



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 15 June 2023
Ref. no.: AGJ 2211/23

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JUDGMENT

in

case no. KO139/21

Applicant

Fadil Nura and 9 other deputies

Constitutional review of Decision No. 08-V-040 of the Assembly of the Republic of Kosovo of 21 July 2021 on the dismissal of the members of the Railway Regulatory Authority Board

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
Nexhmi Rexhepi, Judge and
Enver Peci, Judge

Applicant

1. The Referral was submitted by 10 (ten) deputies of the Assembly of the Republic of Kosovo (hereinafter: The Assembly), namely the deputies: Fadil Nura, Ganimete Musliu, Hajdar Beqa, Ardian Kastrati, Blerta Deliu-Kodra, Ferat Shala, Floretë Zejnullahu, Eliza Hoxha, Abelard Tahiri and Pal Lekaj (hereinafter: the Applicants).

2. The Applicants are represented in the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter: Court) by the deputy Ganimete Musliu.

Challenged decision

3. The Applicants challenge the Decision of the Assembly of the Republic of Kosovo [No. 08-V-040] (hereinafter: the challenged Decision) of 21 July 2021 on the dismissal of the members of the Railway Regulatory Authority Board (hereinafter: RRA Board).

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Decision, whereby the Applicants allege that it is not in compliance with Article 4 [Form of Government and Separation of Power], Article 7 [Values], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights], paragraph 9 of Article 65 [Competencies of the Assembly] as well as Article 142 [Independent Agencies] of the Constitution of Republic of Kosovo (hereinafter: the Constitution).
5. The Applicants also request to have an interim measure related to the specific case imposed, alleging that *“Failure to impose an interim measure, making RRA completely non-functional, and considering that the General Director's term is coming to an end, it would make it impossible for this independent institution to exercise its duties and provide the services defined by law”*.

Legal basis

6. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 (Individual Requests) 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 of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 29 July 2021, the Applicants submitted the Referral to the Court.
8. On 3 August 2021, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci (members).
9. On 4 August 2021, the Court notified the Secretary General of the Assembly of the Republic of Kosovo (hereinafter: the Secretary of the Assembly) and requested him to submit to the Court all relevant documents related to the challenged Decision by 18 August 2021.
10. On 4 August 2021, the Applicants were notified of the registration of the Referral. On the same day, the Court notified the Speaker of the Assembly of the Republic of Kosovo (hereinafter: the Speaker of the Assembly) of the registration of the Referral, who was asked to serve a copy of the Referral on all the Assembly deputies, the Ombudsperson and the Railway Regulatory Authority (hereinafter: RRA). The Court notified the interested parties mentioned above that their comments, if any, should be submitted to

the Court within 15 days, namely by 18 August 2021 to the Court's electronic address or by personal delivery.

11. On the same day, the Court notified the President of the Republic of Kosovo (hereinafter: the President) and the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister) of the registration of the Referral).
12. On 10 September 2021, the Secretary of the Assembly submitted to the Court the following documents.
 1. *Minutes of the meeting of the Committee on Agriculture, Forestry, Rural Development, Environment, Spatial Planning and Infrastructure, dated 2 July 2021;*
 2. *Recommendation No. 08/383/Do-2499 of the Committee on Agriculture, Forestry, Rural Development, Environment, Spatial Planning and Infrastructure on the dismissal of the members of the Railway Regulatory Authority Board of 2 July 2021;*
 3. *The invitation with the agenda for holding the plenary session on 16 July 2021;*
 4. *Extracts of the transcript of the Plenary Session of the Assembly held on 16, 19, 21, 28 July and 6 August 2021;*
 5. *Decision No. 08-V-040 approved by the Assembly on 21 July 2021 on the dismissal of the members of the RRA Board.*
13. On 17 August 2021, RRA submitted a document to the Court, through which it informed the Court that *"The Railway Regulatory Authority has currently no Supervisory Board, as the highest body of the institution, and it therefore considers that the current level does not have the authority to give comments regarding this case"*.
14. On 7 September 2021, the Court requested the Secretary of the Assembly to submit to the Court the Decision of the Assembly [No. 05-V-371] of 28 October 2016, whereby the RRA Board members were appointed.
15. On 9 September 2021, the Secretary of the Assembly submitted to the Assembly the requested Decision.
16. On 2 November 2021, the Court requested from the Chairman of the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of Anti-Corruption Agency, as well as the Chairwoman of the Committee on Agriculture, Forestry, Rural Development, Environment, Spatial Planning and Infrastructure, to clarify before the Court *"the legal status of the Railway Regulatory Authority, namely if the same is an established institution and operates as an independent Agency pursuant to Article 142 [Independent Agencies] of the Constitution or it has any other status based on the applicable laws"*.
17. On 16 November 2021, the Chairwoman of the Committee on Agriculture, Forestry, Rural Development, Environment, Spatial Planning and Infrastructure Mrs. Fitore Pacolli-Dalipi submitted a response to the Court.
18. On 16 February 2022, the Review Panel reviewed the report of the Judge Rapporteur and decided that the decision-making on the case should be postponed pending the completion of a preliminary report.
19. On 18 February 2022, the Court after realizing that Mr. Fadil Nura is no longer a member of the Assembly of the Republic of Kosovo, asked the Applicants to explain to the Court as follows *"whether Mr. Nura will be replaced by another deputy, as your*

representative and one of the applicants in the proceedings before the Constitutional Court of the Republic of Kosovo”.

20. On 25 February 2022, the Applicants notified the Court via e-mail that the deputy Ms. Ganimete Musliu will be their authorized representative before the Court, and that the replacing deputy for Mr. Nura, namely Mr. Isak Shabani, should be considered an applicant deputy.
21. On 2 March 2022, the Court requested the Applicants to submit to the Court the power of attorney for representation for Ms. Ganimete Musliu, signed by all the Applicants, including Mr. Isak Shabani.
22. On 7 March 2022, the Applicants submitted the requested power of attorney to the Court via email.
23. On 15 December 2022, the Review Panel reviewed the report of the Judge Rapporteur and decided that the decision-making on the case should be postponed pending the completion of a preliminary report.
24. On 16 December 2022, Judge Enver Peci took the oath before the President of the Republic of Kosovo, thus commencing his term at the Court.
25. On 5 April 2023, the Review Panel reviewed the report of Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same day, the Court unanimously (i) found that the Referral is admissible; and (ii) that Assembly Decision No. 08-V-036 is not incompatible with paragraph 9 of Article 65 [Competences of the Assembly] of the Constitution.
26. In accordance with Rule 62 (Concurring Opinions) of the Rules of Procedure of the Court, Judge Radomir Laban has prepared a concurring opinion, which will be published together with this Judgment.

