



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

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Prishtina, on 5 September 2023  
Ref. no.: \_\_\_/23

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

## **JUDGMENT**

in

**case no. KO134/21**

Applicant

**Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo**

**Constitutional review of Decision no. 08-V-036 of the Assembly of the Republic of Kosovo of 8 July 2021**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

#### **Applicants**

1. The Referral was submitted by Ramush Haradinaj, Time Kadriaj, Bekë Berisha, Albana Bytyqi, Pal Lekaj, Shemsedin Dreshaj, Besnik Tahiri, Fadil Nura, Mergim Lushtaku, and Florentë Zejnullahu (hereinafter: the Applicants), all deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly). The Applicants before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) are represented by the deputy Besnik Tahiri.

## **Challenged act**

2. The Applicants challenge the Decision of the Assembly of the Republic of Kosovo [no. 08-V-036] of 8 July 2021 (hereinafter: the challenged Act), on the dismissal of eight (8) members of the Board of Radio Television of Kosovo (hereinafter: RTK Board).

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Act, whereby the Applicants allege that it is rendered in violation of articles: 4 [Form of Government and Separation of Power], 7 [Values], paragraph 1 of Article 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 45 [Freedom of Election and Participation] 54 [Judicial Protection of Rights] and paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. The Applicants, request the Court to impose an interim measure related to this referral, for the suspension of the implementation of the challenged Act, until the final decision on the referral is rendered.

## **Legal basis**

5. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, 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) of the Rules of Procedure no. 01/2023 of the Constitutional Court of the Republic of Kosovo (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, was published in the Official Gazette of the Republic of Kosovo and entered into force 15 days after its publication. Therefore, when considering the referral, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), refers to the provisions of the abovementioned 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, continue to be applied to cases that were registered in the Court before its repeal, only if and to the extent they are more favorable for the parties.

## **Proceedings before the Court**

7. On 16 July 2021, the Applicants submitted the Referral to the Court.
8. On 26 July 2021, the President of the Court, Gresa Caka-Nimani, appointed Judge Radomir Laban, as Judge Rapporteur in case KO134/21 and the Review Panel composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Nexhmi Rexhepi (members).
9. On 29 July 2021, the Court notified the Applicants about the registration of the Referral KO134/21 and asked from their representative additional documents. On the same date, were notified: (i) The President of the Republic of Kosovo; (ii) The President of the Assembly, who was asked to deliver a copy of the referral to all the deputies of the Assembly; (iii) the Prime Minister of the Republic of Kosovo; (iv) the Ombudsperson; (v) The Secretary General of the Assembly, from whom the case file was requested, as

- well as (vi) the RTK. On the same date, the interested parties were notified that they can submit their comments regarding the referral to the Court, no later than 12 August 2021.
10. On 29 July 2021, Besnik Tahiri, in the capacity of the authorized representative of the Applicants, submitted to the Court a copy of the challenged Act and Law no. 04/L-046 on Radio Television of Kosovo (hereinafter: Law on RTK).
  11. On 4 August 2021, the Secretary General of the Assembly submitted to the Court the relevant documentation regarding the progress of the procedure until the adoption of the challenged Act.
  12. On 5 August 2021, the RTK submitted to the Court comments regarding Referral KO134/21.
  13. On 12 August 2021, Doarsa Kica-Xhelili, on behalf of the parliamentary group of the VETËVENDOSJE Movement! (hereinafter: LVV), submitted to the Court comments regarding the Applicants' allegations.
  14. On 1 September 2021, judge Remzije Istrefi-Peci asked the President of the Court to exclude her from decision-making.
  15. On 8 September 2021, the President of the Court, by the Decision [KK226/21], approved the request of judge Remzije Istrefi-Peci, finding that the requirements established in subparagraph 2, of paragraph 1, of Article 18 (Exclusion of a Judge) of the Law on the Constitutional Court and Rule 10 (Duties of the President) of the Rules of Procedure No.01/2018, to approve the request of Judge Remzije Istrefi-Peci have been met. As a result, and in accordance with paragraph 2 of Article 19 (Taking of the decisions) of the Law on the Constitutional Court, the Court remained without a decision-making.
  16. From this date, respectively from 8 September 2021, the Court remained without a quorum to consider and decide on the referral. Regarding the lack of quorum, the Court notified all interested parties. On 16 December 2022, Judge Enver Peci took the oath in front of the President, in which case his mandate at the Court began. On this occasion, a decision-making quorum of seven (7) judges was formed in accordance with paragraph 2 of Article 19 (Taking of the decisions) of the Law on the Constitutional Court.
  17. On 17 May 2023, the Court addressed the member states of the Venice Commission Forum for the case in question, with the following questions:
    - 1) *How is the public broadcaster managed and what is the role of the Parliament regarding the supervision and management of the public broadcaster in your country?*
    - 2) *If the public broadcaster is managed by a Board or similar collective body:*
      - a. *who elects and to whom the members of the Board or collective body report?*
      - b. *who has the right to dismiss the members of the Board and for what reasons?*
      - c. *can all Board members be dismissed at once/collectively or only individually based on their individual responsibility?*
    - 3) *According to the legislation of your country, is it possible that the non-approval of the annual report of the public broadcaster constitutes a basis for the dismissal of all members of the Board or the management body of the public broadcaster?*

- 4) *What are the relevant legal guarantees in your country regarding the independence of the public broadcaster and the members of the respective management boards? and*
- 5) *Also, does your court have relevant case law regarding the abovementioned issues?*
18. Between 23 May and 26 June 2023, the Court has received responses from the Constitutional Courts and/or their equivalents of the member states of the Venice Commission Forum, as follows: Liechtenstein, Austria, Bosnia and Herzegovina, Croatia, Czech Republic, Slovakia, Sweden, Mexico and South Africa.
19. On 6 July 2022, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral. On the same date, by a majority of votes, the Court found that the challenged Act of the Assembly is not in compliance with the Constitution.
20. On the same date, the Judge Rapporteur Radomir Laban, based on paragraph (6) of Rule 53 (Voting) of the Rules of Procedure, asked the President to appoint another judge, from the majority, to prepare the Judgment in accordance with the requests of the majority of judges. On this occasion, the President of the Court appointed judge Nexhmi Rexhepi, as one of the judges who was part of the Review Panel, to prepare the Judgment, according to the request of the majority.
21. On 1 August 2023, Judge Nexhmi Rexhepi presented the Judgment before the full Court.
22. On the same date, the Court decided (i) unanimously to declare the referral admissible; (ii) by five (5) votes “for” and two (2) “against” that Decision [no. 08-V-036] of 8 July 2021 of the Assembly is not in compliance with paragraph 1 of Article 7 [Values] and paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution; (iii) to unanimously reject the Applicants’ request for the imposition of an interim measure; and (iv) unanimously hold that the Judgment has no retroactive effect and does not affect the acquired rights of third parties.
23. In accordance with Rule 56 (Dissenting Opinions) of the Rules of Procedure of the Court, Judge Radomir Laban has prepared a concurring opinion, which will be published together with this Judgment.

