THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Newsletter

July — December 2022

CONTENT:

Constitution of Kosovo - Chapter VIII

Constitutional Court

Article 112

[General Principles]

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

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

Composition of the Constitutional Court

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

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

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

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

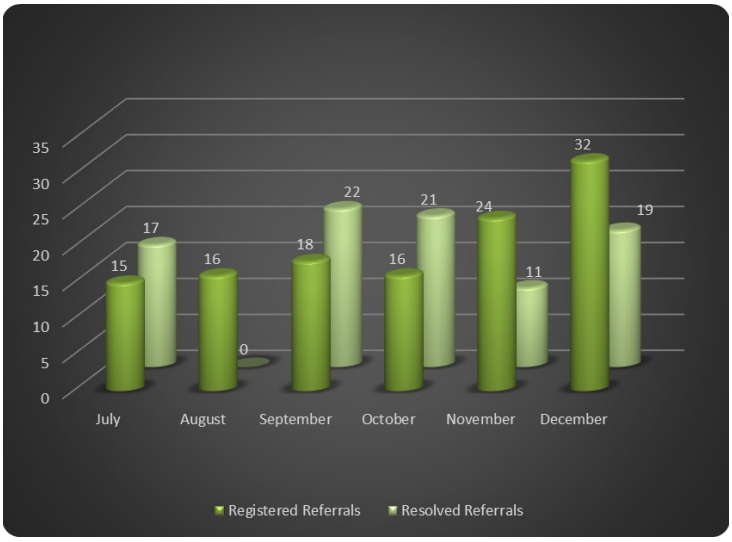
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

** The Court is currently composed of 8 (eight) judges.*

Status of cases

During the six-month period: 1 July – 31 December 2022, the Court has received 121 Referrals and has processed a total of 271 Referrals/Cases.
A total of 90 Referrals were decided or 33.21% of all available cases. During this period, 82 decisions were published on the Court's webpage.

The dynamics of received referrals by month (1 July - 31 December 2022)



The following are 8 judgments that the Court rendered during the six month period, 1 July - 31 December 2022:

- Judgment in Case KI 10/22, submitted by: Trade Union of the Institute of Forensic Medicine. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [ARJ. no. 115/2021] of 18 November 2021.
- Judgment in Case KI 19/21, submitted by: Sadik Pllana. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [Rev. No. 239/2019] of 26 November 2020.
- Judgment in Case KI 116/21, submitted by: Sali Rexhepi. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [Rev. No. 104/20] of 25 February 2021.
- Judgment in Case KI 230/21, submitted by: "Global Trade-af" L.L.C. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [ARJ-UZVP-No. 45/2021] of 28 April 2021.
- Judgment in Case KI 202/21, submitted by: "Kelkos Energy" L.L.C. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [ARJ. UZVP. No. 74/21] of 28 July 2021.
- Judgment in Case KI 159/20, submitted by: "ADOL" L.L.C. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [Rev. No. 29/19] of 1 July 2020.
- Judgment in Case KO 27/21, submitted by: The Supreme Court of the Republic of Kosovo. The filed referral requested the constitutional review of Article 94 [Supervision] of Law No. 03/L-212 on Labour.
- Judgment in Case KO 173/21, submitted by: Municipality of Kamenica. The filed referral requested the constitutional review of articles 3, 4, 5, 6, 7 and 9 of the Administrative Instruction of the Ministry of Education and Science (MES) no. 104/2020 on the "Criteria and Procedures for the Establishment and Termination of the Activity of Pre-University Education Institutions" .

Types of alleged violations

The types of alleged violations in the 121 referrals received during the six-month period, 1 July - 31 December 2022, are the following:

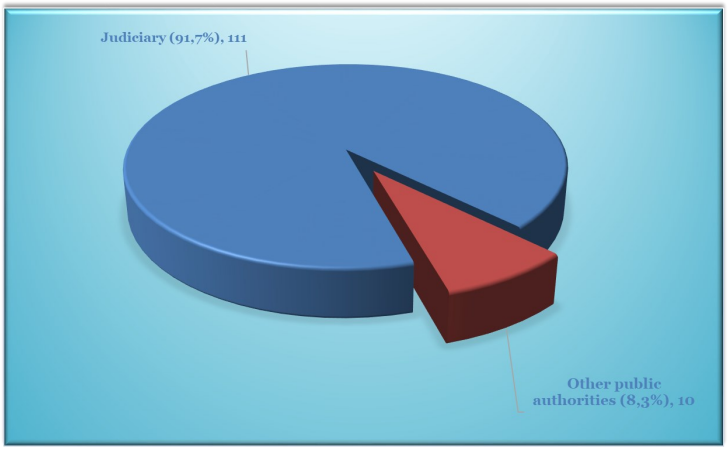
- Article 3 [Equality Before the Law], 9 cases or 3%;
- Article 4 [Form of Government and Separation of Power], 2 cases or 0,7%;
- Article 7 [Values], 5 cases or 1,7%;
- Article 13 [Capital City], 2 cases or 0,7%;
- Article 19 [Applicability of International Law], 2 cases or 0,7%;
- Article 22 [Direct Applicability of International Agreements and Instruments], 8 cases or 2,7%;
- Article 23 [Human Dignity], 2 cases or 0,7%;
- Article 24 [Equality Before the Law], 30 cases or 10%;
- Article 25 [Right to Life], 2 cases or 0,7%;
- Article 29 [Right to Liberty and Security], 4 cases or 1,3%;
- Article 30 [Rights of the Accused], 4 cases or 1,3%;
- Article 31 [Right to Fair and Impartial Trial], 89 cases or 29,7 %;
- Article 32 [Right to Legal Remedies], 22 cases or 7,3%;

- Article 33 [The Principle of Legality and Proportionality in Criminal Cases], 2 cases or 0,7%;
- Article 36 [Right to Privacy], 2 cases or 0,7%;
- Article 45 [Freedom of Election and Participation], 2 cases or 0,7%;
- Article 46 [Protection of Property], 19 cases or 6,3%;
- Article 49 [Right to Work and Exercise Profession], 11 cases or 3,7%;
- Article 53 [Interpretation of Human Rights Provisions], 11 cases or 3,7%;
- Article 54 [Judicial Protection of Rights], 30 cases or 10%;
- Article 55 [Limitations on Fundamental Rights and Freedoms], 4 cases or 1,3%;
- Article 101 [Civil Service], 2 cases or 0,7%;
- Article 102 [General Principles of the Judicial System], 11 cases or 3,7%;
- Article 109 [State Prosecutor], 4 cases or 1,3%;
- Article 110 [Kosovo Prosecutorial Council], 2 cases or 0,7%;
- Other violations, 19 cases or 6,3%;

Alleged violators of rights

- 111 Referrals or 91,7% of Referrals refers to violations allegedly committed by court's decisions;
- 10 Referrals or 8,3% of Referrals refers to decisions of other public authorities;