Summary of facts

27. On 28 October 2016, the Assembly by Decision [No. 05-V-371] appointed 4 (four) members of the RRA Board, namely: Arsim Berisha, Gëzim Qerimi, Shkumbin Hyseni and Ilmi Ahmeti, for a five-year term.
28. On 2 July 2021, the meeting of the Parliamentary Committee on Agriculture, Forestry, Rural Development, Environment, Spatial Planning and Infrastructure (hereinafter: the Assembly Committee) was held, examining the initiation for the dismissal of the members of the RRA Board.
29. On 2 July 2021, the Assembly Committee, with 8 votes “for”, 1 vote “against” and 1 abstention through Recommendation [No. 08/383/Do-2499] recommended to the Assembly to dismiss all members of the RRA Board. In the justification of the aforementioned recommendation, it is emphasized that after reviewing the Annual Report of RRA for 2020, the Assembly Committee found “*the following failures*”:
 1. *The existence of 268 illegal railroad crossings, which continue to pose a threat to citizens’ lives, is concerning. Only during the period 2016-2020, 48 people were injured, while 11 people died.*
 2. *The lack of placing warning signs in relevant and high-risk places is concerning [...]*

3. *The Railway Regulatory Authority neglected cooperation at the municipal level with the security authorities.*
 4. *The Railway Regulatory Authority violated the regulations on the operation of licensed operators in the rehabilitation of railways. The rehabilitation of the railway in Han i Elezit was done by an unlicensed Italian operator.*
 5. *The Railway Regulatory Authority failed to regulate the recognition of licenses, train drivers, and locomotives of local operators with those from the regional countries.*
 6. *The Railway Regulatory Authority failed to control the illegal traffic of trains from Serbia under the direction of the Mitrovica station.*
 7. *We have a decrease in the number of passengers in rail transport on an annual basis. During the time period 2007-2020, we had a decrease in the number of passengers from 417,000 to 58,819 passengers. We have no real analysis of why we have such a decline.*
 8. *The Railway Regulatory Authority failed to work on the modernization of rail transport [...]*
 9. *We have no regular report of the Board's activities [...]*
 10. *The composition of the Railway Regulatory Authority Board is unprofessional.*
 11. *The National Audit Office in its annual audit reports for the Railway Regulatory Authority, required a comprehensive review of the asset register and urged concrete actions for reassessment.*
 12. *The Railway Regulatory Authority Board failed to respond to the inquiry into the increase in expenses under the category of wages and salaries.[...]*
 13. *The Railway Regulatory Authority failed to explain the correlation of travel and training costs with the list of training sessions and visits abroad;*
30. On 13 July 2021, the Assembly informed the deputies of the holding of the plenary session from 16 July 2021 onwards, where among other items of the agenda was the consideration of Recommendation [No. 08/383/Do-2499] of the Assembly Committee to dismiss all the members of the RRA Board.
 31. On 21 July 2021, in the plenary session of the Assembly, the deputies of the Assembly voted on the Recommendation [No. 08/383/Do-2499] of the Assembly Committee for the dismissal of all members of the RRA Board by voting separately for each member. The voting result was the same for all four members of the RRA Board, and it turns out to be as follows: 62 votes “for” the dismissal of the RRA Board, no votes “against” and no abstentions.
 32. Consequently, the Assembly by Decision [No. 08-V-040] dismissed the following four (4) members of the RRA Board: Arsim Berisha, Gëzim Qerimi, Shkumbin Hyseni and Ilmi Ahmeti for a five-year term.
 33. The content of the Decision [No. 08-V-040] is as follows:

The Assembly of the Republic of Kosovo, pursuant to Article 65.9 of the Constitution of the Republic of Kosovo, Article 67 of the Rules of Procedure of the Assembly, as well as Article 38, paragraph 6, point 6.8 of Law No. 04/L-063 on Kosovo Railways, in the plenary session held on 21 July 2021, at the recommendation of the Committee on Agriculture, Forestry, Rural Development, Environment, Spatial Planning and Infrastructure, by voting separately for each member, issues the following:

DECISION

On the dismissal of the members of the Railway Regulatory Authority Board:

I. The following members of the Railway Regulatory Authority Board shall hereby be dismissed:

- 1. Arsim Berisha, chairman*
- 2. Gëzim Qerimi, member*
- 3. Shkumbin Hamiti Member*
- 4. Ilmi Ahmeti, member*

II. This Decision shall enter into force on the date of its adoption.

Applicant's allegations

34. The Applicants claim that the challenged Decision of the Assembly, both in substantial and procedural terms, is in violation of Article 4 [Form of Government and Separation of Power], Article 7 [Values], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights], paragraph 9 of Article 65 [Competencies of the Assembly] as well as Article 142 [Independent Agencies] of the Constitution.
35. Initially, regarding the admissibility of the Referral, the Applicants emphasize that in the present case, the challenged Decision *“should be considered by the Constitutional Court as a potential subject for constitutional review, due to the violation of the provisions of the Constitution, including the provisions of Chapter II of the Constitution, namely the constitutional rights of the members dismissed by this body”*.
36. The Applicants point out that referring to Law No. 04/L-063 on Kosovo Railways (hereinafter: Law on Railways), it is provided that the members of the RRA Board have individual liability, and that paragraph 6.8 of Article 38 of the Law on Railways provides for the possibility of dismissing one or more members of the RRA Board, but according to them *“in no case does the Law on Railways determine and allow for the possibility of dismissing the entire RRA Board”*. The Applicants further add that *“This is because of the idea of preserving the functionality of the institution and preserving its independence in relation to the legal powers it exercises”*.

Alleged violation of paragraph 9 of Article 65 of the Constitution

37. In relation to this allegation, the Applicants point out that the Assembly, when issuing the challenged Decision has *“arbitrarily and without reason”* exercised its competencies provided for under paragraph 9 of Article 65 of the Constitution because according to them, the challenged Decision in *“none of its elements justifies the dismissal of the RRA Board members and does not indicate how these RRA Board members have failed to exercise the duties defined by the Law on Kosovo Railways”*.
38. Moreover, the Applicants allege that the reasons given in the Recommendation [No. 08/383/Do-2499] of the Assembly Committee are not under the RRA competency, and much less under the RRA Board. Further, the Applicants add that *“The Assembly of Kosovo, in a completely arbitrary manner, implemented Article 38, paragraph 6.8 of the Law on Kosovo Railways, which, as we reiterate, allows the dismissal of one or more members of the RRA Board, only under the justification that such members failed to discharge the duties stipulated by the Law on Railways”*.
39. Applicants, referring to point 10 of the Recommendation [No. 08/383/Do-2499] of the Assembly Committee, emphasized that *“The composition of the RRA Board has been evaluated in terms of its professionalism by the 2016 legislature when the members of the RRA Board were elected. Furthermore, this reason for dismissal is completely*

outside the legal logic and gives findings that should have been given by an independent body, such as the Court [...]. This means that the Assembly, in a blank manner and without facts, has arbitrarily exercised the constitutional competency, operationalizing a legal norm which had to be justified by the non-fulfilment of duties by the members of the RRA Board dismissed by the challenged Decision”.

