



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

Prishtina, on 10 August 2023  
Ref. no.: VPM 2243/23

*This translation is unofficial and serves for informational purposes only.*

## DECISION ON INTERIM MEASURE

in

**Case no. KO160/23**

Applicant

**Abelard Tahiri and 11 other deputies of the Assembly of the Republic of Kosovo;**

**Constitutional review of “Decision Ref. No. L-VIII, SP-119 of 11 July 2023, on Scheduling of the Plenary Session of 13 July 2023, of the President of the Assembly of the Republic of Kosovo”**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

#### **Applicants**

1. The Referral was submitted by Abelard Tahiri, Rashit Qalaj, Bekim Haxhiu, Blerta Deliu-Kodra, Eliza Hoxha, Enver Hoxhaj, Ferat Shala, Floretë Zejnullahu, Ganimete Musliu, Hajdar Beqa, Mërgim Lushtaku and Hisen Berisha, deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), of the parliamentary group of the Democratic Party of Kosovo (hereinafter: PDK), who are represented before the Court by Faton Fetahu, lawyer.

## **Contested act**

2. The Applicants challenge the constitutionality of “*Decision Ref. No. L-VIII, SP-119 of 11 July 2023, on Scheduling of the Plenary Session of 13 July 2023, of the President of the Assembly of the Republic of Kosovo*” (hereinafter: the contested act).

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the contested act, which as alleged by the Applicants was rendered in violation of Articles 68 [Sessions], 69 [Schedule of Sessions and Quorum] and 76 [Rules of Procedure] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Articles 16 (President of the Assembly), 19 (Duties of the Presidency) and 52 (Agenda of the Plenary Session) of Rules of Procedure No. 08-V-349 of the Assembly of the Republic of Kosovo (hereinafter: the Rules of Procedure of the Assembly).
4. In addition, the Applicants request from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), to decide upon an interim measure in the contested act, suspending thereby, as a consequence, the entry into force and implementation of “*laws, draft laws, and decisions taken by the Assembly of Kosovo at the session of 13 July 2023*” until the final decision of the Court.

## **Legal basis**

5. The Referral was submitted based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, on Articles 22 (Processing Referrals), 27 (Interim Measures), 42 (Accuracy of the Referral) and 43 (Deadline) of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 25 (Filing of Referrals and Replies) and 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) and 44 (Request for Interim Measures) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).
6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

## **Proceedings before the Court**

7. On 19 July 2023, the Applicants submitted their Referral by mail, which the Court received on 21 July 2023.
8. On 24 July 2023, the Applicants submitted several additional documents including some technical corrections to the initial Referral.
9. On 26 July 2023, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of judges: Bajram Ljatifi (presiding judge), Safet Hoxha and Remzije Istrefi-Peci (members).

10. On 27 July 2023, the Applicants were notified of the registration of the Referral. On the same day, the Court, notified about the registration of the Referral: (i) the President of the Republic of Kosovo (hereinafter: the President); (ii) the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); and (iii) the President of the Assembly of the Republic of Kosovo (hereinafter: the President of the Assembly), who was requested to hand over a copy of the Referral to all deputies of the Assembly. The Court informed the abovementioned interested parties that their comments regarding the Referral, if there are any, should be submitted to the Court, by 10 August 2023, at the Court's electronic address or by personal delivery.
11. On the same day, the Court notified the Deputy Secretary General of the Assembly on the registration of the Referral and requested from him that to the latest by 31 July 2023: (i) he submit to the Court all relevant documents regarding the contested act; (ii) he notify the Court which of the items of the agenda according to the contested act were adopted in the Assembly at the session of 13 July 2023; and (iii) he notify the Court what steps were taken by the Assembly regarding the issues decided by the Assembly based on the agenda according to the contested act.
12. On 28 July 2023, the Deputy Secretary of the Assembly submitted the requested information to the Court.
13. On 28 July 2023, the President submitted a letter to the Court requesting clarification regarding the suspensive effects of the submission of Referral KO160/23 in relation to the decisions and laws adopted in the Assembly at the session of 13 July 2023, which is subject to the decree procedure by the President of the Republic of Kosovo.
14. On 31 July 2023, the Court submitted a response to the President regarding the letter of 28 July 2023, clarifying thereby as in the aforementioned letter of 27 July 2023, that the Applicants also requested imposition of the interim measure with respect to the contested act and that all interested parties and public opinion will be notified of the Court's decision-making on the interim measure.
15. On 1 August 2023, the Review Panel considered the proposal of the Judge Rapporteur regarding the decision on the interim measure. On the same day, the Court, by seven (7) votes in favour and one (1) against, decided to reject the interim measure regarding the contested act and the decisions adopted at the session of 13 July 2023.