### **Summary of facts**

24. On 15 October 2018, the Assembly appointed Sali Bashota, Lirim Geci and Agron Gashi as members of the RTK Board for a three-year term. On 13 August 2020, Petrit Musolli, Fadil Gashi, Bajram Mjeku, Albinot Maloku, Ilir Bytyqi and Fadil Miftari were also appointed members of the RTK Board by the Assembly for a three-year term.
25. On 25 May 2021, the Committee of Assembly for Public Administration, Local Government, Media and Regional Development (hereinafter: Committee for Public Administration), held its meeting to review five (5) items of the agenda, where among others, the fourth item (4) of the agenda was the review of the RTK Annual Report for 2020. After the report of the Chairman of the Board of RTK, the Committee came out with recommendation no. 08/215/Ra-13 for the Assembly, proposing to the latter not to approve the annual report of the RTK for 2020. The reasoning of the said recommendation emphasizes: *“Based on Article 21, paragraph 6, item 1 and Article 38.4 of Law no. 04/L-046 on Radio Television of Kosovo, Radio Television of Kosovo submits the annual report of activities to the Assembly no later than 31 March as well*

*as the annual report on the public debate and opinion of the RTK Board for orientation purposes. The Committee for Public Administration, Local Government, Media and Regional Development, at the meeting held on 25.05.2021, reviewed the annual report of Radio Television of Kosovo and assessed that it does not fulfill the legal reporting obligations and recommends to the Assembly its disapproval”.*

26. On 21 June 2021, the Committee of Assembly for Budget, Labor and Transfers (hereinafter: Committee for Budget), by recommendation no. 08/331/DO-222, proposed to the Assembly the dismissal of all members of the RTK Board.
27. On 22 June 2021, the Committee for Public Administration held meeting no. 7, where the third (3) item of the agenda was: “3. Review of the Recommendation of the Committee for Budget, Labor and Transfers regarding the dismissal of the members of the Board of Radio Television of Kosovo (RTK)”. The Committee in question, after debating on the third (3) item of the agenda, came up with recommendation No. 08/358/Do-238, whereby it proposed to the Assembly the dismissal of all members of the RTK Board.
28. The Committee for Public Administration, among other things, assessed that (i) the Annual Report does not reflect “any short-term or long-term strategy or vision related to the optimal use of RTK capacities, or in general initiatives to reform RTK to increase the effectiveness of legal provisions”; (ii) in reference to the “Progress Report of the European Commission for Kosovo for 2020”, among other things, emphasized the shortcomings of the RTK that must be addressed, including “recruitment not based on merit and with rewards” and that “the avoidance of any political appointment, lack of meritocracy in internal processes or non-transparent rewards, is precisely under the competence of the RTK Board in accordance with Article 29, paragraph 6, 7, 12, 14, 15 and 16, and the failure to implement these provisions, speaks, among other things, about the non-competence of the current Board”; (iii) The current Board, among other things, has failed to respect the decision of Labor Inspectorate regarding the “selection of the Director for Shared Services”; (iv) contrary to the provisions of the Law on RTK, “three of the members of the current Board were also members of the Board in 2019 when employees of RTK made political statements, and against whom the disciplinary procedure has never been initiated”, whereas in 2020, this Board “has appointed to its staff, as Deputy Director, precisely the persons who have violated before the RTK Code of Conduct”; and (v) the Board has failed to “ensure the network of coverage, listening and visibility throughout the territory of Kosovo”, especially “during the period of the Covid-19 pandemic where ensuring such coverage has been essential to ensure the constitutional right of compulsory schooling, in cases where opportunities allowed only virtual learning”.
29. According to the assessment of the aforementioned Committee, (i) the Assembly has the competence to dismiss all members of the RTK Board of based on paragraph 2 of Article 28 (Dismissal and Resignation of a Member of the Board) of the Law on RTK, among other things, because (ii) “The Law on RTK does not refer to the singular designation as a limitation of the possibility of dismissing more than one member at once”. Also, the relevant Committee referred to the practice of dismissing “two members of the Independent Media Commission in 2013”. Moreover, according to the Committee, the legal basis for the dismissal of all RTK Board members is “professional incapability”, which in the Law on RTK, is defined as follows: “fails, demonstrably and consistently to fulfil the duties of a Board member”.
30. On the other hand, the reasoning of the Committee for Budget focuses on the failure of the RTK Board to (i) “ensure transparency and accountability regarding the work of RTK”; (ii) “to compile a long-term strategy for the development and financing of

RTK”; and (iii) acting in “violation of Article 12 of the RTK on Independent Productions and the Public Procurement Law”.

31. Regarding the first issue, the Committee for Budget, among other things, assesses that (i) contrary to paragraph 1 of Article 136 [Auditor-General of Kosovo] of the Constitution, “*the members of the Management Board have continuously failed to ensure unimpeded and uncontested access to the Office of the Auditor General, in initiating and completing the audit of regularity and performance*” and that “*Legal Opinion of the General Directorate on legal and procedural issues of the Assembly of the Republic of Kosovo, of 04.06.2021, specifies that there has never been any provision within the RTK Law that contests the authority of the National Audit Office*” and that in this context, the RTK Board has also “*failed to play the decision-making and supervisory role, as defined in Article 37 of the Law on RTK*” and by “*submitting to the instructions of the General Director*”, also acted in violation of paragraph 7 of Article 25 (Composition of the Board) of the Law on RTK.
32. Regarding the second issue, the Committee for Budget, among other things, assesses that, (i) based on Article 21 (Sources of Funding) of the Law on RTK, “*public television was expected to benefit from direct funding from the state budget for a three-year transitional period, until securing funding from subscription*” and that “*the founder, with the proposal of the RTK Board, should have decided on the tax level for the public broadcaster, but this has not happened*” because “*the current Board has not proposed any strategy to ensure adequate, stable and transparent funding to the public*”; and (ii) “*based on the executed financial reports, the expenses of RTK for salaries for 2008 were € 3,698,982 of the total expenses. The number of employees for 2008 was 424 plus 99 independent associates. In 2020, the expenses for salaries and wages have increased to € 8,625,000 from the total expenses of € 12,591,000 or 68.5%. In 2020, 1,024 employees were reported, of which 806 with regular contracts and another 218 with part-time hours as journalists, actors or correspondents abroad. This trend of expenses and uncontrolled increase in the number of employees has caused a serious financial situation for public television, expressed through debt that varies between 2.6 - 5.2 million euro, between 2018-2020*”.
33. Whereas, with regard to the third issue, the Committee for Budget, among other things, notes that (i) “*The Board has failed to ensure the implementation of the provisions of Article 12.2 of the Law on RTK, which stipulates that public television will annually announce a public competition for the purchase of audiovisual works from independent production, and broadcast them in its program, in accordance with the Law and the Statute of RTK; and that (ii) “the implementation of open tendering in order to achieve the mission and fulfill the diverse tastes, demands and interests of the viewers and listeners of Kosovo is not evident. From the samples viewed on the open procurement platform, it results that they were mainly done through direct negotiation*”. In the end, the relevant Committee, among other things, recommends to “*initiate the supplementing-amending of the Law on RTK to incorporate the best practices of operation and financing of public televisions, including the Principles of Financing of Public Televisions in the Western Balkans, proposed by the EBU within the project supported by the EU and the Public Television Funding Standards proposed by the Council of Europe*”.
34. On 25 June 2021, the Committee for Public Administration submitted to the Assembly the recommendation for the dismissal of all members of the RTK Board.
35. On 7 July 2021, the Assembly notified the deputies about holding the next plenary session, where, among other things, the item on the agenda was the “*review of recommendation no. 08/358/Do-238 of the Committee for Public Administration,*