40. The Applicants further add that the challenged Decision is also not sufficiently reasoned. In support of their allegations, in relation to the lack of reasoning of the Decision, the Applicants also refer to the Court case KI207/19, with the Applicants *Social Democratic Initiative, New Kosovo Alliance and Justice Party*, Judgment of 10 December 2020.
41. The Applicants further state: *“The Law on Railways is presumed constitutional because its constitutionality has never been challenged by any authorized entity. Consequently, its violation by the Assembly in the case of the collective dismissal of the entire RRA Board constitutes a violation of the constitutional obligation to comply with the rule of law”.*
42. Regarding these allegations, the Applicants finally add: *“The dismissal of the members of these institutions cannot be the prerogative of oversight: it constitutes an executive action contradicting the constitutional physiognomy of the Assembly as a representative and legislative body. This directly contradicts the principle of separation and balancing of powers under Article 4 [Form of Government and Separation of Power] of the Constitution which at the same time constitutes a constitutional value pursuant to Article 7.1 [Values] of the Constitution”.*

Alleged violation of Article 142 of the Constitution

43. The Applicants initially point out that RRA, based on the Law on Kosovo Railways, is an independent body, adding that this means that it is included in the group of independent constitutional institutions provided for in Chapter XII.
44. The Applicants add that *“The Constitutional Court of the Republic of Kosovo, at least in two of its cases, expressly promotes and protects the independence of independent institutions as defined under Chapter XII of the Constitution [...].*
45. The Applicants further state: *“by issuing the challenged Decision, the Assembly failed to comply with the independence of RRA, as an independent agency and institution and arbitrarily, by dismissing the entire RRA Board, as the main body, blocked the RRA work and operation. In this way, the organizational and functional independence of an independent institution such as RRA has been violated. The dismissal of the entire RRA Board and making RRA non-functional prevents this independent body from implementing the Law on Railways and performing its duties. Consequently, blocking the RRA work leads to the violation of functional and organizational independence by failing to comply with the specific status of RRA as an independent institution”.*
46. In support of this allegation, the Applicants refer to the Court cases KO73/16, with the Applicants *Ombudsperson Institution*, Judgment of 16 November 2016 and KO171/18, with the Applicant *Ombudsperson Institution*, Judgment of 25 April 2019.

Alleged violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution

47. The Applicants allege that the challenged Decision is not sufficiently reasoned, asserting that *“The Assembly did not give any justification as to why this dismissal was made, the Assembly did not allow the members of the RRA Board to be heard about the reasons for their dismissal before issuing the decision on dismissal. As a result of this, the Applicants allege that the members of the RRA Board did not have the opportunity to submit their objections for the reasons given thereof”*.
48. The Applicants further add that *“the lack of reasoning for the decision makes the decision-making arbitrary and violates the rights defined by the Constitution”*, underlining the challenged Decision in the case at stake is not sufficiently reasoned.
49. Also, in support of this allegation, the Applicants refer to several Court cases, namely the following cases: KI72/12, Applicant *Veton Berisha and Ifete Haziri*, Judgment of 17 December 2012, KI135/14, Applicant *IKK Classic* Judgment of 9 February 2016, KI97/16, Applicant *IKK Classic*; KI87/18, Applicant, *IF Scadeforsikring*, Judgment of 27 February 2019; as well as cases of European Court of Human Rights, *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hiro Balani v. Spain*, Judgment of 9 December 1994, *Higgins v. France*, Judgment of 19 February 1998; *H. v. Belgium*, Judgment of 30 November 1987.

Alleged violation of Article 32 [Right to Legal Remedies] in conjunction with Article 54 [Judicial Protection of Rights]

50. In relation to this allegation, the Applicants emphasize that the rights to legal remedies of the dismissed members of the RRA Board have been violated because according to them *“Kosovo’s legal order does not provide an effective legal instrument for the dismissed members of the RRA Board to have their rights protected”*.
51. According to the Applicants, the Law on Railways does not provide for any possibility of appeal against the Assembly decision on the dismissal of the members of the RRA Board.
52. Finally, regarding this allegation, the Applicants add that *“dismissed Board members would be able to initiate the administrative conflict, only in accordance with the applicable Law on Administrative Conflicts. In the present case, the Assembly decision is not an administrative act, but an act of a constitutional body that is subject to the constitutional review. Such an aspect would prevent the dismissed members of the RRA Board from initiating a case before the Basic Court (Department for Administrative Matters), due to the nature of the legal act (challenged Decision) and this would make the regular legal remedy ineffective for all dismissed members”*.

Applicants’ allegations regarding the violation of the principle of legal certainty and the rule of law, namely Article 7 [Values] of the Constitution

53. In relation to the above-mentioned allegation, the Applicants point out: *“regarding the dismissal of the members of the RRA Board, it was acted without complying with the predictability, since the Law on Railways and no other law provides for or allows a completely arbitrary and unjustified dismissal of the members of the RRA Board, as elaborated above. In the present case, the principle of predictability is violated, since an action that is not precisely defined and is not defined at all by the Law on Railways is taken. [...] In addition to legal certainty, through the challenged Decision, the Assembly has also violated the principle of the rule of law, which constitutes one of the fundamental values embodied in the Constitution of the Republic of Kosovo, namely in Article 7”*.