### **Summary of facts**

16. On 11 July 2023, the President of the Assembly, Mr. Glauk Konjufca, rendered the contested act on the scheduling and convening of the plenary session of the Assembly of the Republic of Kosovo, on 13 July 2023, at 10:00.
17. On the same day, according to the Applicants, the contested act was sent to the deputies of the Assembly of the Republic of Kosovo, at 16:20, by the Secretariat of the Assembly together with (i) the agenda; and (ii) the materials for the plenary session of 13 July 2023.
18. Based on the case files, the proposed agenda included thirty-one (31) items, as follows:
  1. Adoption of the minutes from the previous session;
  2. Statements off the agenda;
  3. Parliamentary questions;

4. Voting in principle of the Draft Law no. 08/L-212 on Reproductive Health and Medical Assisted Fertilization;
5. Voting of the Draft Law no. 08/L-221 on Ratification of the Loan and Project Agreement between the Republic of Kosovo, represented by the Ministry of Finance, Labour and Transfers, KOSTT (Kosovo Electricity Transmission, System and Market Operator J.S.C.) and KFW, Frankfurt Am Main (KFW) for the Project - Development of the Energy Sector VII – improvement of the transmission network;
6. Voting of the Draft Law no. 08/L-222 on Ratification of the Loan Agreement between the Republic of Kosovo and the European Bank for Reconstruction and Development for the “Prishtina Solar Heating” Project;
7. Voting of the Draft Law no. 08/L-223 on Ratification of the Agreement for Co-funding of Higher Education Scholarships at Master's level between the Ministry of Education, Science, Technology and Innovation and the French Embassy in Prishtina;
8. Voting in Principle of the Draft Law no. 08/L-207 on School Textbooks;
9. Review of the Draft Law no. 08/L-234 on Ratification of the Loan Agreement for the Public Finance and Economic Growth Program between the Republic of Kosovo and the OPEC Fund for International Development;
10. Review of the Draft Law no. 08/L-236 on the Ratification of the Treaty between the Republic of Kosovo and the Kingdom of Denmark on the use of the correctional institution in Gjilan for the purpose of executing Danish sentences;
11. Second Review of the Draft Law no. 08/L-102 on Amending and Supplementing the Law no. 04/L-139 on Enforcement Procedure, as amended and supplemented by Law no. 05/L-118;
12. Second Review of the Draft Law no. 08/L-199 on Amending and Supplementing the Law no. 05/L-060 on Forensic Medicine;
13. Second Review of the Draft Law no. 08/L-177 on the Institute of Crimes committed during the war in Kosovo;
14. Second Review of the Draft Law no. 08/L-191 on Judicial Experts;
15. Second Review of the Draft Law no. 08/L-142 Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income;
16. Second Review of the Draft Law no. 08/L-190 on Balanced Regional Development;
17. Second Review of the Draft Law no. 08/L-200 on Prevention and Control of Communicable Diseases;
18. Second Review of the Draft Law no. 08/L-201 on Amending and Supplementing the Law no. 05/L-081 on Energy;
19. First Review of the Draft Law no. 08/L-227 on the Representation of State Institutions in Judicial Proceedings and Arbitration;
20. First Review of the Draft Law no. 08/L-237 on Cadastre of Immovable Property;
21. First Review of the Draft Law no. 08/L-238 on the Sovereign Fund of the Republic of Kosovo;
22. Review of the report with recommendations for supervision of the implementation of Law no. 06/L-009 on Mediation;
23. Review of the report with recommendations for supervision of the implementation of Law no. 04/L-156 on Tobacco Control and Law no. 08/L-040 on Amending and Supplementing the Law no. 04/L-156 on Tobacco Control;