Alleged violators of rights
(1 July - 31 December 2022)



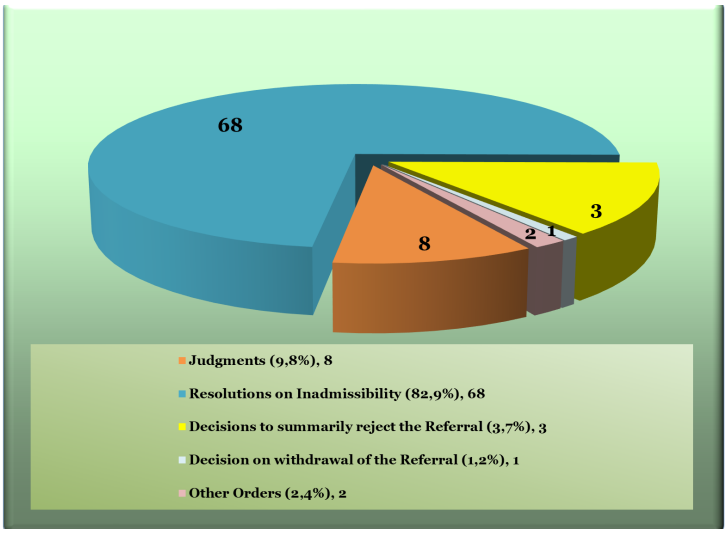
Sessions and Review Panels

During the six-month period: 1 July - 31 December 2022, the Constitutional Court held 23 plenary sessions and 112 Review Panels, in which the cases were resolved by decisions, resolutions and judgments.
During this period, the Constitutional Court has published 82 decisions.

The structure of the published decisions is the following:

- 8 Judgments (9,8%);
- 68 Resolutions on Inadmissibility (82,9%);
- 3 Decisions to summarily reject the Referral (3,7%);
- 1 Decision on withdrawal of the Referral (1,2%);
- 2 Other Orders (2,4%);

Structure of decisions
(1 July - 31 December 2022)

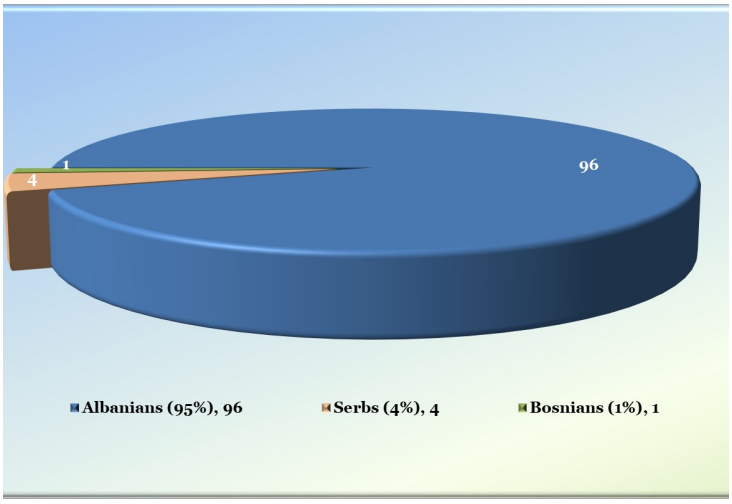


Access to the Court

The access of individuals to the Court is the following:

- 96 Referrals were filed by Albanians, or 95%;
- 4 Referrals were filed by Serbs, or 4%;
- 1 Referral was filed by Bosnians, or 1%;

Ethnic structure of the Applicants
(1 July - 31 December 2022)



15 July 2022

A group of students of the Faculty of Law of the Prishtina University "Hasan Prishtina", accompanied by representatives of the Non-Governmental Organization "Youth Initiative for Human Rights – Kosovo (YIHR KS)", stayed for a visit at the Constitutional Court. They were received by the Judge of the Constitutional Court, Mrs. Remzije Istrefi – Peci and the Jurisconsult, Mr. Sevdail Kastrati.

During the meeting with the students, Judge Istrefi – Peci gave a brief presentation with respect to the composition and organizational structure of the Court, its role and function, parties authorized to file referrals, process of preparing preliminary reports by the Advisers and Judges assigned to the case, and importance of protection of the human rights in the country.

On their part, students expressed their interest in being informed in more details about the number of the cases that are still in the review procedure by the Court, cases and decisions with the biggest impact for the public, number of resolutions on inadmissibility, as well as possibilities that the citizens of the Republic of Kosovo have in order to access the European Court of Human Rights in Strasbourg.

22 July 2022

The judges of the Constitutional Court of the Republic of Kosovo, headed by the President of the Court, Mrs. Gresa Caka – Nimani, stayed for a working visit in Tirana, on Friday, 22 July 2022, at the invitation of the Constitutional Court of the Republic of Albania.

The delegation of judges from Kosovo was invited to participate in the workshop organized by the Constitutional Court of Albania, in cooperation with the Institute for Democracy and Mediation (IDM) in Tirana and with the support of the Swedish International Development Cooperation Agency (SIDA), which aimed at drafting the Code of Ethics of this court.

The workshop began with the introductory words of the presidents of the constitutional courts of Albania and Kosovo, Mrs. Vitore Tusha and Mrs. Gresa Caka – Nimani, whereas judge Nexhmi Rexhepi presented the perspective of the Constitutional Court of Kosovo regarding the code of ethics of judges.

2 September 2022

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, and the Judge of the Constitutional Court, Mrs. Remzie Istrefi – Peci, stayed for a working visit in Galway, Ireland, on 1 September 2022, at the invitation to take part in the International Conference on the topic: "*Effective Application of ECHR in Areas of Conflict in Europe*".

In the conference organized by the Ministry of Foreign Affairs of Ireland, in cooperation with the Irish Center for Human Rights, one of the participating panelists was also President Caka – Nimani, who held a presentation on the topic: "Effective application of the European Convention on Human Rights: Perspective of the Constitutional Court of Kosovo".

During their stay in Galway, President Caka – Nimani and Judge Istrefi – Peci held separate meetings with prominent international academics and jurists in the field of human rights, as well as with judges of European constitutional courts.

16 September 2022

The Judges of the Constitutional Court of the Republic of Kosovo, Mrs. Selvete Gërxhaliu – Krasniqi and Mrs. Remzie Istrefi – Peci, stayed on a two-day work visit in Riga, Latvia, on 15 and 16 September 2022.

They were invited by the Constitutional Court of the Republic of Latvia to take part in the international conference on the topic: "*Sustainability as a constitutional value: future challenges*", organized to

mark the 30th anniversary of the establishment of this court and the 100th anniversary of the adoption of the Constitution of Latvia.

During their stay in Riga, Judges Gërxhaliu – Krasniqi and Istrefi – Peci held a joint meeting with the President of the Constitutional Court of the Republic of Latvia, Mr. Aldis Laviņš, as well as with other counterparts from European constitutional courts participating in this conference.