Allegations regarding the procedure followed in relation to issuing the challenged Decision

54. The Applicants allege that the challenged Decision is unconstitutional also in terms of the procedure followed by the Assembly. According to them, each member should be served with a separate decision with the grounds for dismissal, in accordance with paragraph 6 (7) of Article 38 of the Law on Railways.
55. Regarding this allegation, the Applicants state: *“In the present case, by issuing the challenged Decision, the Assembly dismissed the members of the RRA Board in a wrong way and thus voted separately for the dismissal of each member of the RRA Board. In this case, the Assembly dismissed the “member” and not “one or more members”, i.e. it dismissed all the members individually, according to the separate voting. The Law on Railways makes clear the distinction in which cases the member can be dismissed individually, i.e. the conditions for the dismissal of the member are provided for under Article 38, paragraph 6.7 points 1 to 5. In the case of the challenged Decision, the Assembly of Kosovo has dismissed one or more members, and not the member, so in this particular case the voting is required to be for all dismissed members and not for the member, because as explained, when a member of the RRA Board is dismissed, other legal conditions apply, which are defined in Article 38, paragraph 6.7 of the Law on Railways”.*

Request for interim measures

56. The Applicants, regarding the interim measure, requested the Court to impose an interim measure, underlining that it would cause irreparable damage to RRA and stressing that RRA will be completely non-functional due to the lack of its Board.
57. Furthermore, the Applicants add that the lack of the RRA Board makes it impossible to elect the General Director of RRA.
58. The Applicants in their arguments presented regarding the imposition of the interim measure also emphasize: *“Failure to impose an interim measure, making RRA completely non-functional, and considering that the General Director's term is coming to an end, it would make it impossible for this independent institution to exercise its duties and provide the services defined by law. In this case, irreparable budgetary damage could be incurred”.*
59. Also, regarding the public interest, the Applicants add that the imposition of an interim measure would preserve and protect the constitutional independence of RRA.
60. Consequently, finally, the Applicants request from the Court as follows: (i) impose an interim measure; (ii) declare the claim admissible based on examination on the merits; and iii) declare invalid the Decision of the Assembly [08-v-040, of 31 July 2021.

RRA's comments

61. On 17 August 2021, RRA submitted a document to the Court, through which it informed the Court that *“The Railway Regulatory Authority has currently no Supervisory Board, as the highest body of the institution, and it therefore considers that the current level does not have the authority to give comments regarding this case”.*

Comments of the Committee on Agriculture, Forestry, Rural Development, Infrastructure, Environment, Spatial Planning and Infrastructure

62. On 16 November 2021, the Chairwoman of the Committee on Agriculture, Forestry, Rural Development, Infrastructure, Environment, Spatial Planning and Infrastructure, following the Court’s request for clarification regarding the legal status of RRA, clarified through a letter that the legal status of RRA is regulated by the Law on Railways and the same falls under the scope of the Committee on Agriculture, Forestry, Rural Development, Infrastructure, Environment, Spatial Planning and Infrastructure.
63. Further, through this letter, the Chairwoman of the Assembly Committee, referring to the provisions of the Law on Railways, namely, Article 1, paragraph 1. 42 of Article 3 as well as in Article 38 of the Law on Railways states, inter alia, that “*this Authority reports to the Assembly of Kosovo upon request and at least once a year on the scope of its departments. The Assembly exercises this function based on Article 72 of the Rules of Procedure of the Assembly, namely through the responsible Committee that examines the annual report of this body and presents the report to the Assembly with a recommendation to have this process be concluded by the vote for approval [...] The Assembly is legally entitled to appoint 4 members of the Board at the proposal of the Government, and on the other hand, paragraph 6.6 of the same Article has also determined the cases when a Board member can be removed from the authority that appointed him/her*”.
64. At the end of this reply, it is added that “*The Committee conducted the procedures by implementing the applicable legislation and the Rules of Procedure of the Assembly of Kosovo*”.

Relevant constitutional and legal provisions

Constitution of Kosovo

Article 4

[Form of Government and Separation of Power]

1. *Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.*
2. *The Assembly of the Republic of Kosovo exercises the legislative power.*
3. *The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.*
4. *The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control.*
5. *The judicial power is unique and independent and is exercised by courts.*
6. *The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution.*
7. *The Republic of Kosovo has institutions for the protection of the constitutional order and territorial integrity, public order and safety, which operate under the constitutional authority of the democratic institutions of the Republic of Kosovo.*

Article

7 [Values]

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

2. *The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.*

Article 31
[Right to Fair and Impartial Trial]

1. *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

3. *Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*

4. *Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*

5. *Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.*

6. *Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.*

7. *Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.*

Article 32
[Right to Legal Remedies]

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.

Article 54
[Judicial Protection of Rights]

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

Article 65
[Competencies of the Assembly]

The Assembly of the Republic of Kosovo:

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

[...]

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

Article 142 **[Independent Agencies]**

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

Law No. 04/L -063 on Kosovo Railways

Article 38

Functioning of the Railway Regulatory Authority

- 1. RRA is an independent body that regulates and supervises the railway sector in compliance with the legislation in force in Kosovo and with the EU legislation in force, suitable for Kosovo in this sector.*
- 2. RRA Board approves all sub-legal acts of the departments which are under its authority.*
- 3. RRA, through secondary legislation defines the modalities of management, supervision and control or department's auditing that are under its authority.*
- 4. RRA, reports to the Assembly annually on field activity of the departments which are within the facility.*
- 5. RRA, based on its competencies participates and represents the railway sector of Kosovo in organizations and before competent bodies within and outside the state.*
- 6. RRA's activity, shall be supervised by a supervisory board (Board) which is non-executive board.*
 - 6.1. Assembly shall appoint four (4) members, one of whom is appointed Chairman of the Board, who are proposed by the Government based on the recommendation of the Ministry;*
 - 6.2. RRA board, is composed of five (5) members and one of them is elected as a chairperson, and the fifth member of the board is the General Director of RRA;*
 - 6.3. the Board member must have:*

6.3.1. university degree, in legal, economic, engineering field or specialized knowledge in the transport sector;

6.3.2. at least three (3) years appropriate experience in the transport sector;

6.4. no person may be appointed member of the Board if he is:

6.4.1. actively involved in political parties or

6.4.2. employee, contractor, shareholder, partner, owner, manager, board member, administrator in bankruptcy or a member of a liquidation of any person who has submitted application or whose license has been issued, the security certificate or permit; or is sentenced for criminal offence with six (6) or more months imprisonment;

6.5. all Board members shall be citizens of Kosovo;

6.6. each Board member is appointed for a term of five years (5), and can be reappointed for another one (1) mandate;

6.7. a board member may be removed from the Board of the authority that appointed him, if:

6.7.1. according to the opinion of the authority that appointed him, he failed to exercise skill and has shown commitment expected of a person appointed to the Board;

6.7.2. has, without reason, not attended meetings and participated actively in the activities of the Board for more than three (3) months;

6.7.3. is unable to perform his responsibilities due to physical or mental disability;

6.7.4. has been sentenced to six (6) months or more imprisonment;

6.7.5. has engaged in misconduct (whether in the performance of his duties or not), which, in the opinion of the authority that appointed him, could compromise his ability to perform tasks or may adversely affect the reputation of the Board.