*Local Government, Media and Regional Development*”, for the dismissal of all members of the RTK Board.

36. On 8 July 2021, the Assembly by Decision [no. 08-V-035] rejected to approve the Annual Report no. 08/215/Ra-13 of RTK for 2020.
37. On the same date, the Assembly held eight (8) rounds of voting regarding the dismissal of each member of the RTK Board, as well as approved the challenged Act, by which the dismissal of all, namely 8 (eight) members of the RTK Board was confirmed. The content of the challenged Act, states:

*“The Assembly of the Republic of Kosovo, pursuant to Article 65 (9) of the Constitution of the Republic of Kosovo, Article 67 of the Rules of Procedure of the Assembly, as well as Article 28 of Law no. 04/L-046 on Radio Television of Kosovo, in the plenary session held on 7 and 8 July 2021, with the recommendation of the Committee for Public Administration, Local Government, Media and Regional Development, by a separate vote for each member, rendered this*

#### *DECISION*

*For the dismissal of eight (8) members of the Board of Radio Television of Kosovo*

- I. *The eight (8) members of the Board of Radio Television of Kosovo are dismissed, as follows:*
  1. *Sali Bashota,*
  2. *Agron Gashi,*
  3. *Lirim Geci,*
  4. *Illir Bytyqi,*
  5. *Albinot Maloku,*
  6. *Bajram Mjeku,*
  7. *Petrit Musollidhe*
  8. *Fadil Miftari.*

*This decision enters into force on the date of approval.*

*No. 08-V-036*

*Prishtina, 08.07.2021*

### **Applicant’s allegations**

38. The Applicants allege that the challenged Act is not in compliance with Article 4 [Form of Government and Separation of Power], Article 7 [Values], paragraph 1 of Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights], Article 45 [Freedom of Election and Participation] and paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution.

*(i) regarding violation of Articles 4 and 7 of the Constitution*

39. The Applicants, among other things, emphasize that legal certainty is a fundamental principle in every legal order, which is promoted by the case law of the ECtHR and the Constitutional Court. In particular, the Applicants referred to case of the Court KO219/19, where, among other things, it is emphasized that *“The principle of legal certainty and that of predictability are inherent features of a law and an integral part of the constitutional principle of the rule of law.”*. Further, according to the Applicants, it is emphasized that legal certainty is one of the main pillars of the rule of law and requires, among other things, that the rules are *“clear and precise”* and aim to provide *“that legal situations and relationships remain predictable”*.

40. In the aforementioned context, the Applicants claim that regarding the dismissal of the members of the RTK Board, it has been acted contrary to “*the principle of predictability*”, since neither the Law on RTK nor any other law, “*foresee and allow the dismissal of all members of the RTK Board*” and that in the present case an action that is not at all stipulated by the Law on RTK was taken. Among other things, such a procedure followed for the dismissal of members of the RTK Board, “*violates all the procedural principles that are defined by the laws in force*”.
41. Moreover, the Applicants claim that the dismissal of RTK Board members “*cannot be the prerogative of supervision, which constitutes an executive action that contradicts the constitutional physiognomy of the Assembly as a representative and legislative body*”. According to them, such an approach, is contrary to the principle of separation and balancing of power from Article 4 [Form of Government and Separation of Power] of the Constitution, which at the same time constitutes a constitutional value within the meaning of paragraph 1 of Article 7 [Values] of the Constitution.
- (ii) *regarding violation of paragraph 9 of Article 65 of the Constitution*
42. The Applicants claim that the challenged Act was rendered on the basis of (i) paragraph 9 of Article 65 [Competences the Assembly] of the Constitution; (ii) Article 28 [Dismissal and Resignation of a member of the Board] of the Law on RTK; and Article 67 of the Rules of Procedure of the Assembly. On this basis, the latter allege that the challenged Act is contrary to “*Article 65 (9) of the Constitution, on the grounds of arbitrary exercise of the competence of the Assembly to supervise the affairs of public institutions, which infringes upon the rights of dismissed members of the RTK Board, the rights which stem from the Constitution (Chapter II), as well as international documents and instruments that are directly applicable in the legal order of the Republic of Kosovo, in accordance with Article 22 of the Constitution*”.
43. The Applicants further allege that the challenged Act “*does not indicate for which legal reasons the members of the RTK Board were dismissed*”. According to the Applicants, the fact that the challenged Act “*does not mention the reasons from Article 28 of Law no. 04/L-046 on RTK, for the dismissal of the members of the RTK Board, means that the Assembly has exercised the constitutional competence, defined by paragraph 9, of Article 65 of the Constitution, in an arbitrary manner and outside the requirements foreseen by Article 28 of the Law on RTK*”. This is because, according to them, based on the Law on RTK, the Assembly exercises supervisory competence over RTK, regarding the budget, through the submission of the annual report, respectively according to paragraph 6.1 of Article 21, Article 37 (Monitoring the Functioning of RTK) and Article 38 (Public Character of Activity) of the Law on RTK and in no way can the Assembly exercise supervisory competencies outside of the mechanisms defined by the Law on RTK.
44. The Applicants further claim that the exercise of the constitutional competencies of the Assembly, according to paragraph 9 of Article 65 of the Constitution, not respecting the criteria defined by Article 28 of the Law on RTK, constitutes “*an arbitrary decision and therefore unjustified also due to the fact that the dismissal of all members of the Board was done en bloc*”. According to them, the RTK Law is presumed as constitutional because its constitutionality has never been challenged by any authorized entity. Consequently, “*its violation by the Assembly in the case of the collective dismissal of the RTK Board members constitutes a violation of the constitutional obligation to respect the rule of law*”.



