THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Newsletter

January — June 2023

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.

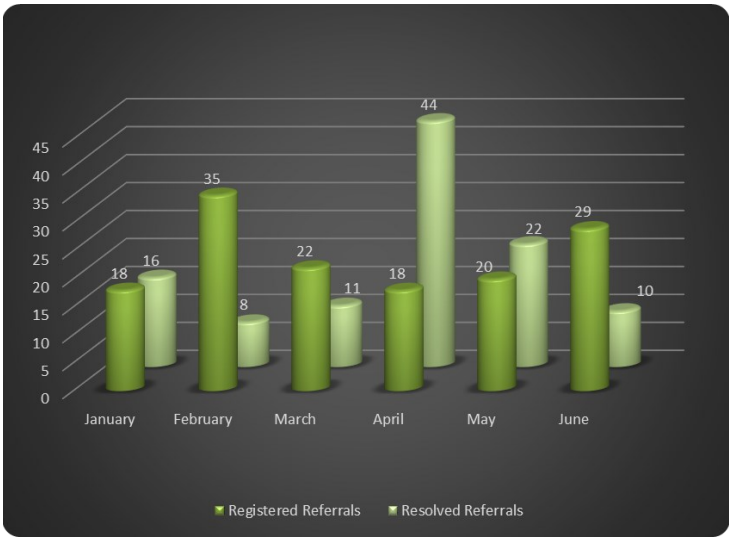
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

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

Status of cases

During the six-month period: 1 January – 30 June 2023, the Court has received 142 Referrals and has processed a total of 323 Referrals/Cases.
A total of 111 Referrals were decided or 34.37% of all available cases. During this period, 120 decisions were published on the Court's webpage.

The dynamics of received referrals by month (1 January - 30 June 2023)



The following are 17 judgments that the Court rendered during the six month period, 1 January - 30 June 2023:

- Judgment in Case KI 214/21, submitted by: Avni Kastrati. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [ARJ. No. 84/2021] of 22 September 2021.
- Judgment in Case KO 190/19, submitted by: The Supreme Court of the Republic of Kosovo. The filed referral requested the constitutional review of Article 8, paragraph 2 of the Law no. 04/L-131 on Pension Schemes Financed by the State in conjunction with Article 5 and 6 of the Administrative Instruction (MLSW) No. 09/2015 on Categorization of Beneficiaries of Contribute Paying Pensions according to Qualification Structure and Duration of Payment of Contributions.
- Judgment in Case KI 143/22, submitted by: Hidroenergji 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. 51/2022] of 19 July 2022.
- Judgment in Case KI 06/21, submitted by: Dragan Mihajlović. The filed referral requested the constitutional review of proceedings before the Court of Appeals of the Republic of Kosovo regarding the case [Ac. no. 3930/2016].
- Judgment in Case KI 36/22, submitted by: "Matkos Group" L.L.C. The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [ARJ. nr. 116/2021] of 28 October 2021.
- Judgment in Case KI 185/21, submitted by: "CO COLINA" L.L.C. The filed referral requested the constitutional review of the Law no. 06/L-155 on the Prohibition of Games of Change and Judgment of the Supreme Court of the Republic of Kosovo [ARJ. UZVP. no. 83/2021] of 7 September 2021.
- Judgment in Case KI 129/21, submitted by: Velerda Sopi. The filed referral requested the constitutional review of "actions and inactions" of the Basic Court in Gjilan, the Basic Prosecutor's Office in Gjilan, the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina.
- Judgment in Case KI 108/22, submitted by: "Metalinvest" J.S.C. The filed referral requested the constitutional review of the Judgment [AC–I–19–0213] of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on the Privatization Agency of Kosovo Related Matters, of 16 January 2022.
- Judgment in Case KO 100/22, submitted by: Abelard Tahiri and ten (10) other deputies of the Assembly of the Republic of Kosovo and in Case KO 101/22, submitted by: Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of the Law no. 08/L-136 on Amending and Supplementing the Law no.06/L-056 on the Kosovo Prosecutorial Council.
- Judgment in Case KI 14/22, submitted by: Shpresa Gërvalla. The filed referral requested the constitutional review of the Judgment of the Supreme Court of Kosovo of the Republic of Kosovo [Rev. no. 409/2020] of 28 September 2021.
- Judgment in Case KI 67/22, submitted by: Zeqirja Prebreza. The filed referral requested the constitutional review of the Judgment of the Court of Appeals of the Republic of Kosovo [CA. No. 1343/2021] of 29 December 2021.

- Judgment in Case KI 41/22, submitted by: Shkumbin Qehaja. The filed referral requested the constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo [AC-I-21-0867-A001] of 10 March 2022.
- Judgment in Case KI 85/22, submitted by: Jadran Kostić. The filed referral requested the constitutional review of Decision [2022:19820] of the Basic Court in Ferizaj of 17 May 2022 and Decision [PN1 no. 704/2022] of the Court of Appeals of the Republic of Kosovo of 31 May 2022.
- Judgment in Case KI 69/21, submitted by: Partia Rome e Bashkuar e Kosovës (PREBK) and Partia Liberale Egjiptiane (PLE). The filed referral requested the constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [AA.no.29/2021] of 12 March 2021.
- Judgment in Case KO 139/21, submitted by: Fadil Nura and nine (9) other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the 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.
- Judgment in Case KI 212/21, submitted by: Behar Emini. The filed referral requested the constitutional review of Decision [Rev. no. 382/2021] of the Supreme Court of the Republic of Kosovo, of 22 September 2021.
- Judgment in Case KI 82/22, submitted by: Valon Loxhaj. The filed referral requested the constitutional review of Judgment [Rev. no. 103/2022] of the Supreme Court of the Republic of Kosovo, of 30 March 2022.

Types of alleged violations

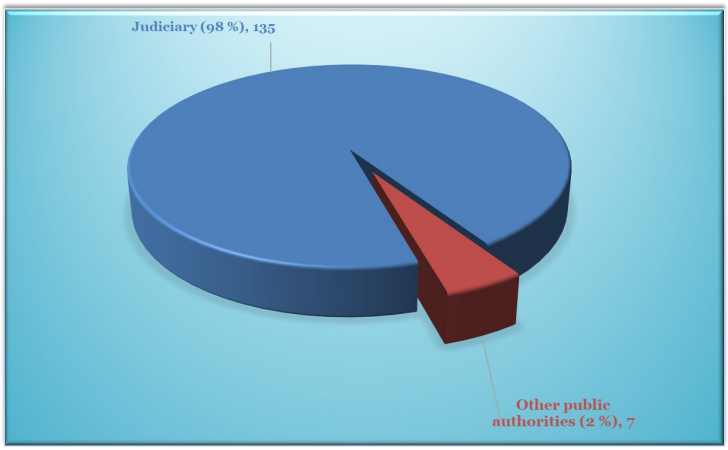
The types of alleged violations in the 142 referrals received during the six-month period, 1 January - 30 June 2023, are the following:

- Article 3 [Equality Before the Law], 12 cases or 3,5%;
- Article 7 [Values], 7 cases or 2%;
- Article 21 [General Principles], 10 cases or 2,9%;
- Article 22 [Direct Applicability of International Agreements and Instruments], 15 cases or 4,4%;
- Article 23 [Human Dignity], 8 cases or 2,3%;
- Article 24 [Equality Before the Law], 48 cases or 14%;
- Article 29 [Right to Liberty and Security], 2 cases or 0,6%;
- Article 30 [Rights of the Accused], 4 cases or 1,2%;
- Article 31 [Right to Fair and Impartial Trial], 108 cases or 31,4 %;
- Article 32 [Right to Legal Remedies], 22 cases or 6,4%;
- Article 36 [Right to Privacy], 2 cases or 0,6%;
- Article 45 [Freedom of Election and Participation], 1 case or 0,3%;
- Article 46 [Protection of Property], 33 cases or 9,6%;
- Article 49 [Right to Work and Exercise Profession], 10 cases or 2,9%;
- Article 53 [Interpretation of Human Rights Provisions], 3 cases or 0,9%;
- Article 54 [Judicial Protection of Rights], 34 cases or 9,9%;
- Article 55 [Limitations on Fundamental Rights and Freedoms], 7 cases or 2%;
- Article 102 [General Principles of the Judicial System], 9 cases or 2,6%;
- Other violations, 9 cases or 2,6%;

Alleged violators of rights

- 135 Referrals or 98% of Referrals refers to violations allegedly committed by court's decisions;
- 7 Referrals or 2% of Referrals refers to decisions of other public authorities;

Alleged violators of rights
(1 January - 30 June 2023)



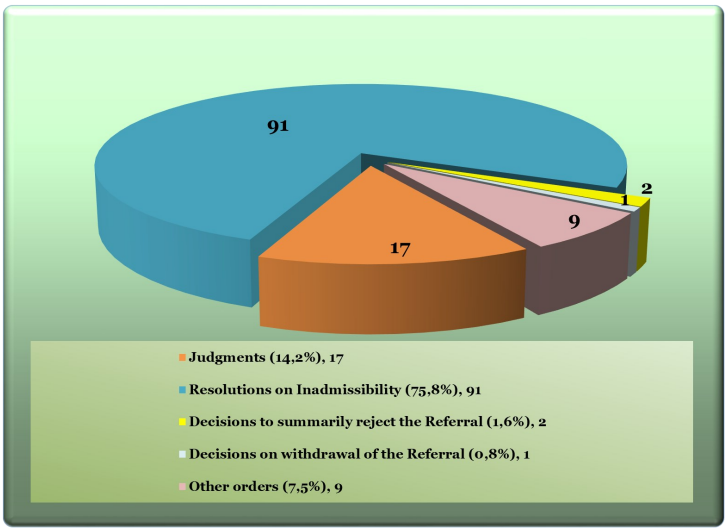
Sessions and Review Panels

During the six-month period: 1 January - 30 June 2023, the Constitutional Court held 19 plenary

sessions and 133 Review Panels, in which the cases were resolved by decisions, resolutions and judgments. During this period, the Constitutional Court has published 120 decisions. The structure of the published decisions is the following:

- 17 Judgments (14,2%);
- 91 Resolutions on Inadmissibility (75,8%);
- 2 Decisions to summarily reject the Referral (1,6%);
- 1 Decision on withdrawal of the Referral (0,8%);
- 9 Other Orders (7,5%);

Structure of decisions
(1 January - 30 June 2023)

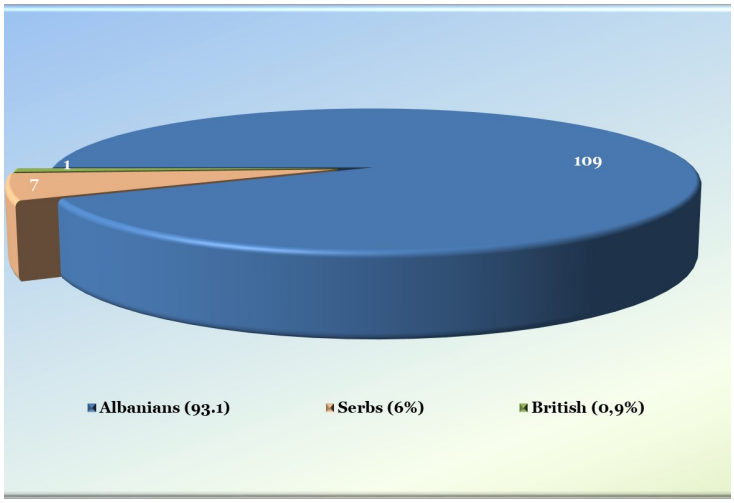


Access to the Court

The access of individuals to the Court is the following:

- 109 Referrals were filed by Albanians, or 93,1%;
- 7 Referrals were filed by Serbs, or 6%;
- 1 Referral was filed by a British citizen, or 0,9%;

Ethnic structure of the Applicants
(1 January - 30 June 2023)



13 January 2023

The President of the Constitutional Court of the Republic of Kosovo, Ms. Gresa Caka – Nimani and the Head of the Council of Europe Office in Prishtina, Mr. Frank Power, have today in a joint ceremony signed the Agreement on the Council of Europe grant for the Constitutional Court. The object of the Grant Agreement is support and financing of a number of projects for the advancement and improvement of the overall capacities of information technology services in the Constitutional Court.

Through these funds provided by the Council of Europe, the reached Agreement will enable the purchasing of advanced hardware and software systems, which will contribute to the facilitation of the process of case management, improvement of the management system of the database and advancing of the functionality of the Constitutional Court's web-page. The Agreement has been signed as part of the Council of Europe project: "*Support to the Constitutional Court in Applying and Disseminating European Human Rights Standards*", initiated in January of last year.

13 January 2023

The President of the Constitutional Court of the Republic of Kosovo of Kosovo, Mrs. Gresa Caka – Nimani and the dean of the Faculty of Law of the University of Prishtina "Hasan Prishtina", Prof. Dr. Avni Puka, signed today in a joint ceremony the Cooperation Agreement between the Constitutional Court and the Faculty of Law of the UP.

The object of the signed agreement, among other things, is the development of joint activities aiming at the deepening and exchanging knowledge in the field of the constitutional law, human rights, constitutional justice and the rule of law, as well as mutual participation in professional seminars and conferences.

Part of the activities foreseen within the Cooperation Agreement are also the periodic lectures of the judges of the Constitutional Court before the students of the Faculty of Law of the UP, the access of law students at the master's and doctoral level to the Library of the Court for academic purposes and research, as well as the engagement of the Faculty Law students as interns at the Constitutional Court.

19 January 2023

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani and Director of the Justice Project of the U.S. Agency for International Development (USAID) in Kosovo, Artan Hadri, signed today in a joint ceremony a Memorandum of Understanding between the Constitutional Court and USAID.

The object of the signed agreement, among other things, is the improvement of institutional capacities of the Constitutional Court for providing more qualitative services for citizens seeking protection of their fundamental rights guaranteed by the Constitution and ensuring easier access of the citizens to the premises of the Court.

The activities planned within the frame of the Memorandum also include USAID assistance in organizing roundtables between the Constitutional Court and representatives of the civil society and the

and the media. The Memorandum of Understanding marks the continuation of USAID's support for the Constitutional Court of Kosovo, as one of the main donors and supporters of various projects realized over the years for the advancement of the Court's professional and infrastructural capacities.

26 January 2023

The Judge of the Constitutional Court, Mrs. Remzije Istrefi-Peci, and Acting Secretary General of the Constitutional Court, Mr. Veton Dula, 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.

The history of the establishment of the Constitutional Court and the adoption of the Constitution of the Republic of Kosovo, the Court's role and responsibilities, as well the jurisdiction and authorized parties to file referrals were only some of the topics on which Judge Istrefi – Peci discussed in her presentation.

Judge Istrefi – Peci continued by informing the international students about the application of the case-law of the European Court of Human Rights and the constitutional obligation to respect the European Convention on Human Rights in the decision-making process of the Constitutional Court of Kosovo.

Following a presentation by Acting Secretary General Dula on the current structure of the Court and its first composition with international judges and legal advisers, the students expressed their interest to be informed more thoroughly on the nature of the decisions issued by the Court, the most frequent reasons for declaring the submitted referrals inadmissible and the duration of the review of cases.