20 September 2022

The President of the Constitutional Court of the Republic of Kosovo, Ms. Gresa Caka – Nimani, and the Judge of the Constitutional Court, Ms. Remzije Istrefi – Peci, hosted in a joint meeting a group of international students of the European Master's Program in Human Rights and Democratization (EMA) from university campuses in Vienna and Venice.

In their presentation, President Caka – Nimani and Judge Istrefi – Peci initially informed the students about the background of the Constitution of the Republic of Kosovo and the constitutional obligation to comply with the European Convention on Human Rights, the role and function of the Constitutional Court in the state system of the Republic of Kosovo, as well as the challenges that this Court has faced in its work until now.

In the course of the meeting, the students expressed their interest in being informed in more details regarding the compliance with the International Covenant on Economic, Social and Cultural Rights on a national level, the process of filing individual referrals with the Court, the number of referrals filed by members of non-majority communities and the publication of decisions in their languages, as well as the compliance with and implementation of the Court's decisions.

29 September 2022

In the framework of the training program organized by the NGO "Balkans Group", with the topic: "Youth *in Politics: Governance and Political Systems*", activists of the youth forums of the political parties of Kosovo visited the Constitutional Court.

They were hosted at the meeting by Judges Mrs. Selvete Gërxaliu – Krasniqi and Mr. Nexhmi Rexhepi, who during their presentation discussed the role and importance of the Constitutional Court in the legal system of the Republic of Kosovo, the first and current composition of constitutional judges, the relationship with regular courts and other state authorities in the country, and the parties authorized to submit constitutional complaints.

During the meeting, the young politicians expressed their interest in being informed in more detail about the types of decisions rendered by the Court, the voting process and the quorum necessary for the decision-making of judges, the nature of constitutional referrals and their number, as well as the possibilities of appealing decisions of the Constitutional Court.

7 October 2022

A delegation of judges of the Constitutional Court of the Republic of Kosovo, led by the President of the Court, Mrs. Gresa Caka – Nimani, stayed for an official visit to Bali, Indonesia, on 4-7 October 2022, with the invitation to participate in the 5th Congress of the World Conference on Constitutional Justice (WCCJ).

The delegation of the Constitutional Court of Kosovo traveled to Bali at the invitation of the Venice Commission and the Constitutional Court of Indonesia, as host and co-organizer of the 5th Congress of the World Conference on Constitutional Justice (WCCJ), which was organized this year on the topic: "*Constitutional justice and pea*ce".

The sources of law, the responsibilities and limitations of the role of constitutional courts in maintaining peace, the fundamental international principles for the protection of human rights and the examination of the independence of constitutional courts, were just some of the topics on which the presidents and constitutional and supreme court judges from 90 countries around the world exchanged their professional views.

During her stay in Bali, President Caka-Nimani met with the President "emeritus" of the Venice Commission, Mr. Gianni Buquicchio, with the Secretary General of the World Conference on Constitutional Justice (WCCJ), Mr. Rudolph Dürr Schnutz, with presidents of several constitutional and supreme courts that are members of the WCCJ, as well as with representatives of Association of Francophone Constitutional Courts and the European Conference of Constitutional Courts.

The Constitutional Court of Kosovo became a full member of the World Conference of Constitutional Justice (WCCJ) on 17 September 2014.

11 October 2022

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, received in a meeting the Minister of Justice of the Republic of Albania, Mr. Ulsi Manja. The current composition and the work until now of the Constitutional Court, the nature of the referrals submitted and the efforts made to consolidate the case-law in line with the case-law of the

During the discussion, President Caka-Nimani emphasized the excellent relations in the cooperation with the Constitutional Court of Albania, as well as the valuable contribution that this court continues to provide to the efforts of the Constitutional Court of Kosovo for membership in international professional forums of constitutional courts.

Both parties underlined the importance and necessity of preserving the independence of the judicial system and advancing the legal framework of both countries by adopting European standards, as essential prerequisites for strengthening democracy, consolidation of the rule of law and effective protection of rights and freedoms of individuals.

In the joint meeting of the President Caka – Nimani and Minister Manja participated also the Minister of Justice of the Republic of Kosovo, Mrs. Albulena Haxhiu and the Ambassador of the Republic of Albania to Kosovo, Mr. Qemajl Minxhozi.

21 October 2022

At the invitation of the Constitutional Court of the Republic of Albania, a delegation of Judges of the Constitutional Court of the Republic of Kosovo, led by the President of the Court, Mrs. Gresa Caka – Nimani, stayed for an official visit in Tirana. The delegation of the Constitutional Court of Kosovo was invited to attend the ceremony commemorating the 30th anniversary of the establishment of the Constitutional Court of Albania and the International Conference organized on this occasion on the topic: "*The role of Constitutional Courts in new democracies*".

President Caka – Nimani, in the capacity of one of the main speakers at the International Conference, attended by presidents and judges of the regional and European constitutional and supreme courts, gave a presentation on the subject of constitutional jurisprudence, as a guarantee to the consolidation of the rule of law.

During the stay in Tirana, President Caka – Nimani and the Judges of the Constitutional Court of Kosovo were hosted in a joint meeting by the President of the Constitutional Court of the Republic of Albania, Ms. Vitore Tusha, and other Judges of this Court.

11 November 2022

A group of final year students of law faculties from universities around the country, accompanied by representatives of the Kosovo Law Institute (KLI), visited the Constitutional Court. The students were welcomed at the meeting by the President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani and the Jurisconsult of the Court, Mr. Sevdail Kastrati.

The role and function of the Constitutional Court in the state system of the Republic of Kosovo, its composition in the first years of operation with international judges and staff, the sources of the constitutional law and the exhaustion of legal remedies prior to filing referrals before the Court, were just a few among the topics that the president Caka – Nimani discussed in front of the students.

The future jurists, meanwhile, expressed their interest in being informed in more detail about the application of the case law of the European Court of Human Rights in the Court's decision-making, about the selection process and mandate of the constitutional judges, as well as about the right to appeal decisions of the Constitutional Court.

30 November 2022

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, conducted an official visit for several days in Paris, from 30 November – 2 December 2022, which was realized with the support of the Embassy of France in the Republic of Kosovo. On the first day of the visit, President Caka-Nimani met with the President of the Constitutional Council of France, Mr. Laurent Fabius and with the President of the State Council of France, Mr. Didier – Roland Tabuteau. Topics of joint discussions, in both meetings, included the achievements of Kosovo in the area of rule of law, respect for constitutionality and legality and protection of the human rights and fundamental freedoms at the national level. In the separate meetings with Mr. Fabius and Mr. Tabuteau, the President also emphasized the need for enhancing the inter-institutional cooperation among the respective institutions aimed at exchanging experiences and know-how in areas of mutual interest.