45. The Applicants further add that the challenged Act violated the Constitution directly, (i) “because no part of it can it be subsumed under the constitutional concept of supervision, which represents the subject of the sentence of paragraph 9, of article 65 of the Constitution”; and according to their assessment, (ii) “any parliamentary supervision, not only this one from paragraph 9, of article 65 of the Constitution, concerns the assessment by the Assembly of the reports made by the institutions that report to the Assembly about their work, because the Assembly cannot replace the institutions that report, as it is not in its constitutional nature to play the role of the trial court”.

46. Finally, the Applicants emphasize that (i) “their referral is not related to “request for constitutional review of the Law on RTK”; but (ii) “the assessment of the arbitrary action of the Assembly, which is not based at any point on the legal parameters that operationalize paragraph 9, article 65 of the Constitution”.

(iii) *related to the violation of fundamental rights and freedoms guaranteed under Chapter II of the Constitution*

*a) regarding paragraph 1 of Article 24 of the Constitution*

47. The Applicants also claim that the challenged Act has also violated the constitutional rights to equality before the law of the RTK Board members, linking this claim “with the unprecedented way of dismissing all members of the RTK Board en bloc”. According to the Applicants, *{this treatment by the Assembly puts them in an unequal position with the members of the RTK Board, whose mandate ended earlier, as provided by the law}*. Putting the current members of the Board in an unequal position, with the other members whose mandate ended earlier, according to the Applicants, “constitutes a violation of equality before the law due to different treatment in the same situation”. In this context, the Applicants referred to the cases of (i) the Court, namely KO203/19, Applicants: *the Ombudsperson*, constitutional review of specific articles of Law no. 06/L-114 on Public Officials, paragraphs 172 and 173 and KO157/18, Applicant: *the Supreme Court of the Republic of Kosovo*, constitutional review of Article 14, paragraph 1.7 of Law No. 03/L-179 on the Red Cross of the Republic of Kosovo, paragraph 77, see also *mutatis mutandis*, cases of (ii) the ECtHR *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Applications No. 5095/71, 5920/72 and 5926/72, of 7 December 1976, par. 56, *Carson and Others v. United Kingdom*, Application No. 42184/05, of 16 March 2010, paragraph 61.

48. Furthermore, the Applicants allege that in the circumstances of the present case “equality before the law” has also been also violated because the dismissed members of the RTK Board, in their current composition, have different mandates in terms of duration. Therefore, according to them, “these different mandates put the members of the Board of RTK in unequal positions since all the members have different mandates and being thus both procedurally and factually, they should be treated differently and with distinction from each other”. According to the applicants, in the present case, “taking into account the fact that 5 (five) dismissed members have different mandates, from 3 (three) others also dismissed, it is implied that the situation of the five (5) newly elected members, with less than one year of mandate, is different from the other three (3), who are in the last year of the mandate”. The Applicants, among other things, argue that such an approach of the Assembly, through the “en bloc” dismissal of RTK Board members”, without distinguishing the concrete situations, results in the violation of the principle of equality before the law, as a guaranteed right by the Constitution.

*b) regarding Article 31 of the Constitution*

49. The Applicants, among other things, argue that the right to be heard is a fundamental principle of the legal system, which directly affects the constitutional right to fair and impartial trial. This principle as such has been promoted by the case law of the ECtHR and the latter has been implemented in the case law of the Court. In support of this allegation, the Applicants refer to Court cases KI186/19, KI187/19, KI200/19 and KI208/19, claiming that these cases are applicable in the circumstances of this case.
50. The Applicants, in this context, also allege that: *“The Assembly did not give the RTK Board members the opportunity to be heard about the reasons for their dismissal, before issuing the decision on dismissal, on 8 July 2021. Due to the impossibility of being heard, the members of the RTK Board have not had the opportunity to express their objections and counter-arguments regarding their dismissal by the Assembly. In this case, through the impossibility of being heard, the Assembly violated the right of all board members to a fair and impartial trial, from Article 31 of the Constitution. The impossibility of argumentation was also assessed as arbitrary by the ECtHR in the case of TAHIROV v. AZERBAIJAN, 2015”*.

*c) regarding Article 32 in conjunction with Article 54 of the Constitution*

51. The Applicants claim, among other things, that the dismissal of the members of the RTK Board, *“in an unforeseen and arbitrary manner”* has prevented them from having effective legal remedies to defend themselves, *“since the legal order of the Republic of Kosovo does not offer an effective legal remedy for the dismissed members of the RTK Board to protect their rights”*. The Applicants claim that *“the right to effective legal remedies from Article 32 of the Constitution have been violated to the members of the RTK Board”* and that the Law on the RTK *“does not foresee any possibility of appeal against the challenged Act, for the dismissal of to the member of the RTK Board”*. In this regard, the Applicants argue that the lack of effective legal remedies also violates Article 54 of the Constitution, because in this case there are no effective legal remedies and in this way, the dismissed members of the RTK Board are prevented from defending their human rights and freedoms guaranteed by Chapter II of the Constitution.
52. Moreover, the Applicants emphasize that in the context of the effective legal remedy, the dismissed members of the RTK Board could open an administrative conflict, only according to the law in force on the administrative conflict. This law, in its article 9, establishes, among other things, that: *“The court in the administrative conflict decides on the legality of the final administrative acts, with which the administration bodies, in the exercise of public authorizations, decide on the rights, obligations and legal interests of physical and legal persons in administrative matters”*. In the present case, the Applicants claim that *“the decision of the Assembly is not an administrative act, but an act of the constitutional body that is subject to constitutionality control”*. Therefore, according to the Applicants, *“such an aspect would prevent the dismissed members of the RTK Board from creating a case in the Basic Court, due to the nature of the legal act, and this would make the regular legal remedy ineffective, for all dismissed”*.