6 February 2023

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 Lisbon, Portugal, on 30 January – 3 February 2023, with the support of the Council of Europe Office in Kosovo, within the project "*Support of the Constitutional Court of Kosovo in the implementation*

and dissemination of European standards of fundamental human rights and freedoms". During the three-day stay in Portugal, the delegation of the Constitutional Court and the Ambassador of Kosovo to Portugal, H.E. Ylber Kryeziu, had meetings with the Constitutional Court, the Supreme Court of Justice, the Supreme Administrative Court and representatives of the Parliament of the Portuguese Republic.

In the Constitutional Court of Portugal, the delegation of the Constitutional Court of Kosovo was welcomed by the President of the Constitutional Court of Portugal, Mr. João Pedro Barrosa Caupers and other judges, who together discussed the jurisdictions of both courts, the characteristics of the Portuguese system in the protection of fundamental human rights and freedoms, with particular focus on the limitations of fundamental rights and freedoms in times of emergencies and the jurisprudence of both courts regarding the Covid-19 pandemic.

The delegation of the Constitutional Court of Kosovo also visited the Supreme Court of Justice of Portugal, where it was welcomed by its President, Mr. Henrique Luís de Brito de Araújo and other judges, with whom they jointly discussed the functions, competencies and composition of this court. On the other hand, during the visit to the Supreme Administrative Court, the Kosovo delegation was welcomed by the President of this court, Mrs. Dulce Manuel da Conceição Neto and

and other judges, where the subject of the joint discussion was also the jurisdiction, composition and work of this institution. During the visit to the three respective courts, the delegations also agreed on mechanisms for deepening cooperation in the future.

The delegation of judges of the Constitutional Court of Kosovo also met with members of the Parliament of Portugal, where they discussed constitutional justice and its importance in advancing the principle of the rule of law, as well as the importance of deepening the cooperation between justice institutions of both countries.

13 February 2023

A group of 15 teachers of the subject "Civic Education" in the primary schools of the municipalities of Fushë-Kosova, Shtime, Viti, Prizren and Prishtina visited the Constitutional Court of the Republic of Kosovo, within the framework of the training program "Youth *Empowerment – Enhancing Human Rights and Rule of Law Education in Schools*", supported by the EULEX Mission in Kosovo and implemented by the non-governmental organization Youth Initiative for Human Rights – Kosovo (YIHR-KS).

The teachers were received at the meeting by the judge of the Constitutional Court, Mr. Nexhmi Rexhepi, who, among other things, informed them about the jurisdiction of the Constitutional Court and the parties authorized to submit referrals, about the composition of constitutional judges and the process of their election, as well as about the decision-making of the Court and the mechanisms available for monitoring their applicability.

Among the issues about which the teachers expressed their interest in being informed in more detail regarding the work and activity of the Constitutional Court, was the selection procedure of the constitutional judges, their mandate as judges and the way of voting during the handling of cases.

16 February 2023

Organized as part of the initial training program of the Academy of Justice Kosovo, an informative workshop was held today at the Constitutional Court of the Republic of Kosovo with newly appointed judges and prosecutors. The President of the Constitutional Court Mrs. Gresa Caka – Nimani, welcomed the new judges and prosecutors to the meeting. In her presentation, she initially discussed the role and jurisdiction of the Court in the legal system of the Republic of Kosovo, its organizational structure and composition, and the parties authorized to file referrals.

President Caka – Nimani then spoke in more detail about the admissibility criteria and handling of referrals, the relations of the Constitutional Court with the courts of other instances in the country, and the possibilities that regular courts have, through the incidental control mechanism, to refer to the Court for the assessment of the constitutionality of a law, which may have been challenged in a judicial procedure.

During the conversation, the newly appointed judges and prosecutors expressed their interest in being informed in more detail about cases in which the Court can review its case-law, the difference between the control of legality and constitutionality of acts, and various aspects of the procedure for referring referrals through incidental control and the prevailing criteria to decide whether the constitutionality of a law should be referred to the Constitutional Court.

31 March 2023

A delegation of the 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 at the Court of Justice of the European Union (CJEU), seated in Luxembourg, on 27-28 March 2023.

On the first of the visit, the delegation of the Constitutional Court was first received in a meeting by the Vice-President of the CJEU, Mr. Lars Bay Larsen and the First Advocate General, Mr. Maciej Szpunar, with whom President Caka-Nimani and other constitutional judges discussed on the functions and competences of this court within the frame of justice

structures of the European Union. The President informed them on the jurisdiction, competences and jurisprudence of the Constitutional Court, including the role and importance of the case-law of the CJEU in the decision making of the Constitutional Court.

The joint meeting continued with the participation of the judges of the two courts in the round table on the theme: "The Charter of the Fundamental Rights of the EU", where among keynote speakers was also the President of the Constitutional Court of Kosovo, Mrs. Gresa Caka-Nimani. During this round table, it was discussed also about the interaction between the Charter of the Fundamental Rights of the EU and the European Convention on Human Rights, as well as the interaction between the CJEU and the ECtHR regarding this area of jurisdiction.

On the second day of the visit, President Caka-Nimani was received in a meeting by the President of CJEU, Mr. Koen Lenaerts, with whom it was discussed about the possibilities of cooperation between the two courts. In addition, the delegation of the Court attended a public hearing of the Grand Chamber of the CJEU.

The visit of the delegation of the Constitutional Court of Kosovo to the Court of Justice of the European Union was concluded with joint discussions with Presidents of Chambers of the Court of Justice, judges of this court and of the General Court.

10 May 2023

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, stayed for an official visit in Tirana. The visit of President Caka-Nimani to the Albanian capital was organized by the Supreme Court of the Republic of Albania, with the invitation to participate in the international conference organized to mark the 110th anniversary of the establishment of this court, on the topic: "*Case law of the Supreme Court, from national identity to universal values*". During her stay in Tirana, President Caka-Nimani was received in separate meetings by the Vice President of the Supreme Court of the Republic of Albania, Mr. Sokol Sadushi, and by the President of of the Constitutional Court of Albania, Mrs. Holta Zacaj. The topic of joint discussion in both meetings was the further deepening of good cooperation relations with the respective courts and joint efforts to strengthen the rule of law in both countries.

19 May 2023

A group of first-year students of the Faculty of Law of the University of Prizren "Ukshin Hoti", headed by the professor of this university, Prof. Dr. Kadri Kryeziu, visited the Constitutional Court.

The students were welcomed by the President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani and the Judge of the Constitutional Court, Mr. Safet Hoxha.

After welcoming them, President Caka-Nimani informed the future lawyers of the function of the Constitutional Court in relation to other powers in the country and of the important role it has played over the years in establishing and protecting the constitutional order foundations. She further spoke about the Court's decision-making process and the constant reference made in each of its decisions to the case law of the European Court of Human Rights and the European Convention on Human Rights.

President Caka-Nimani finally urged the students to engage as much as possible in their university studies and the acquisition of professional knowledge, in order to develop and advance the country's legal structure vis-à-vis future challenges.

In his introduction to the UPZ students, Judge Safet Hoxha made a brief elaboration of the Constitutional Court structure and composition, the process of submitting referrals and their treatment until the judges' decision-making.

9 June 2023

A delegation of judges of the Constitutional Court of the Republic of Kosovo, composed of the Vice President of the Court, Mr. Bajram Ljatifi, and judges: Selvete Gërxhaliu – Krasniqi, Safet Hoxha and Radomir Laban, participated in a joint workshop with the judges of the basic courts of Gjakova, Peja and Prizren, which was organized with the support of the Council of Europe Office in the town of Gjakova.

The topic of the joint discussion between the constitutional judges and the judges of the three basic courts was, among others, the interaction of judicial and constitutional jurisdiction to guarantee the rule of law, and the proper administration of justice in the context of the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the European Convention on Human Rights.

The role of regular courts in the interpretation of the Constitution, the legal basis and the case law of the Constitutional Court in relation to "incidental control", the divergence of the case law of regular courts and the right to a reasoned court decision, as well adjudication of cases within a reasonable time, were some of the topics the constitutional judges addressed in their presentations.

The workshop held points out a continuation of professional consultative meetings between constitutional judges and regular court judges, intending to improve the administration of justice and strengthen the rule of law in the country.

30 June 2023

Judges of the Constitutional Court of the Republic of Kosovo and judges of the Constitutional Court of the Republic of Albania participated in a joint workshop organized in "Swiss Diamond Hotel" in Prishtina.

The constitutional appeal as a substantial right, the trial within a reasonable time and the constitutional review of laws were just some of the topics addressed in the presentations and discussions of the constitutional judges of both countries.

At the end of the workshop, the President of the Constitutional Court of Kosovo, Mrs. Gresa Caka – Nimani and the other constitutional judges received in a joint meeting in the Court premises a delegation of judges of the Constitutional Court of Albania, headed by the President of this Court, Ms. Holta Zaçaj.

The progress achieved so far in the area of constitutional justice of both countries, the efforts made to modernize case management electronic systems and unification of case laws, as well as the key challenges in the functioning of both courts and mutual experiences in overcoming them were the topics of the joint discussion.

Judgment

KO 190/19

Applicant

The Supreme Court of the Republic of Kosovo

Request for constitutional review of Article 8, paragraph 2 of Law no. 04/L-131 on Pension Schemes Financed by the State in conjunction with Article 5 and 6 of the Administrative Instruction (MLSW) no. 09/2015 on Categorization of Beneficiaries of Contribute Paying Pensions according to Qualification Structure and Duration of Payment of Contributions

The Constitutional Court of the Republic of Kosovo reviewed the Referral KO 190/19, submitted by the Supreme Court of the Republic of Kosovo, whereby was requested the constitutional review of Article 8, paragraph 2 of the Law no.04/L-131 on Pension Schemes Financed by the State in conjunction with Articles 5 and 6 of the Administrative Instruction (MLSW) No. 09/2015 for Categorisation of Beneficiaries of Contribute Paying Pension According to Qualification Structure and Duration of Payment of Contributions – Pension Experience.

Based on the referral submitted by the Supreme Court of the Republic of Kosovo in accordance with paragraph 8 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo, the Court assessed the constitutionality of paragraph 2 of Article 8 (Conditions and criteria for recognition of the right to age contribution-payer pension) of Law no. 04/L-131 on Pension Schemes Financed by the State in conjunction with Article 5 (Qualification of beneficiaries of contribute-paying pension) and Article 6 (Required documents for recognition of the right to contributors pensions) of Administrative Instruction (MLSW) no. 09/2015 on "Categorization of Beneficiaries of Contribute Paying Pensions According to Qualification Structure and Duration of Payment of Contributions-Pension Experience".

The Court, unanimously, decided that (i) the referral is admissible; and (ii) paragraph 2 of Article 8 of Law no. 04/L-131 on Pension Schemes Financed by the State in conjunction with sub-paragraph 2.3 of paragraph 2 of Article 6 of Administrative Instruction no. 09/2015 on "Categorization of Beneficiaries of Contribute Paying Pensions According to Qualification Structure and Duration of Payment of Contributions-Pension Experience", are not in compliance with Article 24 [Equality Before the Law] in conjunction with Article 14 (Prohibition of discrimination) and Article 1 (General prohibition of discrimination) of Protocol no. 12 of the European Convention on Human Rights.

The Court emphasizes that the referring court, based on five (5) cases pending before it and which are related to the right of the respective parties to contribution-payer pension, requested the assessment of the constitutionality of the applicable Law in conjunction with the Administrative Instruction challenged in this case, regarding the application of the criterion of fifteen (15) years work experience before 1 January 1999, in the historical and political circumstances of the '90s, during which the vast majority of employees were dismissed from the respective working places based on discriminatory laws.

In the context of the allegations of the referring court, the Court first clarifies that the subject of the constitutional review in this case, is only the relevant provision of the challenged Law in conjunction with the respective Administrative Instruction and which only relates to the contribution-payer pension category and not to the other pension categories defined by the same law, or the other special laws which constitute the entirety of the pension schemes currently applicable in the Republic of Kosovo.

Whereas, regarding the contribution-payer pension category, the Court clarifies that the latter originates from the Law on Pension and Disability Insurance no. 011-24/83 published in the Official Gazette of SAPK no. 26/83 and which the Assembly of the Republic of Kosovo incorporated into the legal order through the Law on Pension Schemes Financed by the State. The latter determines the validity of this category of pensions only for the work experience until 1 January 1999, specifying that in order to be entitled for this category of pensions, citizens must prove pension experience/contribution according to the above-mentioned law of the former SAPK. However,

the Law on Pension Schemes Financed by the State, categorizes the potential contribution-payer pension beneficiaries into two groups. The first group, stipulated by paragraph 6 of Article 8 of the challenged Law, consists of "employees of education, health and others who have worked in the system of the Republic of Kosovo", and to whom the contested Law, "recognizes the work experience on contribution-payer pension for the years 1989-1999". Whereas, the second group, stipulated by paragraph 2 of Article 8 of the challenged Law, consists of all other citizens who could qualify for the right to the contribution-payer pension, however the criteria for exercising this right, are delegated to the level of the sub-legal act, which defines the categorization of citizens/users of contribution-payer pension "according to the duration of the payment of contribution according to the qualification structure". The duration and qualification structure is established through the challenged Administrative Instruction, which, among others, establishes the criterion of fifteen (15) years of work experience/payment of contributions to the respective former pension insurance fund, as determined through the above-mentioned law of the former SAPK. However, regardless of the difference between these two categories as defined in the challenged Law and/or the duration of the payment of contributions until 1 January 1999, the financial means for this category of pensions, namely for the two groups mentioned above, are provided by the budget of the Republic of Kosovo.

Based on the aforementioned context and the allegations of the referring court, the Court emphasizes that the essence of this constitutional referral is to assess whether, contrary to Article 24 of the Constitution in conjunction with Article 14 and Article 1 of Protocol no. 12 of the European Convention on Human Rights, (i) the second group of citizens who can qualify for the right to a contribution-payer pension are discriminated against those of the first group, respectively "employees of education, health and others who have worked in the system of the Republic of Kosovo" and "the work experience on contribution-payer pension" for the years 1989-1999 of whom is recognized; and (ii) whether the application of the criterion of fifteen (15) years work experience/contribution throughout the '90s, during a time when the employment relationships of the vast majority of the employees were terminated as a result of discriminatory laws, is a reasonable and proportional criterion. For this purpose, the Court elaborated and applied the criteria stemming from the case-law of the European Court of Human Rights and that of the Court pertaining to the discrimination test, based on which, it must first be assessed if there is a "difference in treatment" between individuals/ groups and which are in similar and/or analogous situations, and if this is the case, to assess whether the relevant difference in treatment (i) is "prescribed by law"; (ii) pursues a "legitimate aim"; and (iii) is "proportional".