24. Establishment of the ad hoc Committee for the selection of 2 (two) members from the Albanian community to the Independent Media Commission;
  25. Appointment of the Chairperson and one (1) member of the Board of the Privatization Agency of Kosovo;
  26. Election of the Parliamentary Commissioner for the Kosovo Security Force;
  27. Election of members of the Board of the Energy Regulatory Office;
  28. Election of one (1) member of the Property Claims Commission of the Kosovo Property Comparison and Verification Agency;
  29. Appointment of the Chairperson and members of the Steering Board of the Kosovo Pension Savings Fund;
  30. Election of the Governor of the Central Bank of the Republic of Kosovo;
  31. Review of the Proposal - Decision of the Government of the Republic of Kosovo on the dismissal of Mrs. Kimete Gashi from the position of member of the Procurement Review Body.
19. On 13 July 2023, the plenary session was held in which, based on the case files, the Assembly adopted:
1. Decision No. 08-V-579 on the appointment of the Chairperson and one (1) member of the Board of the Privatization Agency of Kosovo;
  2. Decision No. 08-V-580 on the adoption of the report regarding the supervision of Law no. 04/L-156 on Tobacco Control and Law no. 08/L-040 on Amending and Supplementing the Law no. 04/L-156 for Tobacco Control;
  3. Decision No. 08-V-581 on the adoption in principle of the Draft Law no. 08/L-237 on Cadastre of Immovable Property;
  4. Decision No. 08-V-582 on the election of one (1) member of the Property Claims Commission of the Kosovo Property Comparison and Verification Agency;
  5. Decision No. 08-V-583 on the dismissal of Mrs. Kimete Gashi from the position of member of the Procurement Review Body;
  6. Decision No. 08-V-584 on the adoption in principle of the Draft Law no. 08/L-238 on the Sovereign Fund of the Republic of Kosovo;
  7. Decision No. 08-V-585 on the appointment of the Chairperson and members of the Steering Board of the Kosovo Pension Savings Fund;
  8. Decision No. 08-V-586 on the election of the Governor of the Central Bank of the Republic of Kosovo;
  9. Decision No. 08-V-587 on the adoption in principle of the Draft Law no. 08/L-227 on the Representation of State Institutions in Judicial Proceedings and Arbitration;
  10. Decision No. 08-V-588 on the election of members of the Board of the Energy Regulatory Office;
  11. Decision No. 08-V-589 on the adoption of the Law no. 08/L-142 on Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income;
  12. Decision No. 08-V-590 on the adoption of the Law no. 08/L-177 on the Institute of Crimes Committed during the Kosovo War;
  13. Decision No. 08-V-591 on the adoption of the Law no. 08/L-199 on Amending and Supplementing the Law no. 05/L-060 on Forensic Medicine;
  14. Decision No. 08-V-592 on the adoption of the Law no. 08/L-191 on Judicial Experts;

15. Decision No. 08-V-593 on the adoption of Law no. 08/L-201 on Amending and Supplementing the Law no. 05/L-081 on Energy;
  16. Decision No. 08-V-594 on the adoption of the Law no. 08/L-190 on Balanced Regional Development;
  17. Decision No. 08-V-595 on the adoption of Law no. 08/L-102 on Amending and Supplementing the Law no. 04/L-139 on Enforcement Procedure, as amended and supplemented by Law no. 05/L-118;
  18. Decision No. 08-V-596 on the adoption of the Law no. 08/L-200 on the Prevention and Control of Communicable Diseases; and
  19. Decision No. 08-V-597 on the adoption of the Report with Recommendations for the Supervision of the Implementation of Law no. 06/L-009 on Mediation;
20. The Court notes that on the same day, 13 July 2023, an extraordinary session was also held in the Assembly beginning at 15:30, in which two decisions were adopted, as follows:
1. Decision No. 08-V-598 on the Adoption of Law no. 08/L220 on the Price of Medicinal Products;
  2. Decision No. 08-V-599; on the appointment of the members of the Selection Body for the appointment of one (1) member of the Board in the Procurement Review Body.