On the second day of the visit to Paris, President Caka – Nimani conducted a series of meetings with senior officials of the French Senate, in charge of political, legislative and human rights affairs for the region of Kosovo and the Western Balkans, including the Vice President of the Senate Valerie Letard and Senator Laure Darcos, who also leads the inter-parliamentary group for the friendship between France and Western Balkans.

President Caka – Nimani concluded her visit to the French capital with a joint meeting with the President of the Court of Cassation of France, Mr. Christophe Soulard, with whom among others, they discussed about challenges in the procedures of constitutional control and uniform interpretation of laws in the two countries and possibilities of future cooperation between the two courts.

9 December 2022

In its activity "Open Court Day", organized on the occasion of the International Human Rights Day, on Friday, December 9, 2022, the Constitutional Court was visited by students of the Faculty of Law of the University of Prishtina "Hasan Prishtina", a group of citizens and representatives of civil society organizations in Kosovo.

The students were welcomed to the meeting by the President of the Constitutional Court, Mrs. Gresa Caka -Nimani, who during her presentation gave a brief description of the history of the establishment of the Court, first composition with international judges and officials, alongside national ones, as well as the

challenges faced during the review of various constitutional matters, upon which foundations of the constitutional judiciary of the Republic of Kosovo have been laid. During her presentation, President Caka-Nimani also spoke about the importance of the International Human Rights Day at the global level, as well as the respect for the European Convention on Human Rights and the application of the case-law of the European Court of Human Rights in every decision of the Constitutional Court.

The students, on their part, expressed interest to be more closely informed about the relationship between the Constitutional Court and the regular courts, the criteria for submitting referrals to the Court, the procedure of examination and decision making, as well as the right to compensation of the parties to the proceedings and the right to appeal to the European Court of Human Rights with seat in Strasbourg.

On the "Open Court Day", the president Caka – Nimani, accompanied by the judge Selvete Gërxhaliu – Krasniqi, welcomed a group of lawyers and interns engaged in the project "Just React" of the non-governmental organization "Group for Legal and Political Studies", to monitor the work of regular courts in the Republic of Kosovo. The deadlines for submitting constitutional complaints, the number of pending cases and the constitutional obligation to implement the Court's decisions, were just some of the issues on which young jurists expressed their interest to be informed in more detail.

17 December 2022

The American expert with extensive experience in the field of internal communication and organizational development, also a lecturer at the US Columbia University, Prof. Dr. Aileen Webb, stayed on a visit to the Constitutional Court from December 5th until December 16th, 2022.

During her nearly two-week stay in the Court, Ms. Webb developed and implemented an advanced training program designed specifically for the Constitutional Court officials, covering topics such as: "*Good teams and organizational cult*ure", "*Communication and conflict*", "*Building teams and trust*", "*Change and communication*" and "*Great meetings*". During these trainings, Ms. Webb shared

her theoretical and practical knowledge, in order to build values and principles of good and functional organization within an institution, with a special emphasis on the best methods for building mutual trust, as well as communication and accountability mechanisms within the teams.

The overall training program was aimed at equipping the Court officials with the basic knowledge and skills needed to solve the challenges that inevitably arise in a mutual working environment. Each of the workshops was designed to be interactive and to encourage active participation of the staff, introducing a whole range of combined techniques such as case studies, small group exercises, larger group discussions and individual reflections.

This capacity building program for the Court staff was made possible through the support of the "Fulbright Specialist Program", funded by the US Department of State, the Bureau of Educational and Cultural Affairs (ECA) and implemented by the US Embassy in Pristina. The court has benefited from this support following an open competitive process and approval of its draft proposal.

between Kosovo courts and their counterparts from Albania. Meanwhile, the President of the Constitutional Court of the Republic of Albania, Mrs. Vitore Tusha, in her introductory speech stressed the importance of preserving the independence of the constitutional jurisdiction and the independence of the judiciary in both countries.

After the introductory presentations of the Deputy President of the High Court of Albania, Mr. Sokol Sadushi and the Deputy President of the Supreme Court of Kosovo, Mrs. Mejreme Mema, the conference continued with discussions of judges of four courts on different theories of constitutional interpretation, the principle of subsidiarity and the need to interpret laws and the Constitution in the spirit of the European Convention on Human Rights and the case law of the European Court of Human Rights.

In the first conference of this format, organized by the Constitutional Court of Kosovo with the support of the German Foundation for International Legal Cooperation "IRZ", the topic of discussion and comparative treatment was the divergence of the case law of regular courts, interpretation and manifestly arbitrary application of applicable law, and the consolidation of domestic jurisprudence in line with the decisions of the European Court of Human Rights.

During the two-day conference, the judges of the highest level courts of the Republic of Kosovo and the Republic of Albania, had the opportunity to be informed more closely about the best German practices regarding the interpretation of the Constitution and the verification of the constitutionality of laws and acts, which were discussed in detail at the conference by the former judge of the Federal Constitutional Court of Germany, Prof. Dr. Reinhard Gaier.

7 June 2022

In a workshop organized with the support of the Council of Europe Office in Pristina, on the topic: "Electoral Disputes and the European Convention on Human Rights", Judges and Legal Advisors of the Constitutional Court had the opportunity to get more closely acquainted with the relevant standards set in the European Convention on Human Rights (ECHR) related to electoral disputes and relevant caselaw of the European Court of Human Rights.

The right to vote and to stand as a candidate at elections, administration of elections and post-electoral disputes from a comparative point of view, as well as the practical application of Article 3 of Protocol 1 of the ECHR in cases of electoral disputes, were among the main topics on which international experts from the OSCE's Office of Democratic Institution and Human Rights (ODIHR), the European Court of Human Rights and the Venice Commission expressed their views. The two-day workshop, held on 6 and 7 June 2022, at Venus Hotel in Prishtina, also provided a good opportunity for all participants to analyse the landmark cases of the Constitutional Court of Kosovo in terms of disputes arose in different stages of frequent electoral processes.

Judgment

KO 27/21

Applicant

The Supreme Court of the Republic of Kosovo

Request for constitutional review of Article 94 [Supervision] of Law No. 03/L-212 on Labour

The circumstances of the present case are related to the referral submitted to the Constitutional Court by the Supreme Court, for the constitutional review of Article 94 (Supervision) of the Law on Labor, which, among other things, determines that the supervision of the implementation of the provisions that regulate the employment relationship is done by the Labor Inspectorate. The Supreme Court had a case before it related to a job vacancy for the position of "Educator" in a school in the Municipality of Gjilan, in which case one of the candidates in this vacancy submitted a complaint to the Municipal Directorate for Education in Gjilan, alleging irregularities. in this vacancy. After the rejection of the complaint by the Municipal Directorate for Education, the candidate exercised, in parallel, legal remedies, namely (i) appeal before the Labor Inspectorate, in which case the latter ordered the cancellation of the vacancy in question; as well as (ii) a lawsuit in the Basic Court in Gjilan, which rejected the lawsuit and upheld the decisions of the bodies of the Municipality of Gjilan. As a result, the complainant filed revision with the Supreme Court. The latter suspended the decision-making procedure related to the case before it, referring the case to the Constitutional Court, for the assessment of the compatibility of Article 94 of the Law on Labor with certain constitutional provisions. More precisely, the Supreme Court, before the Court, claimed that Article 94 of the Law on Labor is not compatible with Articles 3 [Equality Before the Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution, as the latter, among other things, violates the principle of legal certainty and the legal order of the Republic of Kosovo, as it enables parallel proceedings related to labor disputes before the Labor Inspectorate and before the regular courts related to the same issue, thus resulting in parallel decisions and interference of the Labor Inspectorate with judicial powers, contrary to legal certainty and the constitutional order of the Republic of Kosovo.