6.8. The Assembly may remove one or more Board members if they failed to meet the issues raised which have responsibility under this law;

6.9. A Board member may resign from the Board by written notice to the Assembly and the Board not less than one (1) month before, excluding extraordinary cases.

[...]

Article 39

Statutes and tasks of the Railway Regulatory Authority

1. RRA structure, shall be approved by the Board and includes: management, departments and professional staff. Each department has defined functions to respond to the needs for mobility of the society and the needs for transport and of the economy, as regulated in this law and with necessary sub-legal acts issued by them and by the management of RRA. Departments within RRA are the following ones:

1.1. Department in charge of licensing,

1.2. Department in charge of railway safety,

1.3. Department in charge of railway interoperability,

1.4. Department in charge of railway market regulation.

2. Apart departments established under this section may be created other departments according to need and with the approval of the Board of RRA and in accordance with the present law.

3. Departments shall report to the management of the RRA, which acts under the supervision of the board of RRA.

[...]

11. RRA is a budget organization under the Law on Public Financial Management and Accountability.

12. The general director and financial officer of the Authority shall submit to the Board documents prepared in accordance with the Law on Public Financial management and accountability for the approval prior to issuance.

13. Respective Ministry of Finance will ensure that funding be provided to RRA in accordance with the budget proposal approved in accordance with the budget process.

14. RRA is subject to audits conducted in accordance with the Law in force.

15. Assembly may at any time request additional audits to be implemented in RRA, whose goal will be determined by the Assembly for each case separately.

[...].

Assessment of the admissibility of the Referral

65. The Court initially examines whether the Referral has fulfilled the admissibility requirements established in the Constitution and further specified in the Law and the Rules of Procedure.

66. Initially, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

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

67. In addition, the Court also refers to paragraph 5 of Article 113 of the Constitution, which defines:

“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”.

68. The Court recalls that the Applicants dispute the constitutionality of the challenged Decision regarding its content and the procedure followed.
69. In this case, the Court initially recalls that the Referral was submitted by 10 (ten) deputies of the Assembly, which is the minimum threshold required by Article 113, paragraph 5 of the Constitution.
70. Then, the Court after realizing that Mr. Nura (one of the deputies submitting the Referral and the representative of the Applicants) is no longer a member of the Assembly, asked the Applicants to clarify whether *“Mr. Nura will be replaced by another deputy, as your representative and one of the applicants in the proceedings before the Constitutional Court of the Republic of Kosovo”*. On 25 February 2022, the Applicants notified the Court that the deputy, Ms. Ganimete Musliu, will be their authorized representative before the Court, and that the replacing deputy for Mr. Nura, namely Mr. Isak Shabani, should be considered the applicant deputy, and submitted the power of attorney thereof.
71. At this point, the Court recalls that the Referral was submitted at the time Mr. Nura was a deputy of the Assembly, and then he was replaced by Mr. Isak Shabani, who replaces Mr. Nura before the Court as an applicant deputy. However, the Court considers that in the present case, the Referral is not related to a public function exercised on behalf of a deputy, but is related to the number of deputies as an authorized party according to paragraph 5 of Article 113 of the Constitution at the time of submission of the Referral.
72. The Court assesses that 10 (ten) or more deputies of the Assembly are legitimized as an “authorized party” pursuant to Article 113.5 of the Constitution to challenge the constitutionality of any law or act adopted by the Assembly, both in terms of content and procedure followed. In the present case, the 10 (ten) members of the Assembly are legitimized for being an authorized party, and consequently, based on Article 113.5 of the Constitution, they are entitled to challenge the constitutionality of the Decision [No. 08-V-040] of 21 July 2021.
73. The Court further assesses whether the Referral was submitted within *“8 (eight) days from the date of adoption”*, as defined in paragraph 5 of Article 113 of the Constitution. In this regard, the Court notes that the challenged Judgment was approved on 21 July 2021, while the Referral was submitted to the Court on 29 July 2021. In this case, the Court finds that the Referral was submitted within the deadline.
74. In addition, the Court also takes into account Article 42 [Accuracy of the Referral] and 43 [Deadline] of the Law governing the submission of the Referral based on Article 113.5 of the Constitution, which requires the following information to be submitted:

Article 42
[Accuracy of the Referral]

“1. In a referral made pursuant to Article 113, paragraph 6 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 [Deadline]

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.

75. 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 Procedures, which provides:

Rule 74

[Referral pursuant to Article 113. 5 of the Constitution and Articles 42 and 43 of the Law]

“[...]”

(1) 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.

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”.

76. The Court notes that the Applicants: (i) put their names and signatures on the Referral; (ii) specified the contested Act of the Assembly [No. 08-V-040] of 21 July 2021 on the dismissal of the members of the RRA Board and submitted its copy; (iii) referred to specific constitutional provisions, whereby they claim that the challenged Act is not in compliance; (iv) submitted evidence and testimony to support their allegations; as well as submitted the Referral within the period of eight (8) days, as determined by Article 113.5 of the Constitution.
77. Consequently, The Court finds the Referral admissible and will further examine its merits.

Merits of the Referral

78. The Court initially recalls the essence of the case which, based on the case files, results that: i) the Assembly Committee, by the Recommendation [No. 08/383/Do-2499] recommended to the Assembly to dismiss all members of the RRA Board. In justification of the aforementioned Recommendation, 13 points are listed in paragraph 28 of this document that are considered by the Assembly Committee as a “*failure*” in the performance of the RRA Board, and ii) on 21 July 2021, in the plenary session of the

Assembly, voting was conducted regarding the Recommendation [No. 08/383/Do-2499] of the Assembly Committee for the dismissal of all members of the RRA Board by voting separately for each member.

79. Furthermore, the Court recalls that the Applicants allege that the challenged Decision, both in substantial and procedural terms, is in violation of Article 4 [Form of Government and Separation of Power], Article 7 [Values], Article 65 [Competences of the Assembly], and Article 142 [Independent Agencies] of the Constitution as well as the Applicants' allegations that the rights of the dismissed members of the RRA Board under Chapter II of Constitution have been violated by the challenged Decision, namely Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution.
80. The Court, based on the arguments of the Applicants, notes that the essence of the allegations is related to the way the Assembly has exercised its supervisory competency defined in paragraph 9 of Article 65 of the Constitution in relation to RRA thereby resulting in the challenged Decision on the dismissal of the members of the latter.
81. Taking into account the Applicants' allegations and the circumstances related to this Referral, the Court will further elaborate on the allegations for violation of paragraph 9 of Article 65 [Competences of the Assembly] of the Constitution to proceed then with the other Applicants' allegations.