*d) regarding Article 45 of the Constitution*

53. The Applicants initially refer to (i) paragraph 3 of Article 45 of the Constitution; and (ii) paragraph 3 of Article 25 of the International Covenant on Civil and Political Rights, *“emphasizing, among other things, that the latter defines that every citizen has the right and opportunity, without any of the differences mentioned in article 2 and without unreasonable restrictions: (c) To have access, on general terms of equality, to public service in his country”*. According to the Applicants, *“the members of the RTK Board are not being accepted under conditions of general equality for the exercise of*

*the function, since their dismissal was done outside the conditions set by the Law on RTK, respectively by Article 28, which is based on the challenged Act, not providing equality conditions, compared to the way how the Assembly has treated the members of the RTK Board, since its establishment until now, respectively during the time that the current Law on RTK is in force”.*

54. In this regard, the Applicants allege that (i) the termination of the mandate outside the conditions established by law of the members of the RTK Board violates their right to exercise public office equally, the right which originates from paragraph 3 of article 45 of the Constitution and paragraph 3 of article 25 of the International Covenant on Civil and Political Rights, which applies directly to the Republic of Kosovo, according to Article 22 of the Constitution; and emphasize that (ii) *“the standard of violation of Article 45 (freedom of election and participation), in the sense of the arbitrary termination of a mandate, was also addressed in the practice of the Court in the case KO29/12 and KO48/12, where it was concluded that the arbitrary termination of the President’s mandate leads to a violation of the rights stemming from Article 45 of the Constitution”*. In the same way, also in the light of the circumstances of the present case, according to the Applicants, the Assembly *“decided to terminate the mandate of eight (8) members of the RTK Board, en bloc outside the conditions defined by Article 28 of the Law on RTK and without giving any justification as to what reason the Law defines (Article 28) the members of the Board of RTK were dismissed”*.

#### **Allegations regarding Request for Interim Measure**

55. Regarding their request for the need for imposing an interim measure, the Applicants are based on Article 27 (Interim Measures) of the Law on the Court, claiming (i) prevention of irreparable risks or damages; and (ii) the public interest in imposing this measure. The Applicants allege that their request is *prima facie* founded and has merits of the case, so that *“not imposing an interim measure may cause irreparable damage and is in the public interest”*.
56. Regarding (i) the *prima facie* merits of the case, the Applicants allege that the challenged Act is manifestly inconsistent with the Constitution because it violates the constitutional principles and norms described above and that the challenged Act *“clearly affects the rights of the dismissed members of the Board of the RTK, for the reason that the Assembly, in the event of the dismissal, exercised its competence in a completely arbitrary manner and outside the law on RTK, the constitutionality of which is presumed”*; while, regarding (ii) causing irreparable damage and the public interest, the Applicants, among other things, stress that the dismissal of the RTK Board members *“will cause irreparable damage to the public broadcaster and will disable its functionality”*, among other things because according to *“the Law on the RTK, respectively according to Article 4.2, the Assembly is the competent institution which protects the autonomy of the RTK”* and that *“in the present case, the Applicants consider that in the case of dismissal of the members of the Board, the Assembly has not ensured the autonomy of RTK, but has endangered it”*.
57. In the end, the Applicants argue that the imposition of an interim measure against the challenged Act is also in the public interest, since such a measure would preserve the functionality of the RTK, as well as protect its autonomy. Such a thing is in accordance with the public interest, considering the informative and educational mission that RTK has, as an independent broadcaster. This constitutes a violation of freedom of expression from the first paragraph of Article 40 of the Constitution, the second sentence, which states that *“freedom of expression includes the right to express oneself”*. This right is denied by the very fact that RTK has no longer an autonomous body that oversees the legality of its work and, as a result, has become dysfunctional in

the exercise of this legal function that is guaranteed by the Constitution as a clear component of freedom of expression.

### Comments of RTK

58. On 5 August 2021, the RTK submitted its comments to the Court, arguing that (i) the dismissal of RTK Board members was done by the Assembly in an arbitrary manner and outside the conditions set forth in Article 28 (Dismissal and Resignation of a Member of the Board) of the Law on RTK; and (ii) the Assembly failed to argue and show on what basis of Article 28 of the Law on RTK, the members of the Board were dismissed, unfairly and arbitrarily exercising the competencies stemming from paragraph 9 of Article 65 of the Constitution.
59. Further, RTK argues that paragraph 9 of Article 65 of the Constitution stipulates that the Assembly oversees the work of the Government and other public institutions, which, based on the Constitution and laws, report to the Assembly, and according to the allegation, *“supervision can be done only through the mechanisms defined by the Law on RTK”*. According to the assessment of the RTK, *“if the supervision of public bodies was done by the Assembly, based on this constitutional competence, and this supervision took place outside the mechanisms defined by the Law on the RTK, then the decision is unconstitutional, because the Assembly in this case, used a constitutional competence, outside of what the law establishes, even though Article 65.9 itself determines that supervision can be done on the basis of the Constitution and laws, in this case on the basis of the Law on RTK”*.
60. According to the RTK, *“dismissal does not mean supervision”*, because (i) based on subparagraph 6.1 of paragraph 6 of Article 21 (Sources of Funding), paragraphs 1 and 3 of Article 37 (Monitoring the Functioning of RTK) and paragraph 4 of Article 38 (Public Character of Activity) of the Law on RTK, RTK is supervised by the Assembly through the submission of the annual activity report, through the public debate report as well as through the audit, which may be requested by the Assembly; and that (ii) in no case, *“supervision is done through the dismissal of the entire Board, even though with a separate voting procedure, no article of the Law on RTK establishes the competence of the Assembly to dismiss the entire Board of RTK or the dissolution of the entire Board”*.
61. Moreover, RTK emphasizes that (i) *“the members of the RTK Board have never been invited by the functional Committee or by the Assembly to give their reasons and counter-arguments for their dismissal”*; (ii) *“in the case when the recommendation of the Functional Committee for the dismissal of the Board members was voted, no member of the RTK Board was invited to be heard at that meeting”*; and (iii) as a result, *“the impossibility to be heard, in the case of dismissal, as the last action of the Assembly, also constitutes a violation of the right to a fair and impartial trial, from Article 31 of the Constitution”*.
62. In addition, the RTK alleges that in the present case the equality before the law guaranteed by Articles 3 and 24 of the Constitution has been violated, because *“the Assembly has abused a constitutional competence, and operationalizing that competence outside the conditions stipulated by the Law on RTK and because the members of the Board have been placed in an unequal position, although in the same situation, especially the members who have exercised their mandate for less than a year, after being elected by the previous legislature, respectively in 2020”*.
63. Furthermore, the RTK claims that the right to effective legal remedies guaranteed by Article 32 in conjunction with Article 54 of the Constitution has also been violated to the members of the Board, because *“The Law on RTK does not establish a real and*

*accessible and effective remedy, by which the members of the Board would be able to challenge the Act of the Assembly for their dismissal". According to the RTK, "the members of the Board have not been able to exercise the legal remedy before the regular courts because in 2020 the Basic Court in Prishtina - the Department for Administrative Matters, has declared inadmissible a case where the challenged subject matter was the Decree of the President and in this case, the court has assessed that the Decree of the President must be subject to constitutional review".*

64. Likewise, the RTK emphasizes that none of the recommendations of the Functional Committee for the dismissal of Board members has anything to do with the competencies and responsibilities of the Board. According to the RTK, the reasons for the proposal for dismissal of the Board members are based on: 1) failure to ensure transparency and accountability regarding the work of the RTK; 2) the failure to compile a long-term strategy for the development and financing of RTK; and 3) violation of Article 12 (Independent Productions) of the Law on RTK on Independent Productions and the Law on Public Procurement. Moreover, in Article 29 (Competencies of the RTK Board) of the Law on RTK, the duties of the RTK Board are clearly defined and that none of the issues that have been attributed to the Board as violations by the functional Committee, in the present case, are not the grounds for dismissal, nor are they related to Article 28 (Dismissal and Resignation of a Member of the Board) of the Law on RTK.
65. At the end of the comments, RTK informs the Court that the vacancy for the positions of the eight (8) dismissed members of the Board has been closed on 2 August 2021, so according to them, *"it would be welcome that this case be decided as soon as possible because the eventual delay of the decision would complicate the situation and would also violate the principle of legal certainty and equality before the law for the dismissed members of the Board"*.