In this context, the Court, among others, emphasized that (i) it is not disputed that there is a "difference in treatment" between two groups/categories of citizens and who are in similar and/or analogous situations in terms of the contribution-payer pension category and that this "difference in treatment" is "prescribed by law", namely for the first group through paragraph 6 of Article 8 of the challenged Law, while for the second group through paragraph 2 of Article 8 of the challenged Law in conjunction with Article 6 of the challenged Administrative Instruction; (ii) this "difference in treatment" pursues a "legitimate aim", namely and among other, that of the financial and economic stability of the state; but that (iii) the latter is not reasonable and proportionate. This is because (i) the challenged Law distinguishes between two categories of citizens in the context of the contribution -payer pension category, determining, on the one hand, that the work experience for contribution-payer pension for the years 1989-1999 is recognized for "the employees of education, health and others who have worked in the system of the Republic of Kosovo", while on the other hand, establishing that the criteria for recognition of the corresponding contribution-payer experience must be determined through a sub-legal act for the other categories of citizens who can qualify for the right to contribution-payer pension; (ii) despite the fact that the challenged Law, in paragraph 2 of its Article 8, specifies that the criteria and conditions for being entitled to the right to a contribution-payer pension are determined according to the "duration of the payment of contribution" through a sub-legal act, the latter, namely the challenged Administrative Instruction, applies the criterion of fifteen (15) years of evidence of experience/contribution in a completely formalistic manner into the historical and political circumstances, in the context of which, fulfilling this criterion was impossible based on discriminatory laws applied to the vast majority of citizens; (iii) the entire category of citizens who do not meet the criterion of fifteen (15) years of experience/contribution, are treated the same as all others who have not made any payment of contributions for the pension period

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

before 1999; and (iv) without taking into account the contributions of the relevant citizens, including the duration of their contribution, to the respective former pension fund based on the Law of the former SAPK, the entire category of citizens who may be beneficiaries of the contribution-payer pension category, is financed by the budget of the Republic of Kosovo. In support of the conclusion pertaining to the lack of proportionality between the limitation and the aim pursued, the Court also took into account the ex officio Report with Recommendations no. 235/2018 of the Ombudsperson regarding "the category of citizens who worked before 1999 and did not benefit from the age contribution-payer pension, because they do not meet the eligibility criteria of 15 years of pension experience as a consequence of discriminatory dismissal from work".

Regarding the effects of this Judgment, the Court first emphasizes that, based on paragraph 3 of Article 116 [Legal Effect of Decisions] of the Constitution of the Republic of Kosovo, the repeal of the relevant law or provision is effective on the day of the publication of the Court's decision, unless otherwise decided by the Court. The latter, in accordance with the principles stemming from the relevant Opinions of the Venice Commission, allows the Court the necessary flexibility to determine the temporal effects of its Judgments. However, taking into account the specific circumstances of the present case and the potentially unpredictable consequences of the immediate repeal of the unconstitutional provisions and the subsequent legal gap thereto, and with the aim of striking a balance between fundamental rights and freedoms and the principle of legal certainty, the Court referred to the relevant Opinions of Venice Commission and also requested the opinions of the Constitutional Courts members of the Forum of the Venice Commission.

The common denominator of the respective answers received, in principle, reflects that (i) Constitutional Courts have a certain flexibility regarding the determination of the temporal effects of a Judgment; (ii) in principle, the relevant laws/provisions which have been found as contrary to the Constitution, must be repealed immediately and eliminated from the relevant legal system; but that, (iii) in specific circumstances, and to avoid potential consequences as a result of the immediate repeal of the challenged law/ provision, it is sometimes necessary to postpone the implementation/entry into force of a Judgment of the Constitutional Court, leaving the possibility for other branches of government, namely the executive and legislative, to take the necessary measures to amend the provision declared unconstitutional in accordance with the Constitution and the relevant Judgment of the Constitutional Court; and finally, (iv) in principle, the retroactive effects of the relevant Judgments should be avoided, with an emphasis on the final court decisions, in favor of the principle of legal certainty.

Based on these principles and clarifications elaborated in the Judgment to be published, the Court assessed that in the circumstances of the present case, legal certainty is more effectively protected by deciding to repeal the provisions assessed as contrary to the Constitution after a period of six (6) months, namely by 15 July 2023, so that (i) a legal gap, which can, among others, negatively affect citizens who can benefit from the relevant provisions of the challenged Law in conjunction with the challenged Administrative Instruction, is avoided; and (ii) to provide a reasonable period of time to the Assembly and the Government of the Republic of Kosovo, respectively, to take the necessary measures to supplement and amend Article 8 of the Law on Pension Schemes Financed by the State, in accordance with the Constitution and this Judgment.

Judgment

KI 185/21

Applicant

"CO COLINA" L.L.C.

Request for constitutional review of Law no. 06/L-155 on the Prohibition of Games of Change and Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court of the Republic of Kosovo, of 07 September 2021

The circumstances of the present case are related with the termination of the exercise of the Applicant's sports betting activity, which was exercised based on the licenses issued by the Tax Administration of Kosovo in accordance with Law no. 04/L-080 on the Games of Chance. Based on the latter, the last license

Applicant to exercise this activity was valid from 8 August 2018 to 7 August 2019. However, on 10 May 2019 entered into force Law no. 06/L-155 on the Prohibition of Games of Chance, based on which all games of chance in the territory of the Republic of Kosovo were closed and prohibited. As a consequence, and to implement the aforementioned Law, the Directorate of Games of Chance within the Tax Administration of Kosovo had notified the Applicant for the revocation of its business license, with immediate effect, namely from 10 May 2019, meaning before its expiration on 7 August 2019. Against the Notice of revocation of the license and after the rejection of the complaint by the Tax Administration of Kosovo, the Applicant filed a lawsuit for administrative conflict with the Basic Court, requesting annulment of the Notice of revocation of the license with the claim that, among others, (i) as a result of revoking the license before the expiration deadline, its right to property was violated based on Article 46 [Protection of Property] of the Constitution; (ii) that the Notice was based on the Law on the Prohibition of Games of Chance, alleging that the latter was in violation of the Constitution; and (iii) proposed to the Basic Court that if it had doubts related to the constitutionality of this Law, to refer it to the Constitutional Court through the "incidental control" procedure based on paragraph 8 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution. The Applicant, in parallel with the filing of the above-mentioned lawsuit, also addressed to the Constitutional Court alleging that the Law on the Prohibition of Games of Chance directly affected its rights and was in contradiction with Article 46 of the Constitution, requesting the repeal of the it. The Constitutional Court, in case KI136/19, had declared the referral of the Applicant inadmissible, finding that it is premature, due to the fact that the Applicant had initiated the judicial procedures regarding the Notice of revocation of the license.

In the course of the proceedings before the regular courts, the Basic Court rejected the lawsuit of the Applicant as ungrounded regarding the revocation of the license by the Tax Administration of Kosovo, reasoning that (i) the revocation of the license was lawful since it was based on Law on Prohibition of Games of Chance; (ii) in the administrative conflict procedure, the Basic Court has jurisdiction only to assess the legality of the act but not the violation of constitutional rights of the Applicant; and (iii) despite the allegations of the Applicant for the unconstitutionality of the Law based on which his license was revoked before the expiration of the deadline, it did not address to the Constitutional Court through the "incidental control", to request constitutional review of the challenged provision. The Court of Appeals and the Supreme Court upheld the reasoning of the Basic Court.

The Applicant addressed to the Constitutional Court again, requesting constitutional review of (i) the Law on the Prohibition of Games of Chance; and (ii) the decisions of regular courts, alleging that the right to peaceful enjoyment of property according to Article 46 [Protection of Property] of the Constitution and Article 1 (Protection of Property) of Protocol No. 1 of the European Convention on Human Rights has been violated, as a result of the revocation of the valid license and work permit, namely the immediate prohibition of economic activity. In addition, the Applicant alleged violation of the right to a fair and impartial trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights, reasoning that (i) regular courts should have assess its allegations for the violation of the right to property as a result of the challenged Law and the subsequent Notice of TAK; or (ii) in case of doubt, to address to the Constitutional Court to request constitutional review of the constitutionality of the Law on the Prohibition of Games of Chance.

With regard to the constitutional review of the Law on the Prohibition of Games of Chance, the Court considered that, according to its case law and that of the European Court of Human Rights, to challenge a law directly before the Constitutional Court, among others, is it is necessary that the Applicant be directly affected by the law in question and that there is no intermediate act, namely enforcement measure by the public authority related to the law in question. In this regard,referring to its decision of 2019 regarding the Applicant, namely the Resolution on Inadmissibility in case KI136/19, the Court reiterated that in the specific case there was an enforcement measure related to the Law in question, namely the Notice of the Tax Administration, whereby the Applicant's license was revoked before the expiration of its deadline, and which the Applicant challenged before the regular courts. Therefore, under these circumstances, the Court noted that in the absence of a party authorized to challenge the constitutionality of the law directly to the Constitutional Court, it cannot examine the constitutionality of the Law on Games of Chance, but only the constitutionality of the decisions court related

to the revocation of the license of the Applicant. In the context of constitutional review of the decisions of the regular courts, the Court found that they were rendered in violation of (i) Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the European Convention on Human Rights; and (ii) Article 31 of the Constitution in conjunction with Article 6 of the European Convention on Human Rights.

With regard to the violation found in relation to Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the European Convention on Human Rights, the Court noted that, according to its case law and that of the European Court of Human Rights, in assessing the above-mentioned violations, it must first establish whether through the challenged acts, namely the decisions of regular courts (i) there was any "interference" on the right to peaceful enjoyment of property in the circumstances of the Applicant, and if this was the case, to assess whether the relevant "interference" is (ii) "determined by law"; (iii) followed a "legitimate aim"; and (iv) is "proportional". In this context, the Court noted that upon the revocation of the valid license through the Notice of the Tax Administration of Kosovo, there was "interference" on the right to property of the Applicant, because based on the case law of the European Court of Human Rights, "license" constitutes "property" for the purposes of Article 46 of the Constitution and Article 1 of Protocol No. 1 of the European Convention on Human Rights. Furthermore, the Court also clarified that "interference", which had resulted as a consequence of the decisions of regular courts, (i) was "determined by law", namely the Law on the Prohibition of Games of Chance; and (ii) followed a "legitimate aim", however (iii) it was not "proportional", because the Applicant, based on the case law of the European Court of Human Rights, among others, had a legitimate expectation that during the period for which it had a valid license and work permit based on the previous Law on Games of Chance, it would be able to exercise its economic activity and peacefully enjoy its property.

Whereas, with regard to the violation found in relation to Article 31 of the Constitution in relation to Article 6 of the European Convention on Human Rights, the Court, among others, emphasized that contrary to the guarantees embodied in the above-mentioned articles, the regular courts (i) had not applied the constitutional guarantees when assessing the legality of the revocation of the valid license of the Applicant, namely the relevant allegations for violation of the right to property as guaranteed by the Constitution; and moreover, (ii) they did not provide adequate reasoning concerning the non-referring of the case to the Constitutional Court for constitutional review of the challenged Law, despite the continuous requests of the Applicant.

Finally, and with regard to the effect of this Judgment, the Court noted that, in the interest of legal certainty, this Judgment shall produce legal effect only between the parties to the proceedings and cannot produce a retroactive legal effect regarding other natural and legal persons who may have exercised the activity of games of chance based on the Law on Games of Chance. The Court further emphasized that the Applicant can, in proceedings before the regular courts, claim fair compensation for the violation of constitutional rights found through this Judgment, including possible compensation for the duration that the Applicant had a valid license, namely from the 10 May 2019, when the effect of the revocation of the license began, until 9 August 2019, when the license of the Applicant to exercise its activity expired, based on the prior law, namely the Law on Games of Chance.

Finally, based on the clarifications provided in the published Judgment, the Court concluded that the Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, of 7 September 2021, regarding the Judgment [AA. no. 242/2021] of the Court of Appeals, of 8 June 2021, and the Judgment [A. no. 1861/21] of the Basic Court in Prishtina, of 9 February 2021, are not in compliance with (i) Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 of Protocol no. 1 (Protection of property) of the European Convention on Human Rights; and (ii) Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a Fair Trial) of the European Convention on Human Rights, and that, as such, they shall be annulled.

Judgment
KI 129/21
Applicant
Velerda Sopi

Request for constitutional review of "actions and inactions" of the Basic Court in Gjilan, the Basic Prosecutor's Office in Gjilan, the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina

The Constitutional Court of the Republic of Kosovo has decided and published the Judgment in case KI129/21, submitted by Velerda Sopi. The latter, based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo, challenged before the Court the "actions and inactions" of the state authorities, namely, the Basic Court in Gjilan, the Basic Prosecutor's Office in Gjilan, the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina, and which, according to her, resulted in the violation of the right to life of her mother, namely the deceased S.M., in violation of: (i) the right to life guaranteed by Article 25 [Right to Life] of the Constitution of the Republic of Kosovo and Article 2 (Right to life) of the European Convention on Human Rights; and (ii) the obligations of state authorities established in Articles 18 (General Obligations), 50 (Immediate response, prevention and protection) and 51 (Risk assessment and risk management) of the Council of Europe Convention on Prevention and Combating of Violence against Women and Domestic Violence, namely the Istanbul Convention.

The Court unanimously decided that the Referral is admissible and concluded that the Police of Kosovo, namely the Police Station in Gracanica and the State Prosecutor, namely the Basic Prosecutor's Office in Prishtina, have failed in their positive obligation to protect the life of S.M., guaranteed by paragraph 1 of Article 25 [Right to Life] of the Constitution and paragraph 1 of Article 2 (Right to life) of the European Convention on Human Rights; and (ii) the obligations stipulated by paragraph 4 of Article 18 (General Obligations), paragraph 1 of Article 50 (Immediate response, prevention and protection), paragraph 1 of Article 51 (Risk assessment and risk management) and paragraph 1 of Article 55 (Ex parte and ex officio proceedings) of the Convention on Preventing and Combating Violence against Women and Domestic Violence.

The Court states that in the circumstances of the present case, which are elaborated in detail in the published Judgment, based on the case file, two categories of procedures were conducted, according to the relevant reports of domestic violence. The first, according to the case of domestic violence reported on 10 November 2019 for which the relevant proceedings were conducted by the Police Station, the Basic Prosecutor's Office and the Basic Court in Gjilan. While the second, according to the case of domestic violence reported on 3 March 2021 for which the procedure was conducted at the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina.

Regarding the first category of the proceedings, based on the case file, it results that the procedure started with the reporting of the case of domestic violence on 10 November 2019 at the Police Station in Gjilan and ended on 27 January 2020 by the Judgment of the Basic Court in Gjilan through which, the husband of the deceased S.M., was found guilty of committing the criminal offenses specified in paragraph 1 of Article 248 (Domestic Violence) and subparagraph 3.1 of Article 184 (Assault) of the Criminal Code of the Republic of Kosovo. As explained in the published Judgment, during this period of time, the respective authorities in Gjilan in accordance with their respective competences: (i) imposed the measure of detention on remand; (ii) issued the Protection Order for a duration of twelve (12) months; (iii) filed the criminal report; (iv) filed the indictment; and (v) found L.S. guilty of the criminal offenses specified above. Having said that, the published Judgment emphasizes the fact that the Basic Court in Gjilan replaced imprisonment sentence of L.S. with a fine of one thousand three hundred (1,300) euro. The relevant Protection Order expired on 26 November 2020.

Regarding the second category of proceedings, based on the case file, it results that the procedure started

with the reporting of the case of domestic violence on 3 March 2021 at the Police Station in Gracanica. As explained in the published Judgment, based on the case file, it results that the following day: (i) the statement of L.S was taken; and (ii) S.M., who, according to the relevant police report, among other things, emphasized that "she is not interested in proceeding with the case". On 14 March 2021, S.M. was deprived of her life with a firearm by L.S., who then committed suicide.