Regarding the alleged violation of paragraph 9 of Article 65 of the Constitution

82. The Court recalls that the Applicants in this allegation essentially argue that the challenged Decision was issued in violation of paragraph 9 of Article 65 of the Constitution, because:
 - a) The Assembly has exercised its competency provided for in paragraph 9 of Article 65 of the Constitution arbitrarily and inconsistently, due to the fact that the challenged Decision does not in any of its elements justify the dismissal of the members of the RRA Board and does not indicate how these members of the RRA Board have failed to exercise the duties defined by the Law on Kosovo Railways, namely Article 38 of this Law;
 - b) The reasons given in the challenged Decision, based on the Law on Railways, do not fall within the competency of the RRA Board and they add that "*The dismissal of the members of these institutions cannot be a prerogative of oversight: it constitutes an executive action that contradicts the constitutional physiognomy of the Assembly as a representative and legislative body;*
 - c) The challenged Decision is also unconstitutional in terms of the procedure followed for its adoption.
83. Consequently, the Court will further examine (i) whether the Assembly, in the case of the dismissal of the members of the RRA Board has exercised its competency within the framework of the supervisory function defined by the Constitution; and (ii) whether the Assembly has dismissed the members of the RRA Board arbitrarily and whether the Assembly has followed the foreseen procedure when dismissing the members of the RRA Board.
 - (i) **Regarding the Applicants' allegations that the dismissal of the members of the RRA Board cannot be a prerogative of oversight**

84. The Court recalls that paragraph 9 of Article 65 of the Constitution defines the competency of the Assembly to oversee the work of the Government and other public institutions, which, based on the Constitution and laws, report to the Assembly.
85. Based on the language of the constitutional norm, the authorization and responsibility of the Assembly in the exercise of constitutional powers, including the oversight of the work of public institutions, which, based on the Constitution and laws, report to the Assembly, is clear and indisputable.
86. The Court also refers to the opinions of the Venice Commission regarding the overseeing role of the Assembly, and especially the work of the parliamentary committees. In Opinion No. 845/2016, the Venice Commission emphasized that the standing committees must exercise efficient control within their scope of competency, control which should not be limited to the reviewing reports presented by state bodies and officials, but should also include more active control of actions of the executive and independent agencies. (See Opinion No. 845/2016 of the Venice Commission entitled “Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy”, CDL-AD (2019) 015 of 24 June 2019, paragraph 92).
87. Court notices that one of the forms of parliamentary oversight is the one exercised through standing committees, functional committees and *ad hoc* committees, which are established based on Article 77, paragraph 1 of the Constitution.
88. In this regard, as provided for by Article 77, paragraph 4 of the Constitution, materialized under Articles 62 and 67 of the Rules of Procedures of the Assembly, namely paragraph 1 of Article 62 defines that “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”, while Article 67 stipulates that “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”.
89. In light of the foregoing, the Court notes that in the present case, paragraph 6 of Article 38 of the Law on Railways stipulates that *the “Assembly may remove one or more Board members if they failed to meet the issues raised which have the responsibility under this law”*.
90. Also, based on the Law on Railways, specifically in Article 38, it is provided that the RRA reports to the Assembly at least once a year. Article 38 of the Law on Railways also provides for the RRA's obligation to report to the Assembly about its activity according to specific requirements and at least on an annual basis, namely about the activity of all organizational structures that operate within it.
91. Therefore, it results that the Assembly, through specific requests, annual reports, as well as through the appointment and dismissal of the members of the RRA Board, exercises the oversight function over RRA, based on the applicable law.
92. The Court notes that in the present case, the initiative for the dismissal of the members of the RRA Board came to the Assembly from the Assembly Committee, which recommended to the Assembly the dismissal of the members of the RRA Board, giving the respective grounds in support of the given reasoning. Further, the Assembly, based on paragraph 9 of Article 65 of the Constitution, Article 38 of the Law on Railways and

Article 67 of the Rules of Procedure of the Assembly, following the voting process separately for each member of the RRA Board, adopted the decision challenged by Applicants before the Court.

93. Recommendation [No. 08/383/Do-2499] of the Assembly Committee was voted on in the plenary session of the Assembly held on 21 July 2021 and it turns out to be as follows: 62 votes “for” the dismissal of the RRA Board, no votes “against” and no abstentions.
94. In light of the foregoing, the Court assesses that the Assembly, based on paragraph 9 of Article 65 of the Constitution, exercised its competency for the supervision of public institutions, which, based on the Constitution or laws, report to the Assembly. As mentioned above, Article 38 of the Law on Railways provides that the Assembly may remove one or more Board members if they failed to meet the issues raised which have responsibility under this law.
95. The formulation of the legal norm whereby the right of the Assembly as an appointing and oversight authority to dismiss the member or members of the RRA Board allows the Assembly a wide margin of evaluation.
96. Consequently, the Court assesses that in the case of the dismissal of the members of the RRA Board, the Assembly acted in an oversight role, as defined in paragraph 9 of Article 65 of the Constitution and Article 38 of the Law on Railways.

Whether the Assembly dismissed the members of the RRA Board arbitrarily and whether the appropriate procedure was not followed for issuing the challenged Decision

97. The Court recalls the Applicants’ allegation that *“The Assembly has exercised its competency provided for in paragraph 9 of Article 65 of the Constitution arbitrarily and inconsistently, due to the fact that the challenged Decision does not in any of its elements justify the dismissal of the members of the RRA Board and does not indicate how these members of the RRA Board have failed to exercise the activities defined by the Law on Kosovo Railways, respectively Article 38 of this Law”*;
98. The Court notes that the Assembly Committee issued a recommendation containing the findings on the problems in the railway system and issues of institutional responsibility of RRA, on the basis of which resulted the proposal to dismiss the members of the RRA Board. The Court recalls the relevant parts of this recommendation:
[...]
The existence of 268 illegal railroad crossings, which continue to pose a threat to citizens’ lives, is concerning. Only during the period 2016-2020, 48 people were injured, while 11 people died.
The lack of placing warning signs in relevant and high-risk places is concerning [...]
The Railway Regulatory Authority neglected cooperation at the municipal level with the security authorities.
The Railway Regulatory Authority violated the regulations on the operation of licensed operators in the rehabilitation of railways. The rehabilitation of the railway in Han i Elezit was done by an unlicensed Italian operator.
The Railway Regulatory Authority failed to regulate the recognition of licenses, train drivers, and locomotives of local operators with those from the regional countries.
The Railway Regulatory Authority failed to control the illegal traffic of trains from Serbia under the direction of the Mitrovica station.
We have a decrease in the number of passengers in rail transport on an annual basis. During the time period 2007-2020, we had a decrease in the number of passengers

from 417,000 to 58,819 passengers. We have no real analysis of why we have such a decline.

