the relevant Committees of the Assembly, namely the Committee on Legislation; the Functional Committee on Economy; the Committee on Budget, Labor and Transfers, as well as the Committee for Oversight of Public Finances. In essence, the respective comments submitted to the Court, allege that the contested Act of the Assembly (i) is a Recommendation and not a decision of the Assembly, and consequently it cannot be subject to constitutional control and, therefore, the Applicants' referral must be declared inadmissible for review on merits by the Court; (ii) the contested Act of the Assembly was issued based on paragraph 2 of Article 13 (Corporate governing, competencies, reporting) of Law no. 05/L-085 on Electricity, based on which the Assembly is the sole shareholder of the Public Enterprise KOSTT; (iii) KOSTT obligation to cover electricity deviations in the four (4) municipalities of the Republic of Kosovo is established in Article 16 (Tasks and responsibilities of the Transmission System Operator) of the Law on Electricity and by Article 5 (Compensation for the losses in the North of Kosovo) of the KOSTT License,

respectively, [ZRRE/Li_15/17, 13 April 2017], and moreover, in accordance with the obligations undertaken by the ENTSO-E Connection Agreement; and that (iv) the contested Act of the Assembly is in the public interest because it concerns energy sovereignty of Kosovo under the obligations arising from the ENTSO-E Connection Agreement.

(iii) Admissibility of the Referral

382. In reviewing the constitutionality of the contested Act of the Assembly, the Court initially assessed the Applicants' allegations and the relevant responses of the interested parties, regarding the nature of the contested Act. The Court, in this regard, found that the contested Act of the Assembly falls within the scope of the "*decision of the Assembly*" as provided by paragraph 5 of Article 113 of the Constitution and accordingly, the Referral is admissible for review on merits. This, *inter alia*, and based also on the explanations given in this Judgment, because (i) the relevant decision of the Assembly was adopted by a majority vote of the deputies of the Assembly; and (ii) has legal effects for KOSTT and the Government of the Republic of Kosovo. Moreover, the Court, through its already consolidated case-law, has emphasized that the decision-making of public authorities would remain outside the constitutional control, if the Court was to take into account only the formal designation/terminology assigned to the relevant act by the public authorities.
383. In reviewing the merits of the case, the Court focused on reviewing the constitutionality of the procedure and the substance of the contested Act of the Assembly, namely whether by issuing this Act, the Assembly (i) acted in (non)compliance with its decision-making competence, defined by the Constitution and the law; and (ii) limited the fundamental rights and freedoms of electricity consumers not living in the four (4) municipalities of the Republic of Kosovo, contrary to the guarantees of Article 24 of the Constitution in conjunction with Article 14 of the European Convention on Human Rights and Article 1 of Protocol no. 12 of this Convention.

(iv) Constitutionality of the proceedings

384. Pertaining to the constitutionality of the procedure followed, the Court initially elaborated (i) the competencies and responsibilities of the Public Enterprise KOSTT; (ii) the KOSTT obligation to balance the energy system and cover electricity deviations; (iii) the rights and obligations of KOSTT in relation to the Connection Agreement with ENTSO-E; (iv) the constitutional and legal competencies of the Assembly to adopt the Law on Budget and responsibilities related to public finances; and (v) the procedure followed in the Assembly and the relevant competence to issue the contested Act, and the Court, concluded that the procedure followed in issuing the contested Act of the Assembly is in accordance with Article 65 of the Constitution.