**Comments submitted by Doarsa Kica-Xhelili, on behalf of the LVV parliamentary group**

66. The relevant comments, commenting on the claims of the Applicants, point out that the Applicants' referral for the constitutional review of the challenged Act does not raise constitutional issues and, therefore, cannot be subject to assessment by the Constitutional Court, because, according to comments, it is clear that the referrals that can be submitted to the Constitutional Court should be related to the constitutional review and not the legality of the decisions of the Assembly. According to the comments, the Court cannot enter the assessment of the legality of the dismissal of the members of the RTK Board even in this case if this matter were to be dealt with in an administrative procedure, from the content of the decision of the Assembly, it is clearly seen that it is about the dismissal of members of the RTK Board, which the Assembly itself has elected, fully in accordance with the Law on RTK.
67. According to the comments, the Constitutional Court has the jurisdiction to check the acts of public authorities that are issued in individual cases for their compliance with the constitutional catalog of human rights, but this case does not reflect the similarity with the referral in question. In this context, according to the comments, the Constitution, while defining the jurisdiction of the Constitutional Court, in paragraph 7 of Article 113, states that individuals are authorized to refer before the Constitutional Court violations by public authorities of their individual rights and freedoms, guaranteed by Constitution, but only after exhausting all legal remedies established by law.

68. Further, the comments emphasize that the Applicants try to emphasize constitutional issues, claiming that the challenged Act is unconstitutional, while *“this decision has no basis in the Constitution, except for the constitutional basis of the acts approved by the Assembly, the referral does not in any way contain the substantive aspect of the dismissal of RTK Board members.”*
69. Following the relevant comments, it is also stated that *“(...) in the submitted referral, we do not find any constitutional argument that confirms that in one form or another this case is related to a constitutional violation. The references that the Applicants make in an overwhelming amount of articles are unclear in the sense of lack of relevance to the present case. So, the referral alludes to a series of violations, as follows: violation of Article 65 (9) of the Constitution, as well as Articles 4 [Form of Government and Separation of Power], 7 [Values], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], Article 45 [Freedom of Election and Participation] and Article 54 [Judicial Protection of Rights] as well as legal certainty has been violated. We note that for the Constitutional Court the lack of this relevance becomes clear with a simple reading of the subject of treatment. However... let's take as examples only articles 4, 31 and 45. Based on article 4, which the applicants claim was violated by the decision of the Assembly, it has nothing to do with this decision, because article 4 talks about the form of governance in Kosovo and the separation of power. According to Article 4, paragraph 1 of the Constitution, Kosovo is a Republic based on democratic principles, the organization of which power is exercised according to the principle of separation of powers. In order to closely determine the nature of the form of government in the Republic of Kosovo, it is necessary to examine in detail the constitutional position, the rights and responsibilities and the functioning of the institution of the President of the Republic. The principle of separation of power is a way of regulating the relations between the legislative, executive and judicial powers, in which each of these three powers exercises its power independently of the other two.*
70. Further, according to the relevant comments, stated that, while Article 45 of the Constitution speaks about civil and political right to vote and to be voted for, the latter, according to the comments, has been put absolutely out of context, because it is completely clear that it does not in any way refer to the appointments and dismissals of the RTK Board. Likewise, it cannot be claimed that the right to a fair trial has been violated contrary to Article 31 of the Constitution, as long as such a procedure has not been initiated, just as you cannot claim that the right to legal remedies has been violated or for judicial protection as long as there is no legal action initiated by individuals.
71. According to the comments in question, if the members of the RTK Board have assessed that the challenged Act of the Assembly is illegal, they would have to go to the regular courts to challenge its illegality. In the meantime, the deputies of the Assembly, according to her, do not have the legitimacy to address the regular courts on behalf of the former members of the RTK Board. In the submitted comments, it is emphasized that *“The position of limiting the role of the Constitutional Court, in assessing constitutionality and not legality, is held by this Court, and its practice also speaks about this(KI79/19), in the Resolution on Inadmissibility of this Court, of 10 August 2020, in paragraph 56”*.
72. Moreover, the said comments emphasize that the Constitutional Court has the task of final interpretation of the provisions of the Constitution. Whereas, the jurisdiction that is based on paragraph 5 of Article 113 of the Constitution means the constitutional review of any law or decision. According to the comments in question, the decisions of the Assembly can be the subject of constitutional review in terms of the procedure followed and their content, but only in terms of constitutionality. Moreover, according

to the comments, the Applicants do not have a clear or deliberately confuse the legislative process and the supervisory function of the Assembly. According to the comments (i) the Applicants deliberately do not specify the referral whether they challenge the procedure or the content of the act, because in this way they avoid argumentation, because in order to assess an act of the Assembly from a constitutional point of view, the Constitution would have to expressly determine at least the procedure for electing RTK Board members, even the dismissal procedure; and (ii) in the present case, the composition, operation, responsibilities, method of election and method of dismissal are established by a special law. Thus, according to the comments in question, the challenged Act of the Assembly on the dismissal of members, even though it is an act of a public authority, is not subject to constitutional review.

73. In terms of the possibility of dismissing members one by one, or more than one member of the Board, according to the relevant comments (i) the Law on RTK does not refer to the singular designation as a limitation of the possibility of dismissing more than one member at once; (ii) as a reference, there are other articles within the Law on RTK that make a singular reference, but apply in majority (see article 27); and (iii) the reasoning given in the recommendation very clearly explained in different parts of it that the latter applies to all members of the Board for the reasons provided there.
74. Therefore, according to the relevant comments, not only the Applicants' referral is not related to a constitutional violation, but even if the legality of this referral were addressed, it would be found that there is not a single violation of the Law on RTK. Considering the above, the comments emphasize that the Court should reject as inadmissible the Applicants' referral.