### **Applicants' allegations**

21. The Applicants of this Referral allege before the Court that the contested act, of the President of the Assembly on the scheduling of the plenary session of 13 July 2023, is not in accordance with Article 68 [Sessions], Article 69 [Schedule of Sessions and Quorum], Article 76 [Rules of Procedure] of the Constitution in conjunction with Article 16 (President of the Assembly), Article 19 (Duties of the Presidency) and Article 52 (Agenda of the Plenary Session) of the Rules of Procedure of the Assembly.
  - (i) *regarding the compliance of the contested act with the Constitution and the Rules of Procedure of the Assembly*
22. The Applicants emphasize, among other things, that they do not challenge the competence of the President of the Assembly to convene and schedule the agenda for the plenary session, but challenge the procedure that preceded the session of 13 July 2023, and therefore the constitutional and legal effects of the decision taking of the Assembly in this session.
23. Applicants allege that *“the contested decision raises a constitutional issue of special importance because the President of the Assembly represents the highest legislative and constitutional institution in the Republic of Kosovo and he, according to paragraph 7 of Article 67 of the Constitution, represents the Assembly; sets the agenda, convenes and chairs the sessions; signs acts adopted by the Assembly; and exercises other functions in accordance with this Constitution and the Rules of Procedure of the Assembly”*.
24. In this regard, the Applicants consider that the President of the Assembly, by rendering the contested act, has substantially violated the provisions of Articles 68, 69 and 76 of the Constitution and Articles 16, 19 and 52 of the Rules of Procedure of the Assembly, by scheduling and holding *“arbitrarily”* a session which has resulted in the following constitutional violations:

- (a) not meeting the deadline for convening and scheduling the plenary session according to Article 52 of the Rules of Procedure of the Assembly according to which, among other things, the agenda, together with materials, is distributed to MPs at least two (2) working days prior the plenary session is held; and
- (b) by not putting for adoption the agenda of this session due to the absence of the consensus of the Presidency as a result of the lack of the necessary quorum, namely the failure to hold the Presidency meeting, according to paragraph 1 of Article 19 of the Rules of Procedure, which stipulates that *“The Presidency of the Assembly, in the joint meeting with the heads of the parliamentary groups, shall discuss the agenda of the plenary session, proposed by the President of the Assembly. The agenda is adopted by consensus, and if no consensus is reached, the President shall present the agenda to the plenary session for adoption”*, the agenda of the plenary session should have been put to a vote in the Assembly session of 13 July 2023.

(ii) regarding the legal nature of the contested act

- 25. Regarding the legal nature of the contested act, the Applicants consider that the scheduling of this session cannot be outside the scope of the constitutional control exercised by the Constitutional Court because the contested act, even though it is not a *“decision of the Assembly”* within the meaning of Article 65 [Competencies of the Assembly] and 80 [Adoption of Laws] of the Constitution, was rendered by the holder of this constitutional institution, who has constitutional responsibility according to Article 67 of the Constitution and Article 16 of the Rules of Procedure of the Assembly. The fact that the contested act of the President of the Assembly has produced legal consequences should be subject to constitutional review by the Constitutional Court.
- 26. The Applicants point out that the term *“decision”* used in Article 113.5 of the Constitution refers to *“any action of the Assembly or its holder, which produces legal consequences according to his constitutional competencies”*. Therefore, the term *‘decision’*, according to the Applicants, includes *“not just a legal act of the Assembly, but the decision of the representative of the latter, by whom the contested decision was rendered”*. Further, according to the Applicants, it can be argued that *“any action of the Assembly and/or the President as its representative, which produces legal consequences (general or individual), whether rendered in written or unwritten form, both in regard to substantive issues and procedural issues”*, can be subject to constitutional control.
- 27. According to the Applicants, *“we cannot assume that this is simply an “act” which, as a rule, has no binding force or does not have the character of a legal act”*, because it is about a *“decision”* of the Assembly, respectively its President, within the meaning of paragraph 5 of Article 113 of the Constitution, insofar as its decisions produce such effects and consequences as the scheduling and convening of a session in which issues of state interest are reviewed and decided for the citizens in the Republic of Kosovo – as it has happened in the circumstances of the present case.
- 28. According to them, if such a decision, as in the circumstances of the present case, were excluded from constitutional control, *“it would enable unprecedented arbitrariness in the organization, manner of work, and functioning of the Assembly, on one hand, and effectively lack of necessity for the implementation of the Rules of Procedure, on the other hand”*, which, according to Article 76 of the Constitution, is adopted by two-thirds (2/3) of all deputies of the Assembly.