385. In support to this conclusion, the Court noted that (i) based on paragraph 1 of Article 65 of the Constitution, the Assembly adopts laws, resolutions and acts; (ii) based on paragraph 14 of Article 65 of the Constitution, the Assembly decides “in regard to general interest issues as set forth by law”; (iii) in exercising its competencies as defined by law, namely based on paragraph 2 of Article 13 of the Law on Electricity, the Assembly of the Republic of Kosovo, exercises the rights of the KOSTT shareholder; (iv) on the other hand, based on paragraph 1 of Article 13 of the Law on Electricity, KOSTT functions as a Publicly Owned Enterprise in accordance with Law no. 03/L-087 on Publicly Owned Enterprises and relevant legislation in force; (v) based on Article 4 (Organisation; Shares) of the Law No. 03/L-087 on Publicly Owned Enterprises, the latter are organized as joint stock companies under the applicable law on business organizations; and that (vi) based on Article 151 (Procedures for Authorizing Dividends) of the Law No. 06/L-016 on Business Organizations, among others, the decision on the authorization and payment of dividends can be made by the shareholders.
386. Based on the above, the Court clarified that in issuing the contested Act, the Assembly, among others, has authorized KOSTT to cover electricity deviations in the four (4) municipalities “using revenues from its own budget, funds which will be compensated by dividends or any other possible mechanism” and that it issued this decision (i) exercising its competence as a shareholder of the Public Enterprise KOSTT; and (ii) in the exercise of the shareholder’s competence, made a decision pertaining to the KOSTT dividend; whereas, the exercise of this competence was not related to paragraph 5 of Article 65 of the Constitution pertaining to the budget of the Republic of Kosovo, as also maintained before the Court by the relevant Committees of the Assembly, namely the Committee on Budget, Labor and Transfers and Committee for Oversight of Public Finance; but (ii) the exercise of this competence derives from paragraphs 1 and 14 of Article 65 of the Constitution, based on which the Assembly issues acts pertaining to general interest issues as set forth by law.

(v) The constitutionality of the substance

387. Pertaining to the constitutional review of the substance of the contested Act of the Assembly, the Court first elaborated the general principles regarding the guarantees of Article 24 of the Constitution, Article 14 of the ECHR and Article 1 of Protocol no. 12 of this Convention, noting that Article 24 of the Constitution in conjunction with Article 1 of Protocol no. 12 of the ECHR, extends the protection against discrimination also in relation to any right provided by law. The Court then elaborated the general principles based on its case-law and that of the European Court of Human Rights, clarifying that in order to determine whether an act may have resulted in discrimination contrary to the guarantees provided through these Articles, it must first assess whether the respective act has treated differently “*persons in analogous or relatively similar situations*”, and if this is the case, to assess whether this difference in treatment (a) is prescribed by law; (b) pursues a legitimate aim; and (c) is proportionate, namely, whether there is a relationship of proportionality between the limitation of the right and the purpose to be achieved.

388. In the above context, the Court initially found that in the circumstances of the present case, within the meaning of the legal provisions pertaining to electricity consumers in the Republic of Kosovo, the electricity consumers in all municipalities are in “*analogous or relatively similar situations*”. While, in assessing the difference in treatment, the Court emphasized that as a result of the non-billing/non-payment of electricity by electricity consumers in the four (4) municipalities of the Republic of Kosovo, the electricity consumption in these four (4) municipalities, was recorded as a deviation. For this purpose, KOSTT has requested the allocation of financial means in order to procure electricity to cover deviations in the four (4) municipalities of the Republic of Kosovo. Furthermore, based on the contested Act of the Assembly, it results that as a consequence of the authorization given to KOSTT by the Assembly to cover the deviations due to the non-billing/non-payment of electricity by the consumers of four (4) municipalities of the Republic of Kosovo and until the beginning of the implementation of a electricity billing system that includes the consumers of these four (4) municipalities, the latter enjoy a different treatment from consumers of other municipalities of the Republic of Kosovo. Consequently, the Court found that the contested Act of the Assembly results into a difference in treatment between the consumers living in and those not living in the four (4) municipalities of the Republic of Kosovo.
389. The Court noted, however, that the difference in treatment between consumers in “*analogous or relatively similar situations*”, based on the case-law of the European Court of Human Rights, results in discrimination contrary to the guarantees of Article 24 of the Constitution in conjunction with Article 1 of Protocol no. 12 of the ECHR, only if the relevant act of public authority lacks “*an objective and reasonable justification*”. Therefore, the assessment whether the difference in treatment is (a) prescribed by law; (b) pursues a legitimate aim; and (c) is proportionate, is necessary.
390. First, the Court found that the difference in the treatment of electricity consumers in the four (4) municipalities of the Republic of Kosovo, is “*prescribed by law*”. This because (i) based on Article 16 (Tasks and responsibilities of the Transmission System Operator) of the Law on Electricity, KOSTT has the obligation to balance the electricity system in accordance with the transmission network code and market rules; (ii) based on Article 19 (Procurement of Electricity and Capacities from the Transmission System Operator) of the Law on Electricity, among others, KOSTT has the obligation to cover losses in the transmission network through the procurement of electricity; and (iii) based on Article 28 (Responsibilities and Rights of the Distribution System Operation) of the Law on Electricity, among others, KOSTT has the responsibility to provide electricity to cover losses in the distribution network. Whereas, based on Article 10 (Transmission System Operator) of the Law on Electricity, the transmission system operator owns the transmission system and is responsible for the operation of this system in line with the license issued by the regulatory authority. Based on the KOSTT License, namely Article 5 (Compensation for the losses in the North of Kosovo), the possibility of KOSTT to “*provide*

electricity to compensate for losses arising from energy used, but not paid, by consumers in the north part of Kosovo” is expressly provided.