The Railway Regulatory Authority failed to work on the modernization of rail transport [...]

We have no regular report of the Board's activities [...]

The composition of the Railway Regulatory Authority Board is unprofessional.

The National Audit Office in its annual audit reports for the Railway Regulatory Authority, required a comprehensive review of the asset register and urged concrete actions for reassessment.

The Railway Regulatory Authority Board failed to respond to the inquiry into the increase in expenses under the category of wages and salaries. [...]

The Railway Regulatory Authority failed to explain the correlation of travel and training costs with the list of training sessions and visits abroad; [...]

99. Therefore, in light of the foregoing, the allegation that the challenged Decision of the Assembly does not contain justification for the dismissal of the members of the RRA Board does not in itself constitute an arguable allegation of violations of the substantive aspects of paragraph 9 of Article 65 of the Constitution, since the reasons of dismissal were made known by the findings of the Assembly Committee.
100. The Court brings to attention once again the Applicants' allegation that the challenged Decision is unconstitutional also regarding the procedure followed for its approval by the Assembly. The Applicants point out that since the Assembly dismissed the members of the RRA Board by individual vote, each member had to be issued a separate decision with the grounds for dismissal in accordance with paragraph 6 (7) of Article 38 of the Law on Railways.
101. In examining this allegation of Applicants, the Court recalls that following the procedure conducted in the Assembly Committee, and then in the Assembly, a plenary session was held on 21 July 2021, wherein the voting of the Recommendation of the Assembly Committee regarding the RRA Board was included as an item of the agenda. The Assembly, after presenting the Commission's recommendation and after examining it in the plenary session of the Assembly, adopted the challenged Decision. The challenged Decision was voted through a separate vote for each member, the voting outcome was the same for all members of the RRA Board, and it turns out to be as follows: 62 votes "for" dismissal, no votes "against" and no "abstentions".
102. The Court notes that the Assembly, upon adopting the challenged Decision, voted individually for each member of the RRA Board according to its authorizations based on paragraph 6.8 of Article 38 of the Law on Railways.
103. In this context, it is clear that the recommendation of the Assembly Committee makes the Board responsible as a collegial body and does not refer to any individual member or a certain number of members. The Court reiterates that the wording of the text of the norm, namely paragraph 6.7 of Article 38 of the Law on Railways neither limits or excludes the dismissal of any of the members of the Board, i.e. on an individual basis, nor all the members of the Board as a collegial body.
104. Furthermore, the Court notes that the act of appointing the Board by the Assembly Decision [No. 05-V-371] of 21 July 2021 was delivered to the appointees in the same form - a joint decision for all members and not individually for each of them.

105. Therefore, in the Court's assessment, the procedure followed for the approval of the challenged Act is not incompatible with the requirements of Article 65. 9 of the Constitution.

Regarding the alleged violation of Article 142 [Independent Agencies] of the Constitution

106. The Court recalls that regarding the alleged violation of Article 142 [Independent Agencies] of the Constitution, the Applicants basically claim that:

- a) based on the Law on Railways, RRA is an independent body, and it therefore falls within the group of institutions provided for in Chapter XII of the Constitution and falls within the scope of Article 142 of the Constitution "*governing the independent agencies*"; and
- b) through the challenged Decision, the Assembly failed to comply with the independence of RRA, as an independent agency and institution and arbitrarily, by dismissing all members of the RRA Board, as the main RRA body, blocking its work and operation. In this way, the Applicants allege that the organizational and functional independence of the RRA has been violated.

107. The Court initially emphasizes that the Constitution has listed the independent institutions regulating their role and status under its Chapter XII. Likewise, the Constitution has provided under Article 142 the possibility for the Assembly to establish independent agencies by law.

108. In this regard, the Court refers to the independent institutions according to Chapter XII [Independent Institutions] of the Constitution, specifically Articles 132-135 [Role and Competencies of the Ombudsperson]; 136-138 [Auditor General of Kosovo]; 139 [Central Election Commission]; 140 [Central Bank of Kosovo]; and 141 [Independent Media Commission].

109. The Court also notes that in Chapter XII, namely Article 142 of the Constitution has authorized the Assembly to establish independent agencies by relevant law, which will function based on such a law. Therefore, Article 142 of the Constitution stipulates that:

"Independent agencies of the Republic of Kosovo are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies. Independent agencies exercise their functions independently from any other body or authority in the Republic of Kosovo".

110. The Court notes that the Constitution, in terms of status, distinguishes between the institutions established by the Constitution, namely those defined in Chapter XII of the Constitution, and independent agencies established based on Article 142 of the Constitution. In relation to the former, the role and constitutional power are expressly regulated by constitutional provisions, while in relation to the latter, their role and powers are defined by law (see Court case, [KO171/18](#), Applicant *Ombudsperson Institution*, Judgment of 25 April 2019, paragraph 157).

111. In light of the elaboration above, it results that Article 142 of the Constitution does not authorize the Assembly of Kosovo to establish other independent constitutional institutions with the same status as the independent institutions or agencies defined in Chapter XII of the Constitution. Furthermore, the Court recalls that both the Applicants and the relevant Assembly Committee have not provided relevant and concrete clarifications as to whether or not RRA falls within the scope of Article 142 of the

Constitution. Consequently, in assessing this specific allegation, the Court will be limited to the oversight role of the Assembly defined by paragraph 9 of Article 65 of the Constitution, which stipulates 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*”.

112. The Court assesses that the Assembly, when dismissing the members of the RRA Board, acted in line with its oversight role, as defined in paragraph 9 of Article 65 of the Constitution and Article 38 of the Law for Railways, and the Applicants’ allegation for violation of Article 142 [Independent Agencies] of the Constitution is therefore unfounded.