(iii) regarding the request for interim measure

29. In regard to the issue of the interim measure, the Applicants request that the Court “accept the application of Article 43 of the Law on the Constitutional Court, regarding the ex-lege suspensive effect of the implementation of the decision of the President of the Assembly [the contested act], with the effect of suspending the implementation of all decisions of the plenary session of 13 July 2023, since the same is contested before the Constitutional Court [...]” The Applicants also base the request for ex-lege suspension of the contested act on Article 116 of the Constitution which stipulates that the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.
30. Consequently, the Applicants request from the Court, “without prejudice to the admissibility or merits of the Referral”, to inform the parties involved that the contested act of the President of the Assembly, be suspended ex-lege so that the “laws adopted in this session not be sent for decreeing and publication in the Official Gazette until the final decision of the Constitutional Court on the contested case”, and consequently to suspend the implementation of all other decisions rendered by the Assembly in this plenary session.
31. Finally, the Applicants request from the Court (i) to declare the Referral admissible; (ii) to declare the contested act, namely the “Decision” [Ref. no. L-VIII, SP-119] of the President of the Assembly of 11 July 2023, on the Scheduling of the Plenary Session of 13 July 2023 in violation of the Constitution; and (iii) to annul the plenary session of the Assembly of the Republic of Kosovo held on 13 July 2023 and all decisions taken at the same session.

### **Assessment regarding the interim measure**

32. In order to assess the Applicants' Referral for an interim measure, the Court first recalls the constitutional basis on which the respective Referral was submitted to the Court.
33. In this regard, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulates that “the Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”.
34. In addition, the Court also refers to paragraph 5 of Article 113 of the Constitution, which stipulates:

*“Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.”*
35. The Court also refers to paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, which stipulates:

“[...]”

*2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a*



*decision if the Court finds that application of the contested action or law would result in unrecoverable damages.*

*[...].”*

36. Further, the Court also refers to Article 27 (Interim Measures) of the Law, which provides:

*“1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*

37. The Court also refers to Article 43 (Deadline) of the part of the Law relating to proceedings in the case set out in Article 113, paragraph 5 of the Constitution, which stipulates:

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

*2. In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5 of the Constitution, such a law or decision shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest.*

*3. In the event that a law or decision adopted by the Assembly is contested in accordance with Article 113, Paragraph 5 of the Constitution, the Constitutional Court shall render a final decision on this contest no later than sixty (60) days following the submission of the referral.*

38. The Court also recalls Rule 44 (Request for Interim Measures), paragraph (1) of the Rules of Procedure, which stipulates:

*(1) At any time, as long as the Court has not rendered a decision on a referral, any party may request the imposition of interim measures regarding the issue that is a subject of the procedure before it, as stipulated by Article 27 (Interim Measures) of the Law.*

*[...]*

*(3) The request for interim measures must be submitted in writing, it must describe the facts related to the request, the arguments in support of the request, the measures requested and the reasonably foreseeable consequences if the request is not granted. The party requesting interim measures may attach to the request other documents and evidence that are relevant and support the request.*

*[...].”*

39. Finally, the Court recalls Rule 45 (Decision-making Regarding the Request for Interim Measure) of the Rules of Procedure, which stipulates:

*(1) If the Judge Rapporteur appointed for the referral deems necessary to address the request for interim measure separately from the basic referral, he/she shall prepare a special report regarding the admissibility of the request for interim measure, within a reasonable period.*

*(2) [...]*

*(3) [...]*

- (4) *The Review Panel shall recommend the approval in whole or in part of the request for interim measure, if it finds that:*
- (a) *irreparable harm or damages will be avoided if the interim measure is granted; or*
  - (b) *the interim measure is in the public interest.*
- (5) [...]”