391. Second, the Court found that the difference in the treatment of electricity consumers in the four (4) municipalities of the Republic of Kosovo, pursues a “legitimate aim”. This is because, the contested Act of the Assembly aims at: (i) ensuring the exercise of sovereignty in the electro-energetic system with all the rights and obligations as defined by the Connection Agreement with ENTSO-E; (ii) preserving the energy independence of the Republic of Kosovo; (iii) protecting the public interest in guaranteeing the supply of electricity throughout the territory of the Republic of Kosovo; (iv) maintaining and strengthening the status of KOSTT in the respective international mechanism, namely the Connection Agreement with ENTOS-E, which has enabled this enterprise to operate as an Independent Regulatory Zone within the AK-Block with the Republic of Albania, within the synchronous zone of Continental Europe; (v) preventing the financial consequences by ENTSO-E, as a result of non-fulfilment of the commitment for balancing within the energy network system or avoiding the deviations in the energy system by KOSTT; and (vi) maintaining the KOSTT status in this mechanism and its equal member status with all other transmission system operators within the ENTSO-E.
392. Third, the Court found that the difference in the treatment of electricity consumers in the four (4) municipalities of the Republic of Kosovo, through the contested Act of the Assembly, is “*proportionate*”, namely the contested Act of the Assembly, reflects a reasonable relationship of proportionality between the measure taken and the respective aim pursued. This is because, the contested Act of the Assembly (i) in its point 4, has authorized the Public Enterprise KOSTT to cover the deviations in electricity in the four (4) municipalities of the Republic of Kosovo; while (ii) in its point 5, has obliged the Government to “*within the timeline of six (6) months to ensure the entire system of inclusion in the billing system, based on rules and laws in force, in cooperation with the responsible parties, for billing of the consumers*” in the four (4) municipalities of the Republic of Kosovo. Therefore, the Court, emphasized that the contested Act of the Assembly, namely the authorization provided to KOSTT to cover losses in electricity, is of a temporary character and it aims at extending the electricity billing system to the consumers in four (4) municipalities of the Republic of Kosovo.
393. Consequently, and finally, the Court found that the issuance of the contested Act of the Assembly, has resulted in a difference in treatment of electricity consumers who do not live in the four (4) municipalities of the Republic of Kosovo, nevertheless, this difference in treatment contains an “objective and reasonable justification” and, consequently, does not result into discrimination because (a) it is prescribed by law; (b) has pursued a legitimate aim; and (c) is proportionate, and therefore, was not issued in non-compliance with Articles 24 and 55 of the Constitution in conjunction with Article 1 of Protocol No. 12 to the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.5 of the Constitution, Articles 20, 27 and 42 of the Law, and pursuant to Rules 57 and 59 (1) of the Rules of Procedure, on 28 December 2021, unanimously:

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that the contested Act No. 08-R-01 of the Assembly of the Republic of Kosovo, of 6 May 2021, is in compliance with paragraphs 1, 5 and 14 of Article 65 [Competencies of the Assembly] of the Constitution of the Republic of Kosovo;
- III. TO HOLD that the contested Act No. 08-R-01 of the Assembly of the Republic of Kosovo, of 6 May 2021, is in compliance with Article 24 [Equality Before the Law] in conjunction with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo and Article 1 (General Prohibition of Discrimination) of Protocol no. 12 of the European Convention on Human Rights;
- IV. TO REJECT the request for interim measure;
- V. TO REJECT the request for a hearing;
- VI. TO NOTIFY this Judgment to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of the Republic of Kosovo, the Government of the Republic of Kosovo, the Ombudsperson, KOSTT and ERO;
- VII. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20.4 of the Law; and
- VIII. This decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

**Kopje e vërtetuar
Overena kopija
Certified copy**

Selvete Gërxhaliu-Krasniqi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.