## **Contribution of Member States of the Venice Commission Forum**

### **Austria**

75. In Austria, Public Broadcasting Corporation (ORF), is a foundation under public law. The latter is managed by the Director General appointed by the Foundation Council Stiftungsrat for a period of five years. The Foundation Council has thirty five (35) members who shall be appointed by the Government (acting on proposal of the political parties in Parliament), by the Länder, by the Audience Council Publikumsrat and by the works council. The responsibilities of the Director General emanate from the law. Apart from the responsibilities emanating from the law, the Director General may be charged with additional responsibilities arising from the adoption of resolutions by the Foundation Council.
76. The Director may be removed from office by the Foundation Council by a majority of two thirds (2/3) of its members. The respective law does not specify the grounds for dismissal. Austria has no case law for cases of this nature.

### **South Africa**

77. In South Africa, the public broadcaster is a state organ, based on the Constitution and Law, which is governed and supervised by a Board of fifteen (15) members, twelve (12) of whom are non-executive members, elected by the National Assembly, based on adequate professional qualifications in the information field, and appointed by the President, whose role is purely formal. While the three (3) executive members consist of the General Director, the Chief Operating Officer and the Chief Financial Officer. Based on the legislation of this state, there are two scenarios for the dismissal of Board members. The first is initiated by the Board itself, which recommends to the National Assembly the dismissal of the Board member, on the grounds of: absence for three (3) consecutive months at Board meetings, misconduct, or the inability to perform the

duties efficiently. Second, all members of the Board may be dismissed for the same reasons under Article 15A (2) of the Law. Respectively, the dissolution of the entire Board derives from the processes of dismissal of individual members of the Board, according to Article 15 (1) and 15A (1) of the Law. In such circumstances, the National Assembly, after due investigation, adopts a resolution recommending the total dissolution of the Board if it fails to discharge its fiduciary duties, if it fails to comply with the SABC Act/Charter and if it fails to fulfill duties, defined by Law. The removal of a member of the SABC Board due to “*professional incapability*” and/or non-approval of the SABC annual report” would equate to “*inability to perform duties efficiently*” or “*misconduct*” in terms of section 15A. On the same grounds, the entire Board can be dissolved. The appointment and dismissal of members of the SABC Board has been dealt with in the lower courts, before which a request was submitted for non-fulfillment of constitutional obligations by the President, to determine the list of candidates for the appointment of non-executive members of Board, which was sent to him by the National Assembly, in terms of Article 13 of the Law. The Constitutional Court of South Africa, in this case, issued an order, as exclusive jurisdiction was sought to be considered, and the matter was therefore considered moot and the interests of justice did not warrant further consideration of the matter.

### **Bosnia and Herzegovina**

78. In Bosnia and Herzegovina, public broadcasters are supervised by the Board of Governors. The relevant law stipulates that the Parliamentary Assembly of Bosnia and Herzegovina appoints the members of the Board. The law further specifies three (3) grounds on which the member of the Board of Governors may be dismissed by the Parliamentary Assembly of Bosnia and Herzegovina, upon the recommendation of the Communications Regulatory Agency. These grounds are: if the member requests to be dismissed, if the member fails to attend three times in the Board meeting and does not justify the non-participation, as well as if he/she does not participate in the work of the Board for three (3) months. The Communications Regulatory Agency may also recommend to the Parliamentary Assembly the dismissal of a member if the latter does not comply with the requirements from the System License and/or the license of Radio-Television of Bosnia and Herzegovina.
79. The relevant law also defines the circumstances that make a person ineligible for appointment as a member of the Board of Governors, which are: holding positions in legislative, executive or judicial structures, at any level of government; members of political party; being employed by certain public television and radio stations of Bosnia and Herzegovina; being employed by another company operating in the radio and television broadcasting industry, including legal entities which may cause a conflict of interest. Bosnia and Herzegovina does not have case law regarding this topic.

### **Czech Republic**

80. In the Czech Republic, the role of the RTK Board as it is in the Republic of Kosovo is played by the Board of the Czech Television (under Act. [No. 483/1991](#), on the Czech Television) and by the Board of the Czech Radio (under sub-legal Act [No. 484/1991](#), on the Czech Radio). Members of Television and Radio Board of the Czech Republic are elected by the Chamber of Deputies of the Parliament. Both the Boards present their Annual Reports to the Chamber of Deputies on their work. Members of the Czech Television Board are removed from their office under Section 6 of the Act: (i) if s/he no longer meets the requirements for the performance of the duties of a member of the Council set out in section 5; (ii) if s/he has seriously impaired the dignity of the office of a member of the Council or if s/he has committed conduct which calls into question his/her independence or impartiality in the performance of his/her duties as a member



of the Council; and (iii) if s/he has not attended meetings of the Council for more than 3 months. The members of both Boards may be dismissed collectively by the Chamber of Deputies of the Parliament of the Czech Republic, according to the provisions of their respective acts, if the Boards repeatedly fail to fulfill their obligations, according to the law, or if the Chamber of Deputies does not approve the annual report on the activities of Czech Television or Czech Radio, or the annual report on the management of Czech Television or Czech Radio twice in one consecutive year. The law also expressly defines the criteria of ineligibility, namely the positions that a person cannot hold to be elected as a member of the Board, in order to ensure and preserve the independence of the Board. The Constitutional Court of the Czech Republic has no case law related to the circumstances of the case.

### **Croatia**

81. In Croatia, the public broadcaster is Croatian Radio Television (CRT), which founder is the state, namely the government. CRT is independent in exercising its activity from any political influence or pressure from economic interest groups. The relevant law stipulates that CRT must follow the highest professional and ethical standards of independent journalism.
82. The governing bodies of the CRT are the General Director, the Management Board, the Supervisory Board and the Programming Council. The Supervisory Board has five (5) members, four (4) of whom are appointed and dismissed by the Croatian parliament, with a majority vote of all deputies, after an open competition and according to the recommendation of the Parliamentary Committee for Information, Computerisation and the Media. The fifth member is appointed from among the employees of the CRT and is dismissed in accordance with the criteria established by law. Members of the Supervisory Board may be dismissed before the expiration of their term for the reasons listed in Article 22.8 of the Law, which enumerates the circumstances when his/her actions violate the law and other regulations governing the performance of CRT activities, or if he/she in an unjustified manner does not attend more than two consecutive sessions of the Supervisory Board or within a period of one year, and if his/her behavior damages the reputation of the CRT.
83. According to the Croatian legislation, the Parliament supervises the legality of the actions of the Programming Council and the Supervisory Board of the CRT. Most of the members of the above-mentioned Boards and Councils (collective bodies) are appointed and can be dismissed by the Croatian parliament, before the end of their mandate, according to a limited number of grounds, which are provided in the relevant laws. The relevant provisions refer only to individual dismissal.
84. The Supervisory Board is obliged to submit an annual report to the Croatian Parliament on its work and supervision of the legality of work and financial functioning of the CRT. The relevant Croatian legislation does not explicitly provide that the non-approval of the annual report of the Public Broadcaster constitutes a basis for the dismissal of all members of the Board. On the other hand, as regards “*professional incapability*” of the Board's or Councils' member, there are certain provisions with a similar meaning, as mentioned above, which only relate to individual dismissals. Croatia has no case law of this nature.