The Court, based on the essence of the allegations raised by the referring court, first examined whether in the circumstances of the present case the interference of the Labor Inspectorate was a result of the incompatibility of the norm of the Law on Labor with the Constitution, or as a result of the interpretation and implementation of the norm in question by the Labor Inspectorate, but also by the regular courts. In this perspective, the Court first referred to the content of Article 94 of the Law on Labor, which stipulates that the supervision of the implementation of the provisions of the Law on Labor, which regulate the employment relationship, safety and protection at work, is done by the Labor Inspectorate on the basis of the Law on the Labor Inspectorate and the Law on Safety at Work. In this context, the Court specified that based on the Law on Labor and that of the Inspectorate, the scope of the competence of the Labor Inspectorate is completely clear and which, as an inspection body and mechanism of the executive power, supervises the implementation of the provisions of the Law on Labor which regulate the employment relationship between the employee and the employer and supervise the implementation of the Law on Safety and Health at Work, within the scope defined by the Law on Inspectorate, (i) the implementation of punitive measures (fines) in case of finding irregularities by the employer; and (ii) reporting these irregularities to the relevant ministry or to any other competent authority. The Labor Inspectorate has no competence to resolve "labor disputes" or those arising from the employment relationship, between the employee and the employer, because based on the applicable laws, such competence clearly belongs to the regular courts.

In this respect, the Court reiterated that unlike the Labor Inspectorate, the Law on Labor defines the judiciary as the only responsible authority in the Republic of Kosovo that resolves "labor disputes" from labor law, between employees and employers. The Court also analyzed the content of Article

78 (Protection of Employees' Rights) of the Law on Labor, which defines the complaint procedures within the employer, and Article 79 (Protection of an Employee by the Court) of the Law on Labor, which guarantees the right that any employee who considers that the employer's decision has violated his rights or does not receive an answer from the employer, to initiate a labor dispute in the competent court. The Court emphasized that judicial functions can only be exercised by the courts, according to the principles defined by the Constitution and relevant laws. Moreover, it is clear that the Labor Inspectorate, according to the law, is defined as an executive body established by the Ministry of Labor and Social Welfare, and as such, also within the meaning of the European Convention on Human Rights, namely Article 6 (Right to a fair trial) thereof, does not meet the conditions of either an "independent tribunal" from the executive nor a "court" established by law. Inspection bodies, depending on the nature of the functions they exercise and the institutional status determined by the acts that established them, are part of the executive power and as such cannot exercise functions of a judicial nature. If this were to be done, this would constitute a violation of the principle of separation of powers in violation of the constitutional order of the Republic of Kosovo.

Therefore, the Court considered that in the present case, the allegation of interference with the powers of the judiciary by the Labor Inspectorate is not a result of the incompatibility of the content of Article 94 of the Law on Labor with the constitutional norms, but a result of the way of interpretation and implementation of Article 94 of the Law on Labor and the Law on the Labor Inspectorate, by the Labor Inspectorate itself.

Therefore, and based on the clarifications given in the published Judgment, the Court found that Article 94 (Supervision) of the Law on Labor is in compliance with Articles: 3 [Equality Before the Law], 24 [Equality Before the Law], 31 [Right for Fair and Impartial Trial], 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution, as and among other things, the latter does not foresee any competence for the Labor Inspectorate to resolve "labor disputes" from the right to work between the employee and the employer, this competence, based on the applicable laws, belongs to the judicial power.

Judgment

KO 173/21

Applicant

Municipality of Kamenica

Request for constitutional review of articles 3, 4, 5, 6, 7 and 9 of the Administrative Instruction of the Ministry of Education and Science (MES) no. 104/2020 on the "Criteria and Procedures for the Establishment and Termination of the Activity of Pre-University Education Institutions"

In assessing the constitutionality of the challenged Administrative Instruction, the Court unanimously decided that: (i) the referral is admissible; and (ii) Article 3 (Founder), paragraphs 5, 6 and 7 of Article 6 (Verification of conditions), paragraphs 2 and 3 of Article 7 (Decision) and paragraphs 6, 7 and 8 of Article 9 (Termination of the activity of the educational institution or the separated parallel) of the challenged Administrative Instruction, are not in compliance with paragraph 2 of Article 12 [Local Government], paragraph 1 and 3 of Article 123 [General Principles] and with paragraph 2 and 3 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo, and as such are repealed.

The essence that the circumstances of the present case entail, is related to the competencies that have been attributed through the aforementioned Administrative Instruction to the central level, namely the Ministry of Education and Science, on the one hand, and to the local level, namely the municipalities, on the other hand, in relation to the establishment of educational institutions and separate parallels in the municipalities. The above mentioned Administrative Instruction, among others, clarifies that the decision pertaining to the establishment and termination of educational institutions and separate parallels at the

pre-university level, is taken by the Secretary General of the Ministry of Education and Science, based on the proposal of the relevant municipality. The decision-making at the level of the central government, namely, the Ministry of Education and Science, regarding the establishment/termination of educational institutions and separate parallels at the pre-university level, according to the Applicant, infringes the municipal responsibilities, contrary to the relevant constitutional provisions and those of the applicable laws, namely of Law no. 04/L-032 on Pre-University Education, Law no. 03/L-68 on Education in the Municipalities of the Republic of Kosovo and Law no. 03/L-040 on Local Self-Government, according to which, "provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators", constitutes an own competence of the municipalities and as such, it is "full and exclusive" competence of the municipal level.

Initially and regarding the admissibility of the referral, the Court explains that after having submitted the referral for constitutional review of the challenged Administrative Instruction by the Mayor of the Municipality of Kamenica, Mr. Qëndron Kastrati, on 17 October 2021, namely 14 November 2021, after the second round of local elections in the Republic of Kosovo, Mr. Kadri Rahimaj was elected Mayor of the Municipality of Kamenica. The latter, through his representative, on 5 January 2022, submitted to the Court the request for withdrawal of the referral in the case KO173/21, arguing that he has no legal interest in its review. The Court, based on its case-law and Rule 35 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules of Procedure, according to which, notwithstanding the request for withdrawal, the Court may determine to decide on the initial referral, first assessed the request of the new Mayor of the Municipality, and decided to reject the latter, given the public interest for the continuation of the review and decision on merits in the case, emphasizing the importance of clarifying the allegations of violation of constitutional principles related to local self-government.