Regarding the alleged violation of Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution

113. The Applicants essentially allege that the challenged decision violates the right of the dismissed members of the RRA Board guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, because according to the Applicants, the Assembly did not give the dismissed members of the RRA Board the opportunity to be heard about the reasons for their dismissal, and the challenged Decision is not sufficiently reasoned.
114. Furthermore, the Applicants emphasize that the challenged Decision violates the right of the dismissed members of the RRA Board guaranteed by Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution, emphasizing that “*Kosovo’s legal order does not provide an effective legal instrument for the dismissed members of the RRA Board to have their rights protected*”.
115. In this regard, the Court notes that regarding the allegation to the lack of reasoning of the challenged Decision guaranteed by Article 31 of the Constitution, it has addressed this allegation when addressing the Applicants’ allegations in relation to the oversight function of the Assembly defined by paragraph 9 of Article 65 of the Constitution. Therefore, it does not consider it necessary to address the same allegation separately in relation to Article 31 of the Constitution.
116. Regarding the Applicants’ allegation for lack of legal remedies for the dismissed RRA members guaranteed by Articles 32 and 54 of the Constitution, the Court based on the constitutional norms, in its case law, and referring to the principles defined by the ECtHR, recalls that our legislation does not expressly provide for the exclusion of this category of individuals exercising public functions from seeking judicial protection of their rights before regular courts. Moreover, their right to effective access to justice stems from the Constitution, even if such a thing is not expressly determined by law. (See analogously the ECtHR case [Vilho Eskelinen and others v. Finland](#), no. 63235/00, Judgment of 19 April 2007, paragraph 62, and the Court case [KI214/21](#), with Applicant Avni Kastrati, Judgment of 7 December 2022, paragraph 125).
117. The Court also recalls that Law No. 03/L-202 on Administrative Conflicts (hereinafter: LAC) provides effective legal remedies for solving cases of this category of public officials. In this regard, the Court initially emphasizes that the very purpose of the LAC as a law, as defined in Article 2 [Aim] is to ensure the judicial protection of the rights and interests of natural and legal persons and other parties, whose rights and interests are violated by: (i) individual acts; or (ii) actions of public administration bodies. Further, Article 3, paragraph 1.1 of LAC stipulates that public administration bodies are central administration bodies, while paragraph 1.2 of the same defines as an administrative act any decision of the administrative body issued in an administrative

procedure in the exercise of public authorizations and which directly or indirectly infringes the rights, freedoms or interests of legally recognized natural and legal persons. In addition to the provision defining the purpose of the law, more specifically Article 10 of LAC, inter alia, provides for the possibility of initiating an administrative conflict against acts for which a natural or legal person considers that a right or legal interest has been violated. (See KI214/21, cited above, paragraphs 115 and 116).

118. The Court therefore considers the Applicants' allegation that the members of the RRA Board are not provided with effective instruments to realize their civil rights, does not hold because no constitutional and legal provision denies the members of the RRA Board the right to seek legal protection of their rights in a regular court procedure, as defined by Article 54 of the Constitution.
119. Thus, the Court in relation to the allegations of violation of the individual rights of the members of the RRA Board guaranteed by Articles 32 and 54 of the Constitution, finds that the Applicants have proved that the legislation in force exempts this category of public officials from the obligation to seek legal protection before the regular courts.

Regarding the alleged violation of Article 4 [Form of Government and Separation of Power] and Article 7 [Values] of the Constitution

120. The Court, as it has emphasized in its case law, recalls that Article 4 of the Constitution regulates the form of government and the separation of powers, defining under paragraph 2 of Article 4 that the Assembly is a representative body of the people and also the highest state body exercising legislative power; the President of the Republic of Kosovo, according to paragraph 3 of Article 4 of the Constitution represents the unity of the people and is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions; whereas, the Government of the Republic of Kosovo, according to paragraph 4 of Article 4 of the Constitution, is responsible for the implementation of laws and state policies and the same is subject to parliamentary control by the Assembly. Therefore, the principle of the separation of powers is a fundamental democratic value based on which the constitutional order of the Republic of Kosovo is built and functions (See Court's case [KO 43/19](#), *Albulena Haxhiu, Driton Selmanaj and thirty other deputies of the Assembly of the Republic of Kosovo*, Judgment of 13 June 2019).
121. The Court also recalls relevant parts of the general principles regarding the separation of powers where through its case law it emphasized that the principle of legal certainty and that of predictability are inherent features of a law and an integral part of the constitutional principle of the rule of law. Legal certainty is one of the main pillars of the rule of law and requires, among other things, that the rules be clear and precise, and aim to ensure that legal situations and relationships remain predictable. Predictability first of all requires that the legal norm be formulated with sufficient precision and clarity, so as to enable individuals and legal entities to regulate their behavior in accordance with it. Individuals and other legal entities need to know exactly how and to what extent they are affected by a particular legal norm and how a new legal norm changes their previous status or status provided by another legal norm. Public authorities, when drafting laws, should take into account these basic principles of the rule of law - as important parts of the constitutional system of the Republic of Kosovo (see Court's case [KO219/19](#), *Applicant Ombudsperson*, Judgment of 30 June 2020).
122. Based on the elaboration above as well as referring to the Applicants' allegations, the Court notes that the Applicants in the present case do not substantiate their allegations that in the concrete case we are dealing with circumstances, which would implicate matters pertaining to the scope of Articles 4 and 7 of the Constitution.

Request for interim measures

123. Regarding their request to impose an interim measure, the Applicants based their allegation on Article 27 of the Law, arguing in the prevention of irreparable risks or damages, and that imposing this interim measure is in the public interest
124. However, the Court recalls that the Applicants' allegations regarding the admissibility of the Referral, in the part that refers to the constitutional rights of the members of the RRA Board under Chapter II of the Constitution, were declared inadmissible, and that the Applicants' allegation regarding the alleged noncompliance with paragraph 9 of Article 65 and Article 142 of the Constitution did not result in a violation of the relevant articles. Having said this, the Court does not find it necessary to deal separately with the Applicants' allegations for imposing the temporary measure.
125. Consequently, the request for imposing an interim measure is rejected in compliance with Article 57 of the Rules of Procedure.

FOR THESE REASONS

The Court pursuant to Articles 113. 5 and 116.2 of the Constitution, Articles 20, 27, 42 and 43 of the Law and based on Rules 57 (1), 59 (1) and 74 of the Rules of Procedure, on 5 April 2023,

DECIDES

- I. TO DECLARE unanimously the Referral admissible;
- II. TO HOLD unanimously that Assembly Decision No. 08-V-036 is not incompatible with Article 65.9 [Competencies of the Assembly] of the Constitution;
- III. TO REJECT the request for imposing the interim measure.
- IV. TO NOTIFY this Judgment to the parties;
- V. TO HOLD that this Judgment is effective on the date of its publication in the Official Gazette in accordance with Article 20 (5) of the Law.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.