40. In the context of the above provisions, the Court recalls that the Applicants challenge “*Decision Ref. No. L-VIII, SP-119 of 11 July 2023, on Scheduling of the Plenary Session of 13 July 2023, of the President of the Assembly of the Republic of Kosovo*”. The Court also recalls that the Referral was submitted by more than 10 (ten) deputies of the Assembly, within 8 (eight) days from the date of adoption of the contested act.
41. In this regard, the Applicants allege that the contested act is not in compliance with the Constitution in conjunction with the provisions of the Rules of Procedure of the Assembly, since, among other things, they consider that regarding the agenda set by the President of the Assembly, there should be (i) consensus in the Presidency of the Assembly, and if this is not the case (ii) the same should be adopted by the Assembly and this, according to the allegations, did not happen at the session of 13 July 2023. Furthermore, the Applicants allege that the agenda has not been distributed to MPs within the time limit set by the Rules of Procedure of the Assembly. In this regard, the Court notes that the Applicants do not challenge the decisions adopted at the Assembly session of 13 July 2023, but seek their annulment as a result of convening/scheduling the respective session in an unconstitutional manner through the contested act of the President of the Assembly.
42. The Court notes that the Applicants connect the suspension of the decisions adopted at the session of 13 July 2023, based on (1) Article 116 of the Constitution, which establishes the possibility for the Court to “*temporarily suspend the contested action or law until the Court renders a decision*”; and Article 43 of the Law, which determines the suspensive effect regarding a law or decision adopted by the Assembly as a result of contesting the same in the Court in the circumstances established according to paragraph 5 of Article 113 of the Constitution.
43. In this context, the Court reiterates that based on paragraph 2 of Article 43 of the Law, all contested cases when the Referral is submitted to the Court based on paragraph 5 of Article 113 of the Constitution and where the parties request a constitutional review of laws or decisions of the Assembly which are sent for decreeing to the President, the contested acts are subject to suspensive effect. Consequently, whenever based on paragraph 5 of Article 113 of the Constitution, (i) a law adopted by the Assembly; or (ii) a decision adopted by the Assembly and which, based on the Constitution and applicable laws, is subject to the decreeing procedure by the President of the Republic, is contested before the Court, the Court notifies all parties, including the President, notifying her that based on paragraph 2 of Article 43 of the Law, the contested act is subject to suspensive effect.
44. Whereas, in cases where based on paragraph 5 of Article 113 of the Constitution, other decisions adopted in the Assembly are contested before the Court and which are not subject to the subsequent procedure of decreeing by the President, and which are consequently not subject to suspensive effect according to paragraph 2 of Article 43 of the Law, the Court may, based on Article 116 of the Constitution and Article 27 of the Law on the Constitutional Court, by Referral and/or ex-officio, decide on an interim measure, if the relevant criteria set out in the Constitution, the Law, and its Rules of Procedure are met in its assessment. Consequently, in such cases, the Court, when it has assessed that the relevant criteria set out in the Constitution, Law, and Rules of

Procedure have been met, has done so with or without the Referral by the Applicant. (See, inter alia, the Court case KO127/21, with Applicants: *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*, Decision on Interim Measure of 21 October 2021).