As for the merits of the case, in addressing the Applicant's allegations, the Court first examined the general principles regarding local self-government established in the Constitution, the European Charter of Local Self-Government, the relevant Venice Commission Opinions, applicable laws in the Republic of Kosovo as well as the case law of the Constitutional Court.

The Court, based on Articles 12, 123 and 124 of the Constitution, respectively, among others, stated that: (i) the basic territorial units of local self-government in the Republic of Kosovo are municipalities; (ii) the organization and competencies of the local self-government units are regulated by law; (iii) the municipalities have their "own", "enhanced" and "delegated" competencies; and (iv) the administrative review of municipal acts by the central authorities in the scope of their competencies, is limited to ensuring compliance with the Constitution and the law. Furthermore, based on these constitutional Articles, the Court emphasized that the activity of local self-government bodies is based on the Constitution and the laws and respects the European Charter of Local Self-Government. The latter, inter alia, and insofar as it is relevant to the circumstances of the present case, stipulates that: (i) local authorities, within the limits of the law, will have full discretion to exercise their initiative in relation to any matter which is not excluded from their competence and has not been assigned as a competence of any other authority; (ii) the competencies conferred on local authorities should normally be full and exclusive and that they may not be undermined or limited by another authority, central or regional, except as provided for by law; and (iii) any administrative control over local authorities may be exercised only in accordance with the manners and in the cases provided for by the Constitution or by law.

The Court also reiterated that local self-government is of such importance in the constitutional order, so that the Constitution: (i) has defined these guarantees, inter alia in the Fundamental Provisions of the Constitution; (ii) has determined the observance of the European Charter of Local Self-Government; and (iii) in order to ensure the protection of these guarantees, in Article 113 thereof, has given municipalities direct access to the Constitutional Court, in the capacity of authorized parties, to challenge the constitutionality of laws or acts of the Government which infringe on the municipal responsibilities or reduce the municipal revenues, in case the relevant municipality is affected by that law or act. In compliance with the abovementioned guarantees of the Constitution and the European Charter of Local Self-Government and the reference of the latter in the obligation that these guarantees are also implemented through the

applicable laws, the Court also recalled that based on Article 17 (Own Competencies) of the Law on Local Self-Government, municipalities have "full and exclusive" competences in providing public pre-school, primary and secondary education, including the registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators. On the other hand, the Ministry of Education and Science, based on the Law on Pre-University Education and the Law on Municipal Education, among others, has the main responsibility for planning, setting standards and quality assurance of the pre-university education system and the responsibility to promote and improve the quality and efficiency of education and training through education inspection, monitoring and evaluation in order to increase the quality and oversee the implementation of applicable legislation.

Applying the aforementioned principles in the circumstances of the present case, namely the constitutional review of whether the challenged Administrative Instruction infringes on the municipal responsibilities, the Court, among others, emphasized that the full decision-making powers of the central government for the establishment and termination of pre-university level institutions in the municipalities, that was attributed to the Ministry of Education and Science, through articles 3, 6, 7 and 9 of the challenged Administrative Instruction, according to the clarifications given in the published Judgment, infringes on the "own competences" of the municipality. This is because, based on the manner specified in the relevant provisions of the Law on Local Self-Government, the Law on Education in Municipalities and the Law on Pre-university Education, the decision-making for the establishment of pre-university level institutions belongs to the municipalities. As for Articles 4 (Conditions for establishing an educational institution and a separate parallel) and 5 (Proposal for the establishment of the educational institutions or separate parallel) of the challenged Administrative Instruction, and which, among others, establish the competence of the Ministry of Education and Science, to determine the conditions that must be met by educational institutions and the separate parallels and the necessary documentation through which the fulfillment of the latter could be assessed, the Court concluded that the latter, do not infringe on the municipal "own competences". This is because, in principle, the competence to determine the general criteria and conditions that an educational institution or separate parallel at the pre-university level must meet, through the aforementioned applicable laws and as clarified in the published Judgment, has been attributed to the Ministry of Education and Science.

The Court finally reiterated that based on the Constitution of the Republic of Kosovo, namely its Article 123, local self-government is guaranteed and regulated by law, and based on its Article 124, any administrative review of municipal acts by the central authorities in the area of their own competencies, is limited to ensuring compatibility with the Constitution and the law.

In light of this, the Court emphasized that the central government, and in the circumstances of the present case, the Ministry of Education and Science, through sub-legal acts, cannot attribute to itself additional competencies that have not been foreseen by a law approved by the Assembly of the Republic, and which may interfere with the activity of local self-government in the area of education or infringe on municipal responsibilities in this field. Such a principle in the sense of local self-government also originates from the provisions of the European Charter on Local Self-Government. The Court notes that the Constitution and the applicable laws clearly specify the separation of relevant competencies, including in the field of education, and that both levels of government are obliged to act in full compliance with the same.

ECtHR – Important decisions
(1 July – 31 December 2022)

*** The Italian authorities did not act with the requisite promptness and diligence in dealing with acts of domestic violence and did not comply with their Convention obligations (07/07/2022)**

In its Chamber judgment in the case of **Scavone v. Italy** (*application no. 32715/19*) the European Court of Human Rights held, unanimously, that there had been: a **violation of the substantive aspect of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights in relation to the period from 19 January 2007 to 21 October 2008, and **no violation of the substantive aspect of Article 3 of the Convention in relation to the period from 21 October 2008 to 5 January 2018**; a **violation of the procedural aspect of Article 3 of the Convention**.
The case concerned the domestic violence to which the applicant was subjected by her husband. The applicant complained, in particular, that the respondent State had failed to protect and assist her. She also alleged that the authorities had not acted with the requisite diligence and promptness, as the prosecution of several offences had become time-barred. The Court could not accept that the purpose of effective protection against acts of ill-treatment, including domestic violence, was achieved where the criminal proceedings were discontinued on the grounds that the prosecution had become time-barred, where this occurred as a result of failings on the part of the authorities. Offences linked to domestic violence should be classified among the most serious offences. According to the Court's case-law, it was incompatible with the procedural obligations arising out of Article 3 for investigations into these offences to be terminated through statutory limitation resulting from the authorities' inactivity. In the present case the Court considered that a situation in which the domestic authorities, firstly – on the basis of the mechanisms governing limitation periods in the national legal framework – had upheld a system in which statutory limitation was closely linked to the judicial action even after proceedings had commenced and, secondly, had prosecuted the case with a degree of judicial passivity incompatible with that framework, could not be deemed to satisfy the requirements of Article 3 of the Convention.