In the context of the aforementioned clarifications and based on the Applicant's allegations, the Court focused on the assessment of the fulfillment of the positive obligations of the state in relation to the second category of proceedings, always in the context of the first category. In this regard, the Court first elaborated on the general principles in the context of the positive obligations of the state that stem, among others, from Article 25 of the Constitution, Article 2 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights, and the Convention on the Elimination of All Forms of Discrimination against Women and the Istanbul Convention.

Based on the above-mentioned principles, and with emphasis on the criteria derived from the case law of the European Court of Human Rights, including the Judgments in the cases Opuz v. Turkey, Kurt v. Austria, X and Y v. Bulgaria and Landi v. Italy, the Court assessed whether the state authorities, namely the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina: (i) reacted immediately; (ii) carried out a genuine assessment of the risk, and which, based on the aforementioned case law, should be autonomous, proactive and comprehensive; (iii) were aware or should have been aware of the immediate and real danger to S.M.'s life; and (iv) had taken preventive measures to protect or prevent the deprivation of the life of S.M.

Based on the assessment of the aforementioned criteria, the Court emphasizes the fact that: (i) the police officers of the Police in Gracanica, had reacted immediately by going to the scene and interviewing the suspect L.S., however the latter, among others, did not follow the procedural steps provided by the Law against Domestic Violence and the Standard Operation Procedures, also ignoring the completion of the standard forms regarding the risk assessment and not notifying the Center for Social Work and Victim Advocate, and who according to the aforementioned law, would have been able to take additional steps to protect S.M.; whereas (ii) the Basic Prosecutor's Office in Prishtina, during a period of ten (10) days, "was in the phase of gathering the necessary evidence and information for the clarification of factual circumstances that were not known to the relevant bodies", despite the fact that the competent authority had accurate data , since after reporting the violence on 10 November 2019, regarding L.S., (i) a protection order was issued for a duration of twelve (12) months; and (ii) he was convicted for the criminal offense of domestic violence and assault by the Basic Court in Gjilan. The Court also emphasized the fact that the statement of the deceased S.M. that "she was unable to report to the police and requested that L.S. not be imprisoned, but if possible to be released", based on the positive obligations of the state guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR, as well as Articles 18 and 55 of the Istanbul Convention, does not exempt any state institution from the obligation to undertake all necessary measures determined by applicable laws and regulations for the protection of the victim of domestic violence.

After the relevant assessment of each criterion separately, the Court found that contrary to the aforementioned constitutional guarantees, but also the laws applicable in the Republic of Kosovo, including the Law against Domestic Violence and Standard Operation Procedures, but also the case law of the ECtHR, in accordance with which all public authorities are obliged to interpret fundamental rights and freedoms, the competent authorities: (i) did not react immediately; (ii) did not carry out a genuine risk assessment, which must be autonomous, proactive and immediate; (iii) in the circumstances of the present case, and taking into account that L.S., was already previously convicted for the criminal offense of domestic violence, were aware or should have been aware of the immediate and real danger to the life of S.M.; and (iv) did not take preventive measures to protect or prevent the deprivation of life of S.M..

In the end and in relation to the effect of this Judgment, the latter emphasized the fact that the Court does not have legal competences to award compensation for damage in cases where it finds violations of the respective constitutional provisions, but clarified that the Applicant has the right to resort to other legal remedies available for the further exercise of the rights for the respective compensation in accordance with the findings of this Judgment.

Finally, it should be noted that beyond the Judgment published today, which specifies the state's obligations

in the context of domestic violence and the protection of the right to life, based on constitutional guarantees, but also the international instruments directly applicable in the legal order of the Republic of Kosovo, including the principles stemming from the case law of the European Court of Human Rights, the Court also by the Judgment in case KI41/12, with Applicants Gëzim and Makfire Kastrati, published on 26 February 2013, found a violation of Article 25 of the Constitution and Article 2 of the European Convention on Human Rights, including violations of Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution. The Judgment of 2013 also emphasized the obligations of state authorities in the context of taking necessary measures against domestic violence and protecting the right to life.

In addition, the Court recalls that the Istanbul Convention is directly applicable in the Republic of Kosovo since the adoption of the constitutional amendments on 25 September 2020. The latter also includes the obligation of the state, namely the Republic of Kosovo, to provide effective legal remedies and adequate compensation for victims of domestic violence in case of failure of the state to fulfill the relevant obligations in this context.

Judgment

KO 100/22 & KO 101/22

Applicant

Abelard Tahiri and ten (10) other deputies, and Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo

Request for constitutional review of "actions and inactions" of the Basic Court in Gjilan, the Basic Prosecutor's Office in Gjilan, the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina

The Constitutional Court of the Republic of Kosovo has decided on the joined Referrals in cases no. KO 100/22, with applicants Abelard Tahiri and ten (10) other deputies, and no. KO 101/22, with applicants Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo, regarding the constitutional review of the Law no. 08/L-136 on Amending and Supplementing the Law no.06/L-056 on the Kosovo Prosecutorial Council.

The Court unanimously decided to (i) declare the referrals admissible and to hold that: (ii) point 1.3.2 of paragraph 1 of article 6 and article 8, namely article 10/A of the Contested Law, are not in compliance with paragraph 1 of article 4 [Form of Government and Separation of Power], paragraph 10 of article 65 [Competences of the Assembly] and article 132 [Role and Competencies of the Ombudsperson] of the Constitution; (iii) paragraph 2/a of article 13 of the Contested Law is not in compliance with paragraph 1 of article 4 [Form of Government and Separation of Power] and paragraph 1 of article 110 [Kosovo Prosecutorial Council] of the Constitution; (iv) paragraph 5 of article 16 of the Contested Law is not in compliance with paragraph 1 of article 24 [Equality before the Law] of the Constitution; (v) article 18, respectively article 23/A of the Contested Law is not in compliance with articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution; (vi) paragraph 3 of article 11 and article 20 of the Contested Law are not in compliance with paragraph 1 of article 4 [Form of Government and Separation of Power], article 32 [Right to Legal Remedies], article 54 [Judicial Protection of Rights] and paragraph 1 of article 110 [Kosovo Prosecutorial Council] of the Constitution; and (vii) to declare null and void, in its entirety, the Law no. 08/L-136 on Amending and Supplementing Law no.06/L-056 on the Kosovo Prosecutorial Council.

The essence of the applicants' allegations, supported by the Prosecutorial Council, the Bar Association and, in essence, also by the Ombudsperson in relation to issues pertaining to its competences, and opposed by the Ministry of Justice, pertains to the alleged infringement of the constitutional independence of the Prosecutorial Council, and the separation and balance of powers, in violation of the guarantees contained in articles 4 and 110 of the Constitution, respectively, because according to the applicants, the Contested Law, among others: (i) changes the composition of the Prosecutorial Council, reducing the balance between prosecutorial and lay members, with the latter being elected by a simple majority vote of the deputies present and voting in the Assembly, thereby subjecting

the election of the members of a constitutionally independent institution only to the will of the ruling majority represented in the Assembly; (ii) stipulates the competence of the Ombudsperson to elect one (1) of the lay members of the Prosecutorial Council, contrary to the Constitution and the constitutional functions of the Ombudsperson; (iii) by stipulating the decision-making majority of the Prosecutorial Council to a qualified majority and conditioning the same on the vote of its lay members elected by a simple majority in the Assembly, subjects the decision-making of a constitutionally independent institution to the political will of the ruling majority represented in the Assembly; (iv) does not treat prosecutorial and lay members equally in the context of the legal remedies available in case of their dismissal, making it possible only for the prosecutorial members of the Council to appeal directly to the Supreme Court; and (v) arbitrarily terminates the mandates of the members of the Prosecutorial Council, in violation of the constitutional guarantees, the case-law of the Court and the European Court of Human Rights (ECtHR).

In reviewing the constitutionality of the Contested Law, the Court has, among others, initially elaborated: (i) the basic constitutional principles regarding the justice system, as specified by the Constitution; (ii) a brief history of the Prosecutorial Council, through the respective laws since its establishment, as far as it is relevant to the circumstances of the case at hand; and (iii) the relevant case-law of the Court, the ECtHR and the Court of Justice of the European Union (CJEU). The Court has also elaborated on the basic principles deriving from the Reports and Opinions of the Venice Commission, including but not limited to: (i) the Compilation of Opinions and Reports on Prosecutors of 26 April 2022; (ii) the Report on European Standards concerning the Independence of the Judicial System: Part II – "Prosecution Service"; (iii) the Opinion pertaining to the qualified majorities and anti-deadlock mechanisms; (iv) the relevant Opinions of the Consultative Council of European Prosecutors, including Opinions no. 9 (2014) and no. 13 (2018), as well as the relevant Recommendations of the Committee of Ministers of the Council of Europe; and (v) the two Opinions of the Venice Commission on Kosovo, pertaining to the Contested Law, adopted on 13 December 2021 and 23 March 2022, respectively.

In applying the aforementioned principles to the review of the constitutionality of the Contested Law, the Judgment initially (i) emphasizes that, based on article 16 [Supremacy of the Constitution] of the Constitution, the power to govern stems from the Constitution, as the highest legal act of the Republic of Kosovo, in accordance with which laws and other legal acts must be; and (ii) reiterates its consolidated case-law, based on which, the Constitution consists of a system of constitutional principles and values on the basis of which the Republic of Kosovo functions, and that the norms provided by the Constitution cannot be interpreted in isolation from one another, but must be read and interpreted in conjunction with each other, because that is the only manner through which their exact meaning is derived in the context of article 7 [Values] of the Constitution, pertaining to the values of the Republic of Kosovo.

Further, the Judgment also clarifies that based on the relevant Opinions of the Venice Commission, but also those of the Consultative Council of European Prosecutors and the relevant recommendations of the Committee of Ministers of the Council of Europe, among others, it results that (i) unlike judicial systems, standards in the context of the organization of prosecutorial systems are less consolidated/ uniform; however, (ii) there is a widespread tendency towards the independence of prosecutorial systems, and the case-law of the ECtHR and of the CJEU, also emphasize this aspect.

Having said that, the Judgment clarifies that in the constitutional order of the Republic of Kosovo, the prosecutorial system is fully independent. More precisely, the Prosecutorial Council is an integral part of Chapter VII of the Constitution regarding the Justice System and together with the Judicial Council, they have the competence to administer the judicial and prosecutorial systems, respectively, and despite the respective similarities and differences, in the exercise of their functions, the Constitution has equipped both with "full constitutional independence". The Judgment clarifies that this full constitutional independence, based on article 4 of the Constitution pertaining to the separation and balance of powers, is also subject to the balancing and interaction with other branches of government, always in accordance with the values of the Republic as defined in article 7 of the Constitution.

Based on the reading of the constitutional provisions in their entirety and as far as it is relevant to the circumstances of the concrete case, in principle, and in the context of the Prosecutorial Council, the interaction of the Prosecutorial Council with the Assembly based on the determinations of articles 65 and 110 of the Constitution, is important. The interaction between these provisions, in essence, stipulates the

exercise of the competence of the Assembly to determine the composition of the Prosecutorial Council and to elect the members of the Council, a function which must always be exercised in a manner that preserves the full independence of the Prosecutorial Council in the exercise of its constitutional functions, as stipulated in paragraph 1 of article 110 of the Constitution; and at the same time, must respect the separation and balance of powers as determined in paragraph 1 of article 4 of the Constitution.

In the Court's Judgment, all the principles summarized above have been applied in the examination of each reviewed article of the Contested Law separately. Having said this and for the purposes of this summary, the Court will clarify the main findings and conclusions regarding the most contentious issues of the Contested Law, namely: (i) the revised composition of the Prosecutorial Council and the respective balance between prosecutorial and lay members; (ii) the election of lay members by the majority vote of the deputies present and voting in the Assembly; (iii) the competence of the Ombudsperson to appoint, namely elect one (1) lay member of the Prosecutorial Council; (iv) the difference in treatment between prosecutorial and lay members in terms of the right to a legal remedy and judicial protection of rights in case of the decision to dismiss them as members of the Prosecutorial Council; and (v) the termination of the current mandates of the members of the Prosecutorial Council upon the entry into force of the Contested Law.

(i) Balance between prosecutorial and lay members in the Prosecutorial Council

The Judgment clarifies that the Contested Law determines that the Prosecutorial Council consists of seven (7) members, including the Chief State Prosecutor who is represented ex officio in the Council, three (3) prosecutorial members selected by the prosecutorial system, and three (3) lay members, unlike the Contested Law, based on which, the Prosecutorial Council consists of thirteen (13) members, namely the Chief State Prosecutor who is represented ex officio, nine (9) prosecutorial members selected by the prosecutorial system and three (3) lay members elected by the Assembly, based on proposals of the Bar Association and Law Faculties, and through a public competition in relation to a member from the civil society, according to the specifics of the applicable law. In reviewing the constitutionality of the provision of the Contested Law stipulating the aforementioned structure, the Judgment clarifies that the Constitution contains two defining articles, articles 65 and 110 of the Constitution, respectively. The Constitution, through paragraph 4 of its article 110, has provided, among others, that the composition of the Prosecutorial Council is determined by law, while through paragraph 10 of its article 65, has provided, among others, that the members of the Prosecutorial Council are elected by the Assembly in accordance with the Constitution. Unlike the Judicial Council, in the case of the Prosecutorial Council, the Constitution does not define the ratio between the members selected by the prosecutorial system itself and the respective lay members, delegating the regulation of this ratio at the level of the law, always to the extent that the full constitutional independence of the Prosecutorial Council, as stipulated in paragraph 1 of article 110 of the Constitution, is not undermined.

Taking into account the lack of a specific constitutional regulation in the context of the ratio between prosecutorial and lay members of the Prosecutorial Council, the Judgment also refers to the Opinions of the Venice Commission, including the two Opinions on Kosovo, and which, among others, emphasize that it is important for the composition of prosecutorial councils to avoid two risks, namely (i) in the context of prosecutorial members, the tendency of "corporatism" or of its perception, taking into account the "hierarchical organization of the prosecutorial system and the culture of subordination"; and at the same time, (ii) in the context of lay members, the possibility of "politicization" of the Council, namely the political influence through the manner of their election. This balance, in principle, and among others, according to the aforementioned Opinions, can be achieved through a pluralistic composition of the Council, in which the prosecutors selected by the system itself constitute a "substantive part", yet not necessarily the majority of the members of the Council, and which avoids the possibility for the prosecutors to govern alone but at the same time, it does not enable the lay members to be able to block or "easily outvote them".

Based on the clarifications summarized above and considering the fact that (i) according to paragraph 4 of article 110 of the Constitution, among others, the composition of the Prosecutorial Council is determined by law; and (ii) the standards of the Venice Commission, which reflect the importance of the prosecutorial councils that are balanced between prosecutorial members selected by the system itself and lay members, always with the necessary guarantees to avoid the risk of "corporatism" but also

"politicization" of the Council, the Court held that the composition, namely the ratio between prosecutorial and lay members of the Prosecutorial Council according to the provisions of the Contested Law, is not incompatible with the Constitution.