45. In the present case, the Court clarifies that the Applicants specifically contest the “*Decision with Ref. No. L-VIII, SP-119 of 11 July 2023, on the scheduling of the Plenary Session dated 13 July 2023, of the President of the Assembly of the Republic of Kosovo*”, arguing that it constitutes a “*decision*” of the Assembly and it is subsequently subject to the constitutional control of the Court. The Court points out that this act, is not subject to the decree procedure by the President of the Republic and consequently, the contested act cannot be subject to the ex-lege suspensive effect according to paragraph 2 of Article 43 of the Law.
46. In regard to this, the Court recalls that it has already received two separate Referrals in which two of the decisions adopted by the Assembly at the session of 13 July 2023 are contested, (i) the Referral for constitutional review of Decision no. 08-V-583 for the dismissal of Mrs. Kimete Gashi from the position of member of the Procurement Review Body, registered in the Court as Referral KO157/23; and (ii) Referral for constitutional review of “*Law no. 08/L-142 Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income*”, registered in the Court as a Referral KO158/23. Regarding the latter, the Court has already notified the Assembly and the President of the Republic regarding the ex-lege suspension of the same based on paragraph 2 of Article 43 of the Law, until the Court's decision is rendered regarding the case.
47. Therefore, based on the abovementioned explanations regarding the nature of the contested act and the reasons based on which it cannot be subject to suspensive effect according to paragraph 2 of Article 43 of the Law, the Court will further assess whether the conditions set out in the Constitution, the Law, and the Rules of Procedure have been met in order to approve the rendering of the interim measure regarding the contested act by the Applicants.
48. In this regard, based on the above provisions of the Constitution, the Law, and the Rules of Procedure, the interim measure may be requested by the parties (i) “*in regard to the matter that is the subject of the proceedings before it*”; provided that the party requesting the interim measure manages to prove that (ii) the interim measure is necessary “*to avoid risks or unrecoverable damages*”; or that the interim measure is of “*public interest*.”
49. In this regard, and in assessing the fulfilment of the above criteria, the Court considers that the Applicants' Referral as subject matter of the review has the “*Decision of the President of the Assembly*” of 11 July 2023 on the Scheduling of the Plenary Session of the Assembly of Kosovo on 13 July 2023; whereas, the interim measure is requested regarding the decisions taken in the Assembly session of 13 July 2023, despite the fact that the Applicants have not specifically contested these decisions.
50. Furthermore, the Applicants, in addition to references to the Constitution and the Law, have not presented any evidence or justification as to why the suspension of the implementation of the decisions of the Assembly adopted at the session of 13 July 2023 (i) is necessary “*to avoid risks or unrecoverable damages*”; or (ii) is of “*public interest*”, as required by Article 116 of the Constitution, Article 27 of the Law, and Rule 44 of the Rules of Procedure of the Court.

51. Therefore, the Court, without prejudice to the admissibility or merits of the Referral, considers that the Applicants' Referral for an interim measure against the "*Decision of the President of the Assembly*" of 11 July 2023 on the Scheduling of the Assembly session of 13 July 2023 and which has already been held, a measure that would have the consequence of suspending the decisions taken at the session of 13 July 2023 and listed in paragraph 19 of this Decision, should be rejected. In the assessment of the Court, and without prejudice to the admissibility and/or final merits of the case, the imposition of an interim measure on an act by which a plenary session of the Assembly is scheduled and which would have the consequence of suspending the effect of all decisions taken at that session, cannot be substantiated either with "*avoidance of risks or unrecoverable damages*" or is "*in the public interest*". Moreover, some of the laws/decisions voted in the Assembly at the session of 13 July 2023, have already been contested in the Court according to the above explanations and can be contested in the Court based on the provisions of the Constitution, the Law, and the Rules of Procedure of the Court.
52. Consequently, the Court considers that the rejection of the interim measure at this stage of decision-making is in the service of legal certainty and clarity regarding the procedures and deadlines concerning the entry into force of the laws adopted in the Assembly at the session of 13 July 2023, with the exception of "*Law no. 08/L-142 on Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income*", which has already been subjected to the suspensive deadline based on paragraph 2 of Article 43 of the Law, as a result of the registration of the Referral KO158/23.
53. The Court finally notes that the rejection of the interim measure does not prejudice in any way the admissibility and/or the merits of the Referral.

## **FOR THESE REASONS**

The Constitutional Court of the Republic of Kosovo, pursuant to Article 116 of the Constitution, Article 27 of the Law, and Rule 45 of the Rules of Procedure, on 1 August, 2023:

### **DECIDES**

- I. TO REJECT, by seven (7) votes in favour and one (1) against, the request for interim measure;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. TO HOLD that this Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Radomir Laban

Gresa Caka-Nimani

*This translation is unofficial and serves for informational purposes only.*