*** Collection and retention, by the French blood donation service (EFS), of personal data reflecting applicant's presumed sexual orientation without proven factual basis: violation of Article 8 of the Convention (08/09/2022)**

In its Chamber judgment in the case of **Drelon v. France** (*application no. 3153/16*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.
The applications concerned, first, the collection and retention, by the French blood donation service (EFS) of personal data reflecting the applicant's presumed sexual orientation – together with the rejection of his criminal complaint for discrimination – and, second, the refusal of his offers to donate blood, together with the dismissal by the Conseil d'État of his judicial review application challenging an order of 5 April 2016 which amended the selection criteria for blood donors. Addressing the first application, the Court found that the collection and retention of sensitive personal data constituted an interference with the applicant's right to respect for his private life. That interference had a foreseeable legal basis as the authorities' discretionary power to set up a health database for such purpose was sufficiently regulated by the then applicable Law of 6 January 1978. Whilst the collection and retention of personal data concerning blood donor candidates contributed to guaranteeing blood safety, it was evertheless particularly important for the sensitive data involved to be accurate, up-to-date, pertinent and non-excessive in relation to the goals pursued; and the data retention period had to be limited to what was necessary. The Court observed, first, that even though the applicant had refused to answer the questions about his sex life during the medical examination prior to the blood donation, the data included a contraindication to giving blood that was specific to men who had intercourse with other men. It concluded that the data in question was based on mere speculation without any proven factual basis. Secondly, after noting that the Government had not shown that the data retention period (until 2278 at the time) had been regulated in such a way that it could not exceed the period necessary for the aim pursued, the Court found that the excessive retention period had made it possible for the data to be used repeatedly against the applicant, thus entailing his automatic exclusion from being a blood donor. There had thus been a violation of Article 8 of the Convention on account of the collection and retention of the personal data concerned. As to the second application, the Court rejected as out of time the complaints about the decisions excluding the applicant from blood donation on 16 November 2004 and 9 August 2006. As regards the decision of 26 May 2016 the Court found that the applicant could not invoke a violation of Articles 8 and 14 of the Convention in respect of the order of 5 April 2016 as it was not yet in force on the date of the refusal in question.

*** European Court says proceedings resulting in dismissal of Albanian prosecutor should be reopened (04/10/2022)**

In its Chamber judgment in the case of **Besnik Cani v. Albania** (application no. 37474/20) the European Court of Human Rights held, unanimously,

that there had been: a **violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights.
The case concerned a former prosecutor who was dismissed in 2020 as part of an exceptional process for the re-evaluation of all serving judges and prosecutors – known as vetting proceedings – following a reform of the justice system in Albania, and his doubts about one of the judges appointed to hear his case. The applicant argued that the judge in question should have been disqualified because he had previously been dismissed as a district-court judge, meaning that he had been appointed to the Special Appeal Chamber which had examined his case in breach of the rules on eligibility.
Furthermore, the domestic courts had refused to examine the applicant's arguments in that regard. The Court found that the applicant's argument had amounted to a serious and arguable claim of a manifest breach of a fundamental rule of the domestic law that had adversely affected the appointment of one of the judges sitting on the bench which had heard his case. It therefore concluded that the applicant's right to a "tribunal established by law" had been violated. It also found under Article 46 (binding force and implementation) that the most appropriate redress for the violation of the applicant's rights would be to reopen the case and re-examine it in accordance with the requirements of Article 6 § 1 of the Convention. The finding of a violation could not, however, in itself be taken to require the reopening of all similar cases that have in the meantime become res judicata under domestic law.

* Court finds procedural defects in subsequent review of death by euthanasia of applicant's mother (04/10/2022)

In its Chamber judgment in the case of **Mortier v. Belgium** (*application no. 78017/17*) the European Court of Human Rights made three findings of no violation and one finding of a violation of the European Convention on Human Rights.
The case concerned the death by euthanasia of the applicant's mother, without the applicant or his sister having been informed. The applicant's mother had not wished to inform her children of her euthanasia request in spite of the repeated advice from the doctors. The Court explained that the case was not about whether there was a right to euthanasia, but about compatibility with the Convention of the act of euthanasia performed in the case of the applicant's mother. The Court then found as follows:
- By a majority (five votes to two), that there had been **no violation of Article 2 (right to life)** of the Convention on account of the legislative framework governing the pre-euthanasia acts and procedure. The Court found that the statutory provisions on euthanasia constituted in principle a legislative framework that specifically ensured the protection of the right to life of the patients as required by Article 2 of the Convention.
- By a majority (five votes to two), that there had been **no violation of Article 2 (right to life) on account of the conditions in which the act of euthanasia had been carried out** in the case of the applicant's mother. The Court took the view that it could not be said from the evidence before it that the act in question, performed in accordance with the established statutory framework, had breached the requirements of Article 2 of the Convention.
- Unanimously, that there had been a **violation of Article 2 (right to life) on account of the posteuthanasia review procedure in the present case**. The Court found that the State had failed to fulfil its procedural positive obligation, on account of the lack of independence of the Federal Board for the Review and Assessment of Euthanasia and the length of the criminal investigation in the case.
- By a majority (six votes to one), that there had been **no violation of Article 8 (right to respect for private and family life)**. The Court found that the doctors assisting the applicant's mother had done everything reasonable, in compliance with the law, their duty of confidentiality and medical secrecy, together with ethical guidelines, to ensure that she contacted her children about her euthanasia request.

* Legislation providing for termination of widower's pension when the youngest child reaches the age of majority is discriminatory (11/10/2022)

In its Grand Chamber judgment in the case of **Beeler v. Switzerland** (*application no. 78630/12*) the European Court of Human Rights held, by a majority (12 votes to 5), that there had been: a **violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.
The case concerned the termination of the applicant's widower's pension after his younger child reached the age of majority. The Federal Law on old-age and survivors' insurance provided that entitlement to a widower's pension ended when the youngest child reached the age of 18, whereas this was not the case for a widow. Before the Court, the applicant argued that he had been discriminated against in relation to widows in a comparable situation, who would not have lost their entitlement to the pension. The Government contended that it was still justifiable to rely on the presumption that the husband provided for the financial maintenance of the wife, particularly where she had children, and thus to afford a higher level of protection to widows than to widowers. In their view, the difference in treatment was therefore based not on gender stereotyping but on social reality. Firstly, the Court noted that between 1997 and 2010, the applicant had been in receipt of the widower's pension and had organised the key aspects of his family life, at least partially, on the basis of the existence of the pension. The delicate financial situation in which he had found himself at the age of 57, in view of the loss of the

pension and his difficulties in returning to an employment market from which he had been absent for 16 years, was the consequence of the decision he had made years earlier in the interests of his family, supported from 1997 onwards by receipt of the widower's pension. The Court therefore held that Articles 8 and 14 of the Convention were applicable in the present case.
Next, the Court found that although the applicant had been in an analogous situation in terms of his subsistence needs, he had not been treated in the same way as a woman/widow. He had therefore been subjected to unequal treatment. The Government had not shown that there were very strong reasons or "particularly weighty and convincing reasons" justifying the difference in treatment on grounds of sex. In the Court's view, the Government could not rely on the presumption that the husband supported the wife financially (the "male breadwinner" concept) in order to justify a difference in treatment that put widowers at a disadvantage in relation to widows. It found that the legislation in question contributed rather to perpetuating prejudices and stereotypes regarding the nature or role of women in society and was disadvantageous both to women's careers and to men's family life.