(ii) The necessary majority in the Assembly for the election of the lay members of the Prosecutorial Council

Regarding the majority required for the election of the lay members of the Prosecutorial Council by the Assembly, the Judgment emphasizes two defining provisions, articles 65 and 80 of the Constitution. Article 65 of the Constitution in its paragraph 10 provides that, the members of the Prosecutorial Council are elected by the Assembly in accordance with the Constitution; whereas article 80 of the Constitution in its paragraph 1 provides that, laws, decisions and other acts are adopted by the Assembly by a majority vote of the deputies present and voting, except in cases where it is otherwise provided by the Constitution.

The election of the lay members of the Prosecutorial Council by the Assembly, considering that the Constitution has not provided otherwise, falls within the scope of paragraph 1 of article 80 of the Constitution. As a result, due to the lack of any other specific regulation in the Constitution, the Judgment clarifies that the election of the lay members of the Prosecutorial Council by a majority of the deputies present and voting, is not incompatible with the Constitution.

Having said that and having in mind paragraph 1 of article 110 of the Constitution providing full constitutional independence to the Prosecutorial Council, and also in the context of the principle of separation and balance of powers as provided in articles 4 and 7 of the Constitution, respectively, the Judgment also emphasizes the fact that (i) the relevant Reports and Opinions of the Venice Commission, including the Opinions on Kosovo in relation to the Contested Law, emphasize that it is preferable that the selection of lay members of prosecutorial councils be done by qualified majority and not by a simple majority, emphasizing also the possibility of providing subsequent anti-deadlock mechanisms or even proportional voting systems, so that a parliamentary majority does not have the opportunity to elect at the same time and by a simple majority the lay members of the Council, thus resulting into the possibility of politicizing the Council and the infringement of its independence; and (ii) the laws of the Republic of Kosovo, including those on the Prosecutorial Council and Judicial Council, over the years, have also contained higher majorities for the election and dismissal of their members, including the majority of votes of all deputies of the Assembly.

(iii) The competences of the Ombudsperson to select the lay members of the Prosecutorial Council

In the context of the relevant provisions of the Contested Law through which the Ombudsperson is vested with the power to appoint/elect and dismiss one (1) lay member of the Prosecutorial Council, the Judgment initially emphasizes the fact that according to the Opinions of the Venice Commission, (i) in determining the appropriate balance between prosecutorial members selected by the prosecutorial system and lay members elected by the Assembly, a number of members may represent independent institutions and/or the civil society; and (ii) in the composition of prosecutorial councils, the same can also be represented ex officio or through the proposal/ nomination of relevant candidates.

Such a combination of mechanisms is reflected, among others, in the Basic Law on the Prosecutorial Council, which includes the mechanism of ex officio representation in the Council of the Chief State Prosecutor and the role of the Bar Association, Law Faculties and the civil society, through proposing/ nominating lay members of the Council, subsequently elected by the Assembly.

Having said this, the Judgment, among others, clarifies that the starting point for evaluating the competence of the Ombudsperson to appoint/elect but also dismiss one of the lay members of the Prosecutorial Council, is the Constitution, namely (i) paragraph 10 of article 65 of the Constitution, according to which, among others, the Assembly elects members of the Prosecutorial Council; (ii) Assembly's constitutional powers to elect the officials of constitutional independent institutions as defined in Chapters VII and XII of the Constitution, respectively; and (iii) article 132 of the Constitution, according to which, among others, the Ombudsperson has supervision competencies over all public authorities, including the Prosecutorial Council, in the context of illegal actions and inactions regarding fundamental rights and freedoms. In terms of the latter, the Judgment also recalls that while the Opinion of the Venice Commission clarified that the involvement of the Ombudsperson in the composition of the Prosecutorial Council is not necessarily contrary to the standards, it also drew attention to the fact that such involvement "does not compromise his or her

[the Ombudsperson's] ability to make independent determinations concerning matters involving the KPC".

In the context of the aforementioned provisions in their entirety, the Judgment first clarifies that while in the case of the Prosecutorial Council, unlike the Judicial Council, the determination of the composition and the method of election/appointment of the relevant members is divided between the Constitution and the law, the competence of the Assembly to elect the relevant members of the Prosecutorial Council is determined by the Constitution and therefore, based on the principles deriving from the Court's case-law, it cannot be transferred to the institution of the Ombudsperson through a law adopted according to paragraph 4 of article 110 of the Constitution.

In connection to this and secondly, the Judgment clarifies that in the context of all independent constitutional institutions as defined by Chapter VII regarding the Justice System and Chapter XII regarding the Independent Institutions, and notwithstanding whether the Constitution (i) has specified the competence of the Assembly to elect/ appoint at the level of the Constitution; or (ii) has maintained that the manner of election/appointment is regulated at the level of the law, the holders of public functions of the independent constitutional institutions, are all elected by the Assembly, with the exception of the Central Election Commission, whose composition is defined in the Constitution. This is the case with the specified members of the Judicial Council, the Ombudsperson, Ombudsperson deputies, the Auditor General, the Governor and members of the Central Bank Board and members of the Independent Media Commission, who are elected by the Assembly in the manner specified in the Constitution and/or relevant laws. Thirdly, based on article 132 of the Constitution, the Ombudsperson has supervisory competences defined in the Constitution, namely and among others, (i) the competence to monitor and protect the rights and freedoms of individuals from illegal and irregular actions or inactions of public authorities, including those of the Prosecutorial Council; and (ii) the obligation not to accept instructions and interference from any authority exercising power in the Republic of Kosovo with the same obliged to respond to his/her requests. Based on these constitutional characteristics, the Assembly of the Republic of Kosovo, through the relevant laws, has equipped the Ombudsperson with extensive authorizations, including monitoring functions, in the context of disciplinary procedures of judges and prosecutors administered by the respective Council. In fact and taking into account the nature of the constitutional functions of the Ombudsperson, the legislator has not even granted the same the competence to appoint/elect its own deputies, who are in fact elected by the Assembly through the majority of deputies present and voting. Consequently, the Judgment clarifies that the competence of the Ombudsperson to elect lay members of the Prosecutorial Council, is not in compliance with the Constitution.

Pertaining to the first, the Judgment clarifies that the Council's decision-making, which is subject to a qualified majority of two-thirds (2/3) in two rounds of voting, among others, concerns the most essential functions of the Prosecutorial Council, in the exercise of which it has full constitutional independence as defined by articles 109 and 110 of the Constitution, pertaining to (i) the proposal of the Chief State Prosecutor; and adoption of acts pertaining to (ii) the recruitment, proposal, promotion, transfer, and discipline of prosecutors. Whereas, regarding the second issue, the Judgment clarifies that (i) in the context of the Court's finding that the competence of the Ombudsperson to appoint/elect one (1) member of the Council is not in compliance with the Constitution; and (ii) taking into account the determination of the Contested Law that the lay members of the Council are elected at the same time and by a simple majority in the Assembly, it results that decision-making in the Prosecutorial Council regarding its most essential constitutional functions, could be conditioned by the vote of one (1) lay member, elected by the Assembly by a simple majority. The Court emphasizes that such a solution is neither in accordance with the Opinions of the Venice, the constitutional independence guaranteed to the Council according to paragraph 1 of article 110 of the Constitution, nor with the principle of separation and balance of powers in a democratic state. As a result, the Judgment clarifies that the decision-making method by the Council, as determined by the Contested Law, is not in compliance with the Constitution.

Having said that, and referring to the Opinions of the Venice Commission, the Judgment also points out that in the context of the composition of the Council as specified through the Contested Law, both the simple majority and the qualified majority, have their short-comings, because (i) in case of simple majority voting, it would be possible for the prosecutorial members to govern alone, and such a solution could contradict the essence of the principle that the Councils should have

pluralistic composition; while (ii) in the case of qualified majority voting and without a meaningful and effective anti-deadlock mechanism, it would be possible for the lay members elected at the same time and by a simple majority by the Assembly, to potentially block any decision-making. In this context, the Judgment emphasizes the principles of the Venice Commission, regarding the possibilities of prosecutorial council compositions, including the balance between prosecutorial and lay members and the method of electing the latter.

(iv) Difference in treatment pertaining to the legal remedies and judicial protection of rights

Regarding the right to a legal remedy and judicial protection of rights for the members of the Prosecutorial Council in case of their dismissal, the Judgment first clarifies that articles 24, 32 and 54 of the Constitution must be interpreted in the context of paragraph 1 of article 110 of the Constitution, namely the full independence of the Council in exercising its functions. The Judgment emphasizes the fact that the independence of the Council is interrelated to the independence of its respective members, and the manner in which they are elected and dismissed, is crucial in this aspect. The Judgment notes that this issue was not subject of review of the two Opinions of the Venice Commission pertaining to the Contested Law.

The Judgment further clarifies that the Contested Law, unlike previous laws, establishes a difference in treatment between prosecutorial and lay members of the Prosecutorial Council, with respect to the legal remedy available in case of their dismissal. The Judgment also clarifies that according to the Contested Law, (i) the prosecutorial members of the Council are dismissed following a two-thirds (2/3) majority vote in the Council and then have the right to appeal directly to the Supreme Court, which in turn must decide within thirty (30) days; while (ii) their lay member colleagues, following the Council's proposal, are dismissed by the Assembly with a simple majority of the deputies present and voting, different from the vote by majority of all deputies of the Assembly as stipulated by the Basic Law, and do not have the right of appeal directly to the Supreme Court. In applying the principles deriving from its case-law and that of the ECtHR in this context, the Court found that while a legal remedy, namely the administrative conflict procedure before the Basic Court theoretically exists for the lay members as well, the difference in treatment between prosecutorial and lay members regarding the respective legal remedies and judicial protection of rights, is not in conformity with the Constitution.

(v) Termination of mandates of a constitutionally independent institution through law

Regarding the termination of the mandates of the members of the Council, namely the termination of the current mandates and with no right to a legal remedy (i) for six (6) out of nine (9) prosecutorial members by lot drawing; and (ii) the lay members through the effect of law, the Judgment initially clarifies that the Constitution, has two defining articles, its articles 4 and article 110, respectively. The former, in its paragraph 1, defines that Kosovo is a democratic Republic based on the principle of separation of powers and control and balance between them as defined by the Constitution, while the latter, (i) in its paragraph 1 defines that the Prosecutorial Council is a fully independent institution in the performance of its functions, in accordance with the law; while (ii) in its paragraph 4, it stipulates that the composition of the Prosecutorial Council, including the provisions concerning the mandates, is regulated by law.

In the context of the security of tenure of members of constitutionally independent institutions, the Judgment first clarifies (i) the relevant case-law of the Court; and then (ii) the case-law of the ECtHR and the CJEU. With respect to the former, it specifies that through its case-law, the Court has held the position that the premature termination of constitutional mandates and/or legal mandates of constitutionally independent institutions, is subject only to the conditions defined in the Constitution and/or laws on the basis of which the respective mandates were obtained.

Such a stance, in principle, was also held by the ECtHR and the CJEU, inter alia, in the cases Baka v. Hungary; Grzeda v. Poland, C-619/18, European Commission v. Poland and C-192/18, European Commission v. Poland, respectively. In the context of these judgments and always taking into account the respective differences and similarities, in principle, it results that (i) the premature termination of mandates in all of these cases followed as a result of the adoption of new laws in the name of reforms in the justice system, and finding violations of the European Convention and European Union law, respectively, the ECtHR and the CJEU, did not take into account the arguments of the respective governments that maintaining the existing mandates would represent an obstacle to the planned reforms; (ii) the security of constitutional and legal mandates is essential for the independence of independent institutions and their premature termination, can only be done based on the relevant

provisions and procedures specified in the Constitutions and/or laws, on the basis of which they were obtained; (iii) the existence of effective legal remedies to challenge the relevant decisions based on which the mandates are terminated prematurely is important, and their absence resulted in a violation of the European Convention in the aforementioned cases of the ECtHR; and (iv) exceptionally, the acquired mandates may be terminated prematurely, however, any legal initiative/reform, which may result in the premature termination of the respective mandates, must pursue a legitimate aim and be proportional to the aim pursued and in this context, among others, the aforementioned jurisprudence, with an emphasis on the Grzeda case, also takes into account the approach of the lawmaker towards the security of tenure throughout the existence of the relevant institutions.

The relevant opinions of the Venice Commission, as clarified in the Judgment, in principle, also hold the same position. They emphasize the importance of preserving the mandates of members of constitutional institutions, regardless of whether they are defined by the Constitution and/or law. In principle, and according to the Venice Commission, the early termination of mandates must always be related to an identifiable violation or failure to perform the duty of the member concerned, as well as follow the constitutional/legal procedure for the dismissal or termination of the respective mandate, because otherwise and among others, the termination of the mandates of the constitutional institutions could be continuously dependent on the preferences of the executive and/or legislative branches of government.

Having said that, both opinions of the Venice Commission, with respect to the Contested Law, in this context and inter alia, emphasize that (i) the provisions of the Contested Law that enable the continuation of the mandates of a part of the membership of the Prosecutorial Council are "more respectable" of international standards in relation to the previous model of the Contested Law, which had proposed the termination of all mandates of the Prosecutorial Council; and (ii) members of the Prosecutorial Council, in principle, should be allowed to finish their mandates, but exceptionally, termination of the mandates may be acceptable, provided that it results in "significant improvement of the system" and that if "it is demonstrated convincingly that their replacement serves a vital public interest and leads to the overall improvement in the system.".

In this context, the Judgment clarifies that the improvement of the balance between prosecutorial and lay members in the Prosecutorial Council, in principle, contributes to the advancement of the democratic legitimacy of the same, always if it is accompanied with the necessary safeguards to ensure its full independence. However, and with due regard to the aforementioned principles, and taking into consideration that (i) the case-law of the Court, has consistently maintained that the termination of the mandates of the members of a constitutionally independent institution must be interrelated to the grounds stipulated for the termination of the mandates foreseen according to the law on the basis of which they were obtained; (ii) despite continuous reforms pertaining to the Prosecutorial Council over the years, including changes to its composition, with the exception of the instance of termination of the ex officio representation of the Minister of Justice in the Council which was proposed by the relevant Ministry and was never contested, the mandates of the members of the Prosecutorial Council, have been continuously retained until their natural expiration through transitional provisions of all relevant laws, including the instance when the Prosecutorial Council was first established based on article 110 of the Constitution, after the declaration of independence of the Republic of Kosovo, and this, interpreted in harmony with the case-law of the ECtHR, is a clear indicator of the importance attributed to the security of tenure of constitutionally independent institutions in the legal order of the Republic of Kosovo; and furthermore, (iii) the fact that the Court has found that a number of essential provisions of the Contested Law are not in compliance with the Constitution, the Judgment ultimately stresses that the termination of the mandates of the Prosecutorial Council members, as per the Contested Law, cannot serve as a convincing reason for a "significant improvement of the system" that could serve a legitimate and proportionate aim, and on the basis of which, it would have been possible to exceptionally authorize the termination of the mandates of a constitutionally independent institution, thus creating a precedent with consequences for the security and independence of the exercise of the function of the constitutionally independent institutions and consequently, also for the democratic order and the rule of law in the Republic of Kosovo.

In the end, the Judgment clarifies that the referrals of the applicants were filed with the Court pursuant to paragraph 5 of article 113 of the Constitution and that this category of referrals has a suspensive nature, i.e. such a law can be sent to the President of the Republic of Kosovo for promulgation only after the decision-making of the Court and in accordance with

the modalities defined in the Court's final decision concerning the contested case. In the context of its case-law, as elaborated in the Judgment, the Court deems that, taking into account the nature of the provisions of the Contested Law declared as not in compliance with the Constitution, and the fact that it would be difficult to implement the remainder of the Contested Law following the invalidation of these provisions, the Contested Law, in the service of the principle of legal certainty, must be declared invalid, in its entirety.

Judgment

KI 69/21

Applicant

Partia Rome e Bashkuar e Kosovës (PREBK) and Partia Liberale Egjiptiane (PLE) represented by Albert Kinolli and Veton Berisha, respectively

Request for constitutional review of Judgment [AA.no.29/2021] of the Supreme Court of the Republic of Kosovo of 12 March 2021

The circumstances of the concrete case are related to the early elections for the Assembly of the Republic of Kosovo held on 14 February 2021. The two candidates, representatives of the political entities PLE and PREBK, respectively, and who according to the certified results of the aforementioned parliamentary elections, had failed to win seats in the Assembly, claim that their electoral rights have been violated as a result of the respective decisions of the Elections Complaints and Appeals Panel (ECAP) and the Supreme Court and which the respective applicants are contesting before the Court, claiming violations of paragraph 4 of article 58 [Responsibilities of the State], article 45 [Freedom of Election and Participation] and article 64 [Structure of Assembly] of the Constitution of the Republic of Kosovo. Regarding one of the aforementioned candidates, namely the applicant PREBK, represented before the Court by Albert Kinolli, the Judgment clarifies that the same has not exhausted the legal remedies provided by law as required by paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution, because the same has not appealed the decisions of the ECAP of 7 and 10 March 2021, respectively, before the Supreme Court. As for the other applicant, namely PLE, represented before the Court by Veton Berisha, the Judgment clarifies that the same challenges the Judgment of the Supreme Court only pertaining to the refusal to annul/declare invalid the ballots in specified polling stations in the municipalities of Kamenica, Graçanica and North Mitrovica. However, the applicant did not appeal to the Supreme Court the supplementary decision of the ECAP of 10 March 2021 which had decided regarding North Mitrovica, therefore, failing to exhaust the legal remedies established by law. Consequently, based on to the applicant's referral, the Court will review the constitutionality of the contested Judgment of the Supreme Court only to the extend it has been contested, namely pertaining to the refusal to annul/ declare invalid the ballots in the specified polling stations in the municipalities of Kamenica and Graçanica, respectively.

In the aforementioned context, the Judgment recalls that as a result of the failure to obtain sufficient votes to win a seat in the Assembly in the parliamentary elections of 14 February 2021, the applicant submitted the relevant complaints/appeals to the ECAP and subsequently to the Supreme Court, claiming that the votes won by Romani Iniciativa were "orchestrated and coordinated" with the "political entity Lista srpska" and that as a result, all the votes that this political entity has won and that exceed the number of voters of the Roma, Ashkali and Egyptian communities in the respective polling stations, should be declared invalid and removed from the election results.

The ECAP and the Supreme Court based their decision -making on these claims and referring to paragraph 4 of article 58 of the Constitution and paragraph 2 of article 64 of the Constitution, but disregarding article 45 of the Constitution, had annulled/declared invalid ballots in polling stations in the municipalities of Leposaviq, Novobërda, Ranillug, Partesh and Kllokot, in essence, establishing the standard that exercising the right to vote and to be elected in the legal order of the Republic of Kosovo is conditional on the ethnic affiliation of the voter and the voted. More precisely, according to the ECAP and the Supreme Court, (i) pertaining to the twenty (20) guaranteed seats in

the Assembly, in the context of passive electoral rights, parties, coalitions, citizens' initiatives and independent candidates, who have declared to represent a respective community that is not the majority, can only be voted for by the voters of the same community; and consequently, in the context of active electoral rights, voters can only vote for the parties, coalitions, citizens' initiatives and independent candidates who have declared to represent their community; and (ii) votes obtained for parties, coalitions, citizens' initiatives and independent candidates who have declared to represent a community that is not in the majority and that exceed the number of voters who are supposed to belong to the same community in a given polling station, are declared invalid, because otherwise "there is no objective connection between the voters and the voted subject". ECAP and the Supreme Court had based the calculation on the proportion between the number of ballots and voters who are supposed to represent the community that is not in the majority on the "data obtained from the Statistics Agency of the Republic of Kosovo in 2011, but also on credible reports of the OSCE and Poll Books."

Before the Court, the applicant in essence, claims that (i) the ballots in the respective polling stations must be annulled/declared invalid in proportion to the number of voters representing the relevant community because otherwise, the elected representative in the Assembly "lacks the objective connection with the community" that the same declares to represent; and (ii) the guaranteed seats in the Assembly according to paragraph 2 of article 64 of the Constitution can only be won if voted for by the same community that the parties, coalitions, citizens' initiatives and independent candidates competing for these seats declare to represent. Having said this, the applicant himself emphasizes that in the Republic of Kosovo, there is a lack of a "precise legal basis", also emphasizing that "there are no precise international practices and norms" which expressly require that the guaranteed seats for communities that are not a majority can only be won if they are voted for by the same community they declare to represent. In the absence of these constitutional and legal bases, the applicant claims that based on paragraph 4 of article 58 of the Constitution, the Court must oblige the Assembly to take adequate measures, through the adoption of laws, that would ensure the effective participation of communities that are not the majority in Kosovo, so that, among others, the guaranteed seats in the Assembly of Kosovo would be won only if they are voted for by the voters of the same community that they declare to represent, and more precisely that "communities would be registered in separate electoral rolls so that only the voters of the communities found in those rolls can vote for the representatives who have declared to represent those communities in guaranteed seats".

In reviewing the constitutionality of the challenged Judgment of the Supreme Court, the Court, as far as it is relevant to the circumstances of the concrete case, elaborated (i) the general principles on electoral rights according to the Constitution; (ii) the general principles on the representation of communities that are not the majority in Kosovo according to the Constitution and the Framework Convention of the Council of Europe for the Protection of National Minorities; and (iii) the general principles according to the Code of Good Practice in Electoral Matters of the Venice Commission and the Lund recommendations on the Effective Participation on National Minorities in Public Life. The Court has also particularly elaborated the case-law of the European Court of Human Rights (ECtHR) in the interpretation of article 3 of Protocol no. 1 of the European Convention on Human Rights (ECHR) in the context of (i) the procedures necessary for the annulment of election results, including the declaration of invalidity of votes; and (ii) the electoral rights and national minorities. In the context of the latter, the Judgment also elaborates on the opinions and reports of the Council of Europe and the Opinions of the Venice Commission, including but not limited to (i) the Report on Electoral Rules and Affirmative Action for National Minorities' Participation in Decision-Making Process in European Countries; (ii) Protection of National Minorities and Elections; and (iii) Summary of Opinions and Reports related to Electoral Systems and National Minorities.

The Judgment clarifies that the essential issue raised in this case is whether the votes of the citizens of the Republic of Kosovo can be annulled/declared invalid based on their supposed ethnic affiliation. In this context and based on article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Judgment emphasizes that the Court is obliged to interpret fundamental rights and freedoms in harmony with the case-law of the ECtHR, and in the context of electoral rights, in harmony with case-law in the interpretation of article 3 of Protocol no. 1 of the ECHR. Based on the latter, among others and as elaborated in the Judgment, (i) it is not the role of the courts to determine the will of the voters; and (ii) any declaration of invalidity of votes must be based on a

clear legal basis. Based on this case-law, the Judgment further elaborates on whether in the Republic of Kosovo, ballots can be declared invalid based on the supposed ethnicity of the voters.

Initially and in the context of the validity and/or invalidity of the ballots, the Judgment clarifies that (i) based on paragraph 1 of article 64 of the Constitution, seats in the Assembly are allocated in proportion to the number of valid votes won by the political entities; (ii) the Law on General Elections, while it does not define the criteria on the basis of which the invalidity of votes can be determined, defines the ECAP as an independent body competent to decide on the complaints/appeals pertaining to the election process; (iii) the ECAP has the power to annul/declare invalid ballots in exceptional circumstances, but always based on the applicable rules, namely the Constitution, the Law on General Elections and the relevant regulations of ECAP and the Central Elections Commission (CEC).

In this context, the Judgment emphasizes that article 45 of the Constitution is the fundamental article that regulates electoral and participation rights. The same stipulates that (i) every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of the elections, has the right to elect and be elected, unless this right is limited by a court decision; (ii) the vote is personal, equal, free and secret; and (iii) state institutions support the possibility for every person to participate in public activities and everyone's right to democratically influence the decisions of public bodies.

The Judgment clarifies that based on article 45 of the Constitution, the active aspect of electoral rights, namely the right to elect, is subject to only two constitutional limitations, age and the respective court decision. The same rights are guaranteed through the Law on General Elections. The latter, in Chapter II, defines the Voter Eligibility, Voters List and the Challenge and Confirmation Period for the Voters List. As far as it is relevant for the circumstances of the concrete case, in its article 5 (Voter Eligibility), it also defines some additional restrictions related to the right to vote, while in article 7 (Voters List), it defines that citizens eligible to vote are those registered in the Central Civil Registry, specifying that the necessary information for the Voters List are "name, surname, date of birth, address, and the Polling Center where he/she is assigned to vote", these data being written in the languages and alphabets in which the original notes are kept in accordance with the Law on the Use of Languages in Kosovo. The law and the applicable regulations of the CEC do not contain any obligation for voters to declare their ethnicity for the purposes of the Voters List and the exercise of active electoral rights. Such an approach is in fact in compliance with the international instruments, including as clarified through the Explanatory Report of the Code of Good Practice in Electoral Matters, and according to which, among others, neither candidates nor voters should be required to indicate their affiliation as to national identity. The characteristics of the vote that are related to its freedom and secrecy are guaranteed by all international instruments, as explained in detail in the Judgment. Moreover, based on the applicable regulations of the ECAP and the CEC, the declaration of ballots invalid includes only the circumstances in which (i) more than one political entity is marked on the ballot; (ii) the way it is marked makes the voter's intention unclear; (iii) the ballots were not stamped with an official seal; and (iv) the voter marks only the candidate and not the political entity. The aforementioned regulation does not define any criteria on the basis of which ballots can be declared invalid based on the ethnicity of the voters.

Whereas, in the context of the right to be elected, namely the passive aspect of electoral rights, article 45 of the Constitution, with the exception of age and limitation by court decision, does not define any other limitations. However, in the context of parliamentary elections, this article must be read and interpreted jointly with articles 64 [Structure of Assembly], 71 [Qualification and Gender Equality] and 73 [Ineligibility] of the Constitution, respectively. The first determines that twenty (20) seats in the Assembly of Kosovo are guaranteed for parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb community or other communities, regardless of the number of seats won, while the second and the third, determine the necessary qualifications to become a candidate and the circumstances of the ineligibility to run as a candidate for deputy of the Assembly. For the circumstances of the concrete case, the connection of articles 45 and 64 of the Constitution is relevant.

Further, the Judgment clarifies that the secret ballot is also noted by article 64 of the Constitution, also focusing on the open electoral lists. This article also points out that the Assembly has one hundred and twenty (120) deputies elected by secret ballot, based on open lists, where twenty (20) seats are guaranteed for the representation of communities that are not in the majority in Kosovo, in the manner specified in paragraph 2 of article 64 of the Constitution. These guarantees are also specified in article 110 [General

Provisions] of the Law on General Elections, according to which, among others, Kosovo is considered one electoral area with many candidates. Questions related to the procedures pertaining to the registration of political parties and political entities are specified under Chapter III (Political Party Registration and Political Entity Certification) of this law. None of these procedures stipulates exceptions or special procedures in terms of political entities competing for the guaranteed seats in the Assembly. Such a criterion, based on paragraph 2 of article 64 of the Constitution, in the context of the registration of the aforementioned political entities, is set forth in the applicable rules of the CEC, and which in the framework of the necessary documentation for the relevant registration, also foresee the "declaration of the ethnicity of the founder of the political initiative".

Having said that, guaranteeing certain seats in the Assembly for the communities that are not in the majority, based on the constitutional and legal provisions as explained above, not necessarily entails the obligation that these seats can only be won if they are voted for by the same community that is not in the majority, thus also conditioning the active electoral rights to ethnicity. The reports and opinions of the Venice Commission, including the explanatory reports of the international instruments as noted in the Judgment, clarify that the electoral systems in all European countries and beyond, in the context of accommodating the respective national minorities and to the extend relevant in the circumstances of the concrete case, among others, emphasizing that (i) there are electoral systems which, in the context of passive electoral rights, provide for additional guarantees regarding national minorities, including guaranteed seats in the respective assemblies, while in the context of active electoral rights, the emphasis is put on the freedom and secrecy of the vote; and (ii) exceptionally and in special cases, in the context of active electoral rights, they enable dual voting or special electoral lists for national minorities, which mechanisms are precisely provided for in the applicable constitutions and/or laws. In the Republic of Kosovo, such a system, which stipulates a special electoral system for communities that are not in the majority in the context of active electoral rights, is not provided by the Constitution nor in the Law on General Elections. According to the Constitution, the vote is personal, free, equal and secret, and, among others, according to the Code of Good Practices for Electoral Matters, neither candidates nor voters are obliged to reveal their belonging to a national minority. Moreover, the Judgment also refers to a recent case of the ECtHR, namely Bakirdzi and E.C. v. Hungary, which became final on 3 April 2023. This case is very relevant to the circumstances of the concrete case, because, among others, it concerns (i) the free expression of the will of the voters; (ii) shortcomings of the voting system of national minorities affecting the secrecy of the ballot; (iii) systems that require a national minority candidate to be elected only by the voters of the same minority; and (iv) systems that allow national minority voters to vote only for their respective national minority lists and not for general political party lists. In this case, and despite the fact that the Hungarian law itself determines the connection between active and passive electoral rights with the respective ethnicity related to designated seats in the assembly, the ECtHR, in the context of the circumstances of the respective case, held that the electoral rights of the voters of national minorities were violated in contradiction with the guarantees established through article 3 of Protocol no. 1 of the ECHR, emphasizing, among others, that (i) there are doubts that a system in which a vote can only be cast for a specific closed list of candidates and which requires voters to abandon their party affiliation in order to have representation as members of a national minority, ensures "free expression of the opinion of the people in the choice of the legislature"; and (ii) the right to complete secrecy of the ballot in such circumstances is not available to national minority voters.