*** Difference in treatment between persons born in France before and after Algerian independence to parents born in French Algeria: not discriminatory under Article 14 of the Convention (13/10/2022)**

In its Chamber judgment in the case of **Zeggai v. France** (*application no. 12456/19*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 14 (prohibition of discrimination)** of the European Convention on Human Rights **taken together with Article 8 (right to respect for private and family life).**
The case concerned the rejection of the applicant's request for a certificate of French nationality. He was born in France, before Algerian independence, to parents who at the time were still French nationals. He has lived continuously in France and his brothers and sisters, who were born after Algerian independence, have acquired French nationality. He had previously held a French identity card and voter card, issued to him in error by the French authorities. He complained before the Court that he had been subjected to discrimination prohibited by Article 14. The Court noted that the applicants' parents, who were born in French Algeria and fell under the local civil status, had not made use of the possibility of being recognised as French nationals by signing a declaration of recognition. It saw no reason to call into question the legitimacy of the distinction made between the minor children of individuals who fell under the Algerian local civil status depending on the date of their birth, i.e. before or after Algeria gained independence. It found that this distinction, at the time, had been appropriate to the legitimate aim pursued, namely to ensure that minor children should automatically have the same status as their parents in respect of French nationality, bearing in mind that the question whether their parents remained French nationals had arisen precisely on account of, and in the context of, Algerian independence. The Court further observed that the difference in treatment between the applicant and his siblings did not relate to the principle of access to French nationality but to the avenues available for such access. While pointing out that the respondent State had made an error in issuing an identity card and voting card to an individual who no longer had French nationality, it found that this matter had no bearing on the question before the Court as to whether the difference in treatment complained of by the applicant had been discriminatory. Having regard to the broad margin of appreciation afforded to the respondent State, the Court accepted that the measures adopted had been proportionate to the legitimate aim pursued. It concluded that the difference in treatment complained of by the applicant, in the enjoyment of his right to respect for his private life, had thus been based on an objective and reasonable justification.

*** Child's right to private life violated by lack of provision in Swiss law, until 2018, for alternative means of recognising children born to same-sex couples through surrogacy (22/11/2022)**

In its Chamber judgment in the case of **D.B. and Others v. Switzerland** (*applications nos. 58817/15 and 58252/15*) the European Court of Human Rights held, - by a majority of six votes to one, that there had been a **violation of Article 8 (right to respect for private life of a child born through surrogacy)** of the European Convention on Human Rights, and - unanimously, that there had been **no violation of Article 8 (right to respect for family life of the intended father and the genetic father).**
The case concerned a same-sex couple who were registered partners and had entered into a gestational surrogacy contract in the United States under which the third applicant had been born. The applicants complained in particular that the Swiss authorities had refused to recognise the parent-child relationship established by a US court between the intended father (the first applicant) and the child born through surrogacy (the third applicant). The Swiss authorities had recognised the parent-child relationship between the genetic father (the second applicant) and the child. The Court stated that the chief feature which distinguished the case from those it had decided before was that the first two applicants were a same-sex couple in a registered partnership. Regarding the third applicant, the Court noted that, at the time he was born, domestic law had afforded the applicants no possibility of recognition of the parent-child relationship between the intended parent (the first applicant) and the child. Adoption had been open to married couples only, to the exclusion of those in

registered partnerships. Not until 1 January 2018 had it become possible to adopt the child of a registered partner. Thus, for nearly seven years and eight months, the applicants had had no possibility of securing definitive recognition of the parent-child relationship. The Court therefore held that for the Swiss authorities to withhold recognition of the lawfully issued foreign birth certificate in so far as it concerned the parent-child relationship between the intended father (the first applicant) and the child born through surrogacy in the United States, without providing for alternative means of recognising that relationship, had not been in the best interests of the child. In other words the general and absolute impossibility, for a significant period of time, of obtaining recognition of the relationship between the child and the first applicant had amounted to a disproportionate interference with the third applicant's right to respect for private life under Article 8. Switzerland had therefore overstepped its margin of appreciation by not making timely legislative provision for such a possibility. Regarding the first and second applicants, the Court first observed that the surrogacy arrangement which they had used to start a family had been contrary to Swiss public policy. It went on to hold that the practical difficulties they might encounter in their family life in the absence of recognition under Swiss law of the relationship between the first and third applicants were within the limits of compliance with Article 8 of the Convention.

* Judgments concerning dismissal of two Albanian prosecutors: no systemic problem (13/12/2022)

Chamber judgments in the cases **Nikëhasani v. Albania** (*application no. 58997/18*) and **Sevdari v. Albania** (**no. 40662/19**) concerned two prosecutors who had been dismissed from their posts after Albania had embarked on far-reaching reform of the justice system in 2016. The reform involved an exceptional re-evaluation of all serving judges and prosecutors – otherwise known as "vetting proceedings".
The European Court of Human Rights held, by six votes to one, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights **as concerned Ms Nikëhasani**. It considered that her dismissal had been justified, the vetting process having revealed serious doubts over her financial propriety after a careful examination of her case. On the other hand, it held, unanimously, that there had been **a violation of Article 8 of the European Convention as concerned Ms Sevdari's dismissal**. There had been no sign of bad faith in her declarations during the vetting process; any alleged irregularities had essentially concerned the payment of tax on some of her husband's income from lawful activities abroad. The Court considered under Article 46 (binding force and implementation) that an appropriate redress for Ms Sevdari would be to reopen the proceedings. See FAQ. That did not mean, however, that the functioning of the current vetting process in Albania in general disclosed any systemic problem. Throughout both judgments the Court referred to its 2021 leading judgment Xhoxhaj v. Albania, in which it had ruled that the vetting process was as a whole fair and impartial, and had responded to an urgent need to combat corruption in the country and restore public trust in the justice system.

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

INFORMATION ON THE COURT

The building of the Constitutional Court:

The Constitutional Court of the Republic of Kosovo, since it became functional in 2009, has been located in the building of the former Kosovo Protection Corps - KPC, located in the center of Prishtina, in the area of Pejton. The position of the Court in the center of the capital city, symbolizes an equal access to all citizens and other authorized parties to the Constitutional Justice. Over the years this building has been adapted according to the needs and nature of work of the Constitutional Court. This has been carried out with the support of our donors, as in the case of construction of the Courtroom of the Court which has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the Library of the Court which was entirely supported by the GIZ Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011.
The building of the Court has a usable office space of 1 937 m^2 and is used by 65 employees.

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