Based on the aforementioned clarifications, the Judgment notes that (i) according to paragraph 2 of article 45 of the Constitution, the vote is personal, equal, free and secret; (ii) according to paragraph 2 of article 64 of the Constitution, regardless of the number of seats won, twenty (20) seats in the Assembly belong to communities that are not in the majority in the manner specified in this article; (iii) the Constitution, the international instruments specified in its article 22 [Direct Applicability of International Agreements and Instruments], the case-law of the ECtHR and the Law on General Elections, in the context of active electoral rights, do not include the obligation for voters to elect only parties, coalitions, citizens' initiatives and independent candidates that have declared to represent the community that those voters belong to and in the context of passive electoral rights, neither the guaranteed seats in the Assembly for parties, coalitions, citizens' initiatives and independent candidates, are conditional only on the vote of the citizens belonging to the communities they declare to

represent; (iv) if the state opts for such an electoral system, the same must be prescribed through laws adopted by the Assembly and in accordance with constitutional provisions and values; and (v) according to the case-law of the ECtHR, it is not the role of the courts to determine the will of the voters and any declaration of invalidity of votes, must be based on a clear legal basis and on precise procedure followed, as stipulated in the applicable laws and regulations. In the context of the latter, the Judgment clarifies that within the electoral system in the Republic of Kosovo, there is no legal basis on which ballots can be declared invalid in certain polling stations, based on assumptions about the ethnicity of voters, including the proportion between the number of ballots that a party, coalition, citizens' initiative and independent candidate declare to represent a community that is not in the majority, may have won, and the calculated number of voters of the same community in the respective polling stations.

Consequently, and in the absence of a constitutional and/or legal basis for declaring the ballots invalid in certain polling stations in the municipalities of Kamenica and Graçanica, respectively, the Court finds that the refusal to annul/declare the ballots invalid in the aforementioned municipalities through the challenged Judgment of the Supreme Court, has not resulted in the violation of the applicant's rights to be elected in the Assembly of Kosovo, under paragraph 1 of article 45 of the Constitution in conjunction with article 3 of Protocol no. 1 of ECHR.

In fact, the applicant itself emphasizes the fact that there is no constitutional and/or legal basis in the Republic of Kosovo to declare ballots invalid based on the ethnicity of the voters. As a result, it requests the Court to oblige the Assembly of the Republic of Kosovo to take adequate measures, through adoption of laws which would prescribe special lists for communities that are not in the majority, through which the effective participation of communities would be ensured, so that, among others, the guaranteed seats in the Assembly of Kosovo could be won only if they are voted for by members of the same community that they declare to represent.

Having said this, among others, the Judgment clarifies that in the context of referrals filed based on paragraph 7 of article 113 of the Constitution, as are the circumstances of the concrete case, individuals are only authorized to refer violations by public authorities of their own individual rights and freedoms. Whereas, based on article 63 [General Principles] of the Constitution, the legislative institution of the Republic of Kosovo is the Assembly. The latter has full competence to determine the model and specifics of the electoral system through its adopted laws. Based on the principle of separation and balancing of powers, the laws adopted by the Assembly may be subject to constitutional review by the Constitutional Court, if contested before it based on the provisions of article 113 of the Constitution.

Finally, the Judgment emphasizes three other issues and which are related to the circumstances of the concrete case, as follows (i) another Judgment of the Supreme Court which decided similarly as in the circumstances of the applicant; (ii) the obligation to declare votes invalid only based on a clear legal base and respective procedure followed including addressing claims of irregularities, including possible criminal offenses, pertaining to the application of election rules and procedures, as stipulated in the applicable laws; and (iii) the effects of this Judgment.

As it pertains to the first issue, the Judgment clarifies that the applicant in his submission also referred to another judgment of the Supreme Court, namely [AA.nr.30/2021], which was issued following the appeals of the political entities representing the Bosniak community Lista Boshnjake, Unioni Social Demokrat and Nova Demokratska Stranka, and which, according to the applicant, based on the same interpretation of paragraph 4 of article 58 of the Constitution, annulled/declared invalid the ballots in all polling stations which were contested by the appellant political entities. The Court emphasizes that this Judgment has never been challenged before the Court and, consequently, has not been subjected to its constitutional review.

As it pertains to the second issue, the Judgment clarifies that paragraph 1 of article 64 of the Constitution refers specifically to the "number of valid votes" in determining the seats won in the Assembly of the Republic, while the relevant legal basis and the procedure for declaring votes invalid are stipulated in the Law on General Elections and other applicable electoral regulations. The Judgment emphasizes the fact that, based on the case-law of the ECtHR but also the applicable laws of the Republic of Kosovo, the declaration of votes invalid must be based on a clear legal basis. Furthermore, the Court emphasizes that criminal offenses against voting rights are defined in Chapter XVIII of the Criminal Code of the Republic of Kosovo. Allegations for violations during the electoral process, including the abuse of the right to vote and the procedures as to how such violations are addressed, are specified in the Law on General

General Elections, but also in the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo.

Finally, and pertaining to the third issue, namely the effects of this Judgment, the latter clarifies that, as the Court has specified in previous judgments related to individual rights in post-election disputes related to parliamentary elections, namely in (i) Judgment KI207/19, with applicants NISMA Socialdemokrate, Aleanca Kosova e Re dhe Partia e Drejtësisë, regarding the constitutional review of Judgments [A.A.U.ZH.no.20/2019] of 30 October 2019 and [A.A.U.ZH.no.21/ 2019] of 5 November 2019 of the Supreme Court of the Republic of Kosovo; and (ii) the Judgment in cases KI45/20 and KI46/20, with applicants Tinka Kurti and Drita Millaku, regarding the constitutional review of the Decisions [AA. no. 4/2020] of 19 February 2020 and [AA.no.3/2020] of 19 February 2020 of the Supreme Court, based on the principle of legal certainty, this Judgment cannot produce retroactive legal effect on the certified election result pertaining to the parliamentary elections of 14 February 2021.

The Court, unanimously, decided to (i) declare the referral submitted by PREBK inadmissible as a result of non-exhaustion of the legal remedies defined by law; and (ii) to declare the referral submitted by PLE admissible for review on merits; while, by majority, it decided to (iii) find that the Judgment [AA.no.29/2021] of 12 March 2021 of the Supreme Court did not violate the right of the applicant, namely PLE, to be represented in the Assembly after the parliamentary elections of 14 February 2021, according to paragraph 1 of article 45 [Freedom of election and participation] of the Constitution in conjunction with article 3 (Right to free elections) of Protocol no. 1 of the European Convention on Human Rights; and (iv) hold that this Judgment does not have retroactive effect and that, based on the principle of legal certainty, it does not affect the rights of third parties.

ECtHR – Important decisions (1 June – 30 June 2023)

* Labelling a book of fairy tales as harmful to children solely because of LGBTI content breached the Convention (23/01/2023)

The case of **Macatė v. Lithuania** (*application no. 61435/19*) concerned a children's book of fairy tales containing storylines about same-sex marriage. Distribution of the book had been suspended soon after its publication in 2013. It had been resumed one year later after the book had been labelled as possibly harmful to children under the age of 14. This was the first case in which the European Court of Human Rights had assessed restrictions on literature about same-sex relationships written specifically for children. In its Grand Chamber judgment in the case the European Court held, unanimously, that there had been: a **violation of Article 10 (freedom of expression)** of the European Convention on Human Rights. The Court found that the measures against the applicant's book had intended to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships. In particular it could not see how, according to the national courts and the Government, certain passages – a princess and a shoemaker's daughter sleeping in one another's arms after their wedding – had been sexually explicit. Nor was it convinced by the Government's argument that the book had promoted same-sex families over others. To the contrary, the fairy tales had advocated respect for and acceptance of all members of society in a fundamental aspect of their lives, namely a committed relationship. As a result, it concluded that restricting children's access to such information had not pursued any aims that it could accept as legitimate.

* The authorities' refusal to replace the term "male" by the term "neutral" or "intersex" on the applicant's birth certificate did not breach Article 8 of the Convention (31/01/2023)

In its Chamber judgment in the case of **Y v. France** (*application no. 76888/17*) 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. The applicant, who is a biologically intersex person, complains about the domestic courts' refusal to grant his request to have the word "neutral" or "intersex" entered on his birth certificate instead of "male". In examining the case in the light of the respondent State's positive obligation to secure to the applicant effective respect for his private life, the Court ascertained whether the general interest had been duly weighed against the applicant's interests. The Court noted, firstly, that an essential aspect of individual intimate identity was central to the present case, in that gender identity was in issue, and acknowledged that the discrepancy between the applicant's biological identity and his legal identity was liable to cause him suffering and anxiety. The Court then acknowledged that the arguments put forward by the national authorities in refusing the applicant's request, based on respect for the principle of the inalienability of civil status and the need to preserve the consistency and reliability of civil status records and of the social and legal arrangements in place in France, were relevant. It also took into consideration the Court of Cassation's reasoning to the effect that judicial recognition of a "neutral" gender would have farreaching consequences for the rules of French law, constructed on the basis of two genders, and would imply multiple coordinating legislative amendments. After noting that the Orléans Court of Appeal had held that granting the applicant's request would amount to recognising the existence of another gender category and therefore to exercising a normative function, which was in principle a matter for the legislature and not for the judiciary, the Court pointed out that respect for the principle of the separation of powers, without which there was no democracy, had thus been at the heart of the domestic courts' considerations. Recognising that although the applicant stated that he was not asking for the enshrinement of a general right to recognition of a third gender, but only for rectification of his civil status, the Court noted that if it were to uphold the applicant's claim this would necessarily mean that the respondent State would be required, in order to discharge its obligations under Article 46 of the Convention, to amend its national law to that effect; in consequence, the Court considered that it too was required to exercise restraint. In matters of general policy on which opinions within a democratic society could reasonably differ widely, a special weight had to be accorded to the role of the domestic policy-maker. This was particularly true where, as in the present case, the question was one on which society would have to make a choice. In the absence of a European consensus in this area, it was therefore appropriate to leave it to the respondent State to determine at what speed and to what extent it could meet the demands of intersex persons, such as the applicant, with regard to civil status, giving due consideration to the difficult situation in which they found themselves in terms of the right to respect for private life, especially the discrepancy between the legal position and their biological reality. The Court concluded that, having regard to the discretion ("margin of appreciation") enjoyed by the respondent State, France had not failed in its positive obligation to secure effective respect for the applicant's private life; it followed that there had been no violation of Article 8 of the Convention.

* Complaints about reduction in old-age pensions in Serbia amid austerity measures, inadmissible (09/02/2023)

The case of **Žegarac and Others v. Serbia** (*application no. 54805/15 and 10 other applications*) primarily

concerned the 11 applicants' complaints that the payment of their old-age pensions had been reduced from November 2014 to September 2018. The reduction followed legislative amendments introduced by the Government as part of a wider set of austerity measures. The legislation was repealed once it was considered that public debt had been sufficiently reduced. In its decision, the European Court of Human Rights, unanimously, decided to declare eight of the applications inadmissible. It ruled in particular that the reduction in pension payments had been limited to recipients of higher pensions, had been temporary – lasting just under four years – and had been part of the effort to balance the State budget. The authorities had therefore struck a fair balance between ensuring the financial stability of the pension system – which was in the general interest of the public – and protecting the applicants' property rights in order to prevent them from bearing an individual and excessive burden. It also decided, unanimously, to strike the other three applications out of its list of cases. In one of those cases the Court had had no response to its correspondence, while the applicants in the other two cases had died without an heir submitting a request to pursue the proceedings before it.

*** Violation of a whistle-blower's freedom of expression as a result of his criminal conviction (14/02/2023)**

In its Grand Chamber judgment in the case of **Halet v. Luxembourg** (*application no. 21884/18*) the European Court of Human Rights held, by a majority (twelve votes to five), that there had been: a violation **of Article 10 (freedom of expression)** of the European Convention on Human Rights. The case concerned the disclosure by Mr Halet, while he was employed by a private company, of confidential documents protected by professional secrecy, comprising 14 tax returns of multinational companies and two covering letters, obtained from his workplace. Following a complaint by his employer, and at the close of criminal proceedings against him, Mr Halet was ordered by the Court of Appeal on appeal to pay a criminal fine of 1,000 euros, and to pay a symbolic sum of 1 euro in compensation for the non-pecuniary damage sustained by his employer. In view of its findings as to the importance, at both national and European level, of the public debate on the tax practices of multinational companies, to which the information disclosed by the applicant had made an essential contribution, the Court considered that the public interest in the disclosure of that information outweighed all of the detrimental effects arising from it. Thus, after weighing up all the interests concerned and taking account of the nature, severity and chilling effect of the applicant's criminal conviction, the Court concluded that the interference with his right to freedom of expression, in particular his freedom to impart information, had not been "necessary in a democratic society".

*** Decision to return an abducted child to his father in the USA did not contravene the mother's rights under the European Convention (21/02/2023)**

In its Chamber judgment in the case of **G.K. v. Cyprus** (*application no. 16205/21*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.
The case concerned the proceedings and a subsequent order by the Cypriot courts to return the applicant's son to the United States of America under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. The Court found, in particular, that the domestic courts had not automatically ordered the return of the child. They had considered all the arguments of the parties and rendered detailed decisions which, in their view, safeguarded the best interests of the child and ruled out any serious risk to him. As a whole, the decision-making process had not run contrary to the procedural requirements inherent in Article 8 of the Convention, and the applicant had not suffered a disproportionate interference with her right to respect for her family life. The Court underlined that the aim of the Hague Convention was to prevent the abducting parent from being allowed to benefit from his or her own wrongdoing.

*** Russia responsible for unlawful arrests, ill-treatment and detention of two vulnerable men by de facto Abkhaz authorities (07/03/2023)**

In its Chamber judgment in the case of **Mamasakhlisi and Others v. Georgia and Russia** (*application nos. 29999/04 and 41424/04*) the European Court of Human Rights held, unanimously, that there had been, in respect of the first and third applicants:
- a violation of Article 3 (prohibition of inhuman or degrading treatment),
- a violation of Article 5 § 1(a)(c) (right to liberty and security), and
- a violation of Article 6 §§ 1 and 3(c) (right to a fair trial)
of the European Convention on Human Rights by the Russian Federation and no violation by Georgia.
The case concerned events prior to the armed conflict in 2008 between Georgia and Russia and, in particular, Mr Mamasakhlisi's and Mr Nanava's arrests in 2001 and 2003 respectively, and their alleged ill-treatment, conviction and continued detention by the de facto Abkhaz authorities. The Court found that, while Georgia had exercised no control over Abkhaz territory at the time, it had jurisdiction by virtue of the events having taken place on its territory recognised under public international law. As regards Russia, the Court concluded that, due to its sustained and substantial political and economic support for Abkhazia and dissuasive military

involvement, Russia had exercised effective control and decisive influence over the area and thus had jurisdiction in respect of the matters complained of. The Court found that Mr Mamasakhlisi's and Mr Nanava's arrests and detention had been unlawful. Mr Mamasakhlisi had been ill-treated and detained in inhuman and degrading conditions. Neither of the applicants had received adequate medical attention or benefited from a fair hearing by an independent and impartial tribunal established by law. They had not been able to organise their defence and effectively benefit from the assistance of a lawyer. In terms of apportioning responsibility for the violations of the Convention, the Court found Russia responsible for the violations and no violation by Georgia. The Court specifically considered that the Georgian Government had done everything within its power to secure Mr Mamasakhlisi's and Mr Nanava's rights under the Convention but had come up against the persistent refusals of the de facto Abkhaz authorities to cooperate and the inactivity of the Russian authorities to take necessary action to address the complaints once they had been notified of them. As a result of its continued support for Abkhazia during the relevant period, Russia was responsible for the violations of the applicants' rights.

* Systematic publishing of tax debtors' personal data in Hungary breached the Convention (09/03/2023)

In its Grand Chamber judgment in the case of **L.B. v. Hungary** (*application no. 36345/16*) the European Court of Human Rights held, by 15 votes to 2, that there had been: a **violation of Article 8 (right to respect for private and family life and the home)** of the European Convention on Human Rights.
The case concerned the Hungarian legislative policy of publishing the personal data of taxpayers who were in debt. The applicant complained in particular that his name and home address had been published on a list of "major tax debtors" on the tax authorities' website under a 2006 amendment to the relevant tax legislation. The Court found that the amended publication scheme had been systematic, without any weighing up of the public interest in ensuring tax discipline against the individual's privacy rights. In particular, Parliament had not assessed the previous publication schemes and their impact on taxpayers or reflected as to what the additional value would be of the 2006 amended scheme.
Moreover, little or no consideration had been given to data protection, the risk of misuse by the general public of a tax debtor's home address, or the worldwide reach of Internet. The Court was not therefore satisfied, notwithstanding the respondent State's wide discretion to decide on such matters, that the Hungarian legislature's reasons for enacting the amended publication scheme, although relevant, had been sufficient to show that the interference with the applicant's rights had been "necessary in a democratic society".

* Hungary must develop a policy to put a stop to segregation in education (30/03/2023)

In its Chamber judgment in the case of **Szolcsán v. Hungary** (*application no. 24408/16*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 14 (prohibition of discrimination)** of the European Convention on Human Rights, taken in conjunction with Article 2 of Protocol No. 1 (right to education).
The case concerned the applicant's education in a primary school that was almost exclusively attended by Roma children. His request to be transferred to another school in a neighbouring town was rejected because he did not live in the school's catchment area. However, he claims that about one quarter of that school's pupils lived in the same town as him, which was within easy distance as it was five minutes away on public transport. He alleges that the curriculum taught at the school he attended was poor and that he was deprived of a proper education. The Court found that the fact that his school was almost exclusively attended by Roma children amounted to segregation. It reiterated that the education of Roma children in segregated classes or schools without taking adequate measures to correct inequalities was incompatible with the State's duty not to discriminate based on race or ethnicity. The Court held under Article 46 (binding force and implementation) that the Hungarian State had to adopt measures not only to end the segregation of Roma pupils at that particular school but to ensure the development of a policy to put a stop to segregation in education, as recommended by the Fifth Report on Hungary of the European Commission against Racism and Intolerance (ECRI).

* Refusal of German authorities to record a transgender parent as mother on birth certificate of child to whom she had not given birth did not violate Convention (04/04/2023)

In its Chamber judgment in the case of **A.H. and Others v. Germany** (*application no. 7246/20*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights.
The case concerned three applicants, the first of whom is a transgender parent (A.H.), who complained that the civil registration authorities had refused to record the first applicant in the register of births as mother of the third applicant (L.D.H.) on the grounds that A.H. had not given birth to the child – to whom G.H. (the second applicant) had given birth – who had in fact been conceived with A.H.'s sperm. The Court found that, in line with the intention of the German legislature, the former gender and former forename of a transgender parent had to be indicated not only where the birth had taken place before the recognition of the parent's gender change had become final but also where, as in the present case, the child had been conceived or born after the gender reclassification.

Having regard to the fact that the first applicant (A.H.) was the parent of the third applicant (L.D.H.) had not been called into question, and there were few scenarios where the first applicant's transgender identity could be revealed upon presentation of the child's birth certificate (on which she was recorded as father), also taking account of the discretion ("margin of appreciation") afforded to the respondent State, the Court found that the German courts had struck a fair balance between the rights of the first and second applicants (A.H. and G.H.), the interests of the third applicant (L.D.H.), considerations as to the child's welfare and the public interests at stake.

* Delayed reinstatement of suspended prosecutor violated Article 8 (04/04/2023)

In its Chamber judgment in the case of **Gashi and Gina v. Albania** (*application no. 29943/18*) 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 in respect of Mr Gina.
The case concerned a criminal investigation into the applicants on suspicion of irregularities related to their declaration of assets and financial interests over the years, and their suspension from their positions as prosecutors as required by the relevant legislation. The Court found that the suspension of Mr Gina raised an issue under Article 8 of the Convention and had been devoid of any legal basis once the criminal investigation against him had ended, and had therefore not been "in accordance with the law". The Court dismissed as inadmissible Ms Gashi's similar complaint about her suspension and the alleged leaking of personal data to the media.

* Unjustified detention on remand of two former secret-police officers (04/04/2023)

In its Chamber judgment in the case of **Radonjić and Romić v. Serbia** (*application no. 43674/16*) the European Court of Human Rights held, unanimously, that there had been: a violation **of Article 5 § 3 (right to liberty and security)** of the European Convention on Human Rights, and a **violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court)**.
The case concerned the detention on remand for almost three and a half years of two former secret-police officers suspected of murdering a well-known Serbian journalist and newspaper publisher. It also concerned the length of the proceedings before the Constitutional Court to review their detention. The criminal trial is still pending in their case. The Court saw no reason to disagree with the Constitutional Court's findings that the first year and two months of their detention had been justified by, among other reasons, the need to preserve public order if the applicants had been released given the high-profile nature of the case, but that over time, and for the remaining two years and three months of their detention, that reason had no longer been valid. Although the national courts had therefore acknowledged a breach of the applicants' rights, the Court noted that they had not been awarded any compensation. Accordingly, it refused to dismiss the case for lack of victim status, and held that there had been a violation of the Article 5 § 3. Lastly, the Court considered that it had taken the Constitutional Court more than two years to rule on the lawfulness of the applicants' detention and that that could not be regarded as "speedy" within the meaning of Article 5 § 4 of the Convention.

* Ban on entry to the Sejm for displaying a banner violated the Convention (06/04/2023)

In its Chamber judgment in the case of **Drozd v. Poland** (*application no. 15158/19*) the European Court of Human Rights held, unanimously, that there had been: a violation **of Article 10 (freedom of expression)** of the European Convention on Human Rights.
The case concerned a one-year ban imposed on the applicants on entering the Sejm (the Polish Parliament's lower house). They were banned for displaying a banner – which read "Defend Independent Courts" (Brońcie niezależnych sadów) – in the grounds of the Sejm during a protest against the Government's planned reforms to the judiciary. The Court felt that a distinction should be made between that incident, which had occurred outside the Sejm building, and incidents inside which interfered directly with the orderly conduct of parliamentary debate. It found that the ban had been given without any procedural safeguards. In particular, the applicants had simply received letters from the Head of Parliament Security informing them that they were banned, without any clear procedure for challenging the measure.

* Failure to protect a patient's right to informed consent (13/04/2023)

In its Chamber judgment in the case of **Mayboroda v. Ukraine** (*application no. 14709/07*) 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 as regards the failure to protect Ms Mayboroda's right to informed consent.
The case concerned the applicant's allegation that her kidney had been removed without her consent or even knowledge during emergency surgery for internal bleeding in March 2000. The intervention had been carried out in the Lviv Regional Clinical Hospital, a public hospital. She had found out a few months later via an anonymous telephone call that her left kidney "had been stolen". An official investigation had concluded that the kidney had been removed to save her life, while a civil action she had brought had resulted in her being awarded damages against the consulting doctor. The Court found in particular that the

authorities had not examined whether there had been a possibility to gain consent to the kidney removal either from Ms Mayboroda before the operation or from her relatives during the procedure and the State had failed to set up an appropriate regulatory framework to protect Ms Mayboroda's right to informed consent.

* Violation of freedom of expression of candidate in parliamentary elections who was penalised for speaking Turkish while campaigning (02/05/2023)

In its Chamber judgment in the case of **Mestan v. Bulgaria** (*application no. 24108/15*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 10 (freedom of expression)** of the European Convention on Human Rights. The case concerned an administrative sanction imposed on the leader of a political party – traditionally supported by voters belonging to the Turkish minority in Bulgaria – who was a candidate in the 2013 Bulgarian parliamentary elections, for speaking in Turkish while campaigning for election. The Bulgarian authorities took the view that he had breached the Bulgarian Electoral Code. The Court noted that the Bulgarian Electoral Code imposed an absolute prohibition on the use of any language other than the official language (Bulgarian) in election campaigning, and that breaches of the relevant provisions resulted in administrative sanctions in the form of fines. The Court stressed the importance of pluralism, tolerance and the protection of minorities in a democratic society and observed that respect for minorities, far from weakening democracies, could only make them stronger. Thus, despite the margin of appreciation afforded to the national authorities, the Court considered that the prohibition in question did not correspond to a pressing special need and was not proportionate to the legitimate aims mentioned in Article 10 of the Convention. The interference with the exercise of the applicant's right to freedom of expression had therefore not been necessary in a democratic society.

* Violation of the rights of an applicant held in prison for 44 years and lacking any realistic prospect of release (09/05/2023)

In its Chamber judgment in the case of **Horion v. Belgium** (*application no. 37928/20*) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights.
The case concerned an applicant detained since 1979 and sentenced to life imprisonment in 1981 for the murder of five people in connection with a robbery. He complained that his life sentence was irreducible de facto. The Court noted that, since January 2018, the psychiatric experts and the domestic courts had agreed that extending the applicant's detention in prison was no longer appropriate, either in terms of public safety or for the purposes of his rehabilitation and reintegration into society. They therefore recommended that the applicant be admitted to a forensic psychiatric unit as an intermediate stage before his possible release. As a result, the domestic courts refused to approve any other sentence adjustments such as limited detention or electronic surveillance, emphasizing that the applicant's admission to a forensic psychiatric unit was an essential step in his reintegration into society. However, according to those same courts, the applicant's admission to such a unit "appear[ed] impossible in practice owing to funding issues", since the units in question received State subsidies only for persons in compulsory confinement and not for convicted persons like the applicant. Accordingly, the Court considered that the predicament in which the applicant had found himself for several years owing to the practical impossibility of securing a place in a forensic psychiatric unit, although his detention in prison was no longer considered appropriate by the domestic authorities, meant that he currently had no realistic prospect of release, a situation prohibited by Article 3 of the Convention.

* Obtaining consent for Jehovah's Witnesses' collecting of personal data necessary to protect rights of others (09/05/2023)

In its Chamber judgment in the case of **Jehovah's Witnesses v. Finland** (*application no. 31172/19*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 6 (right to a fair trial)** of the European Convention on Human Rights, and no violation of Article 9 (freedom of thought, conscience and religion). The case concerns the obligation for individual Jehovah's Witnesses to obtain consent when collecting personal data during their door-to-door preaching. The Court found in particular that the domestic authorities had correctly balanced the interests of the applicant community with the rights of individuals as regards their personal information, holding that obtaining consent had been necessary.

* Use of evidence obtained in breach of fundamental rights led to murder conviction (11/05/2023)

In its Chamber judgment in the case of **Lalik v. Poland** (*application no. 47834/19*) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 6 § 3 (c) (right to legal assistance of own choosing)** of the European Convention on Human Rights. The case concerned the applicant's defence rights and privilege against self-incrimination. In January 2016, while drunk, the applicant set fire to his drinking partner's jacket, with the latter sustaining severe burns and dying as a result. The applicant was convicted of aggravated murder and sentenced to 25 years' imprisonment. The

judgments of the national courts referred explicitly to statements he had made during his informal questioning which had taken place before he had seen a lawyer and allegedly while still under the effect of alcohol. The Court found in particular that Mr Lalik had not been properly informed of his defence rights. It expressed concern that the national courts had admitted and assessed evidence obtained in breach of those fundamental guarantees. The explanations that Mr Lalik had given during his informal questioning had served as key evidence in establishing his intent to kill his friend, which in turn had led to his conviction for murder. In the Court's view, such reasoning went against the concept of a fair trial.

*** Applicant's conviction for not promptly deleting unlawful comments on Facebook did not breach his right to freedom of expression (15/05/2023)**

In its Grand Chamber judgment in the case of **Sanchez v. France** (*application no. 45581/15*) the European Court of Human Rights held, by a majority, that there had been: **no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.
The application concerned the criminal conviction of the applicant, at the time a local councillor who was standing for election to Parliament, for the offence of incitement to hatred or violence against a group or an individual on grounds of religion, following his failure to take prompt action to delete comments posted by third parties on the "wall" of his Facebook account. The applicant alleged that his conviction had breached his right to freedom of expression under Article 10 of the Convention. The criminal case had turned solely on the applicant's lack of vigilance and failure to react in respect of comments posted by others. It had thus raised the question of the shared liability of the various actors involved in social media. The French criminal courts, applying a "cascading liability" regime introduced by the Law of 29 July 1982, had convicted the authors for the unlawful messages together with the applicant as the Facebook account holder, being characterised as "producer". First, the Court considered that the domestic legal framework, providing for a sharing of liability between all those involved, had been sufficiently precise, for the purposes of Article 10 of the Convention, to enable the applicant to regulate his conduct in the circumstances. Secondly, the Court agreed with the domestic courts that the comments at issue, which had been posted in the specific context of a forthcoming election, could be classified as hate speech, when interpreted and analysed in terms of their immediate impact, and were therefore unlawful. Thirdly, it took the view that the interference with the applicant's freedom of expression pursued not only the legitimate aim of protecting the reputation or rights of others, but also that of preventing disorder or crime. As the applicant had decided to make his Facebook "wall" publicly accessible and had "authorized his friends to post comments", in the Court's view he could not have been unaware, in view of the local tensions and ongoing election campaign around that time, that his choice was clearly not without certain potentially serious consequences. The Court concluded, taking account of the State's margin of appreciation, that the decisions of the domestic courts had been based on relevant and sufficient grounds, with regard both to the applicant's liability, as a politician, for the unlawful comments posted by the third parties, who had themselves been identified and prosecuted as accomplices, and to the applicant's criminal conviction. The interference in question could thus be regarded as "necessary in a democratic society". There had therefore been no violation of Article 10 of the Convention.

*** No violation of former President of Croatia's rights in online news article alleging his possible involvement in bribery (30/05/2023)**

In its Chamber judgment in the case of **Mesić v. Croatia** (no. 2) (*application no. 45066/17*) the European Court of Human Rights held, by five votes to two, that there had been: no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.
The case concerned an article published in February 2015 by an Internet news portal Dnevno.hr suggesting that the applicant, a former President of Croatia, had, during his term of office, been offered or taken bribes in relation to the procurement of armoured vehicles for the Croatian army from the Finnish company Patria. Mr Mesić complained that by dismissing his civil action for compensation, the domestic courts had failed to protect his reputation in violation of his right to respect for private life. The Court noted that the article had not targeted Mr Mesic's private life but had referred to his conduct in the exercise of his official duties and, in reporting what had been stated in official documents, had not unambiguously stated that he had participated in criminal activities. In particular, it found that the Croatian courts had struck a fair balance between the former president's right to respect for his private life and the right of the news portal to freedom of expression.

(*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.

ADDRESS

Street: “Perandori Justinian”, nr. 44, 10 000 - Prishtina
Tel: +383 (0)38 60 61 62
Mob: +383 (0)45 200 595; +383 (0)45 200 576
Fax: +383 (0)38 60 61 70
E-mail: gjykata.kushtetuese@gjk-ks.org
Web: www.gjk-ks.org