### **Liechtenstein**

85. According to comments submitted through the Forum, in the state of Liechtenstein, the public broadcaster is established by the Law on Public Broadcasters, which is under the

overall supervision of the Government. The Government of Liechtenstein also elects the President and members of the Board of Directors (Article 46 (2) (a) of LRFG).

86. The Government of Liechtenstein has the right to dismiss members of the Board of Directors at any time, irrespective of the term of office, for different reasons after informing the parliamentary business audit committee in advance. A reason for dismissal, the relevant law establishes in particular any circumstance which makes the continuation of the exercise of duty by the member of the Board concerned unacceptable (Article 8(1) of the Law on the Governance of Public Enterprises. However, since dismissal as a member of the strategic management level of a public company can under certain circumstances be associated with a great loss of image for the person concerned, dismissal should only be possible for important reasons. However, an explicit list of important reasons could never be complete, in Liechtenstein a general formulation must therefore be chosen, which mentions the most important criterion that the state from the point of view of the electoral body cannot accept to continue retaining the person concerned as a member of the strategic management level. Other important reasons for dismissal under the respective law are also mentioned: repeated or serious violation of legal provisions; serious violation of the interests of the company or of the country, cessation of a condition for appointment and a permanent incapacity to exercise the office. Since the basis for dismissal under the law “*important reasons*” is not exhaustive, the response received by the State of Liechtenstein, among other things, states that based on the applicable law, “*professional incapacity*” and “*non-approval of the annual report*” of the public broadcaster may constitute a basis for the dismissal of Board members.
87. The Parliament takes note of the annual accounts and the annual report and may submit motions to the Media Commission about violations of the LRFG (Article 45 of LRFG). Members of the Board of Directors may only be dismissed individually, although it may happen that several members may be dismissed at the same time.
88. In fulfilling its mandate, the Public Broadcaster in Liechtenstein shall take into account the principles of the Liechtenstein legal system, in particular the principle of freedom of opinion, and shall ensure the objectivity and impartiality of reporting, the consideration of diversity of opinion and the balance of programs, as well as the independence of persons and organs of LRFG (Article 5 of LRFG).

### **Mexico**

89. In Mexico, the Public Broadcasting System is a public entity separate from the Federal Public Administration, which enjoys legal personality and assets. According to this status, the Public Broadcasting System has technical, operational, decision-making and management autonomy, which primary objective is to provide a non-profit broadcasting service.
90. The public broadcaster in Mexico is managed by the Governing Board, led by the President and consisting of seven (7) members, three (3) of whom are appointed from the Executive and three (3) by the Citizens’ Council. The composition of the Board according to the Mexican Constitution and Law should adhere to the principle of gender parity.
91. According to the Law on Public Broadcasters of Mexico, the members of the Governing Board that define the Citizens’ Council, may be dismissed if they do not attend three consecutive sessions or six sessions within a period of two (2) years, if they violate the objectives of the public broadcaster or if they voluntarily resign. As for the three representatives who are appointed by the Executive, neither the Constitution nor the Law of Mexico specify who should appoint them, which authority can dismiss them, and

for what reasons. The Law on Public Broadcasters does not contain specific provisions, either for individual dismissals or collective dismissals. However, Article 26 of the Law on Public Broadcasters provides for the circumstances in which three (3) members of the Citizens' Council can be replaced.

### **Sweden**

92. In Sweden, there (3) are three public broadcasters, one television and two radio stations. Public broadcasters are organized as limited liability companies (aktiebolag), which are wholly owned by a foundation (Förvaltningsstiftelsen). Each broadcaster is managed by a Board of Directors, an Executive Director appointed by the Board of Directors and management. Through this organizational structure, it is intended to ensure the independence of public broadcasters, acting as a buffer between public broadcasters and the state. The independence of public broadcasters is ensured through this organizational structure and status as limited liability companies that are wholly owned by the foundation.
93. The role of the Parliament in the management and supervision of the public broadcasters is limited to the Radio and Television Act and the Law on Freedom of Expression. The licensing of public broadcasters in Sweden is done by the Government, which also decides on the conditions for the allocation of funding related to economic management and accounting. Public broadcasters are overseen by the Swedish Broadcasting Commission (Granskningsnämnden), which assesses and examines the conditions of whether public broadcasters meet the criteria for licensing and funding. The members and the president of the Board of each public broadcaster are appointed by the foundation (Förvaltningsstiftelsen), as the sole shareholder, with the exception of the members who are elected from among the employees of the public broadcasters. Being the sole shareholder, the Foundation may dismiss the members of the Board of Directors in accordance with the relevant Companies Act, without giving reasons. The boards of each broadcaster report to the foundation (Förvaltningsstiftelsen) at annual general meetings. Due to the way public broadcasters are organized and managed in Sweden, the Swedish Supreme Administrative Court does not have any case law regarding the nature of the case.

### **Slovakia**

94. In Slovakia, public broadcasters are established by the state and managed by the General Director and Supervisory Board of nine (9) members, who are elected by the Slovak Parliament by a simple majority vote.
95. The Law on Public Broadcasters of Slovakia explicitly distinguishes different criteria in the case of individual dismissal of a member of the Board and of the entire Board (Article 12, paragraph 1, points c) and d)). The member of the Board may be dismissed individually by the Slovak Parliament due to incompatibility with the function, due to criminal conviction, loss of legal capacity or failure to exercise their duties for at least three (3) months (Article 12, paragraph 2). Whereas, the dismissal of the Board as a body, according to the LPB, takes place in two cases, the first: (i) when the Slovak Parliament passes two (2) resolutions in the course of six (6) months, declaring that the Board is not exercising its duties according to the law; and (ii) when the Board refuses three (3) times in a row to adopt the draft budget for the public broadcaster presented by the General Director and has initiated with the relevant parliamentary committee the dismissal of the Director, but the Parliament has decided not to dismiss him. The relevant law precisely defines the grounds for the dismissal of the General Director, while professional incompetence is not expressly provided for by law. However, some of the grounds that the law provides for the dismissal of the General Director imply that

“*professional incompetence*” can be a ground for dismissal. There is no case law regarding the nature of the case.

## **Relevant constitutional and legal provisions**

### **CONSTITUTION OF THE REPUBLIC OF KOSOVO**

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

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

#### **Article 4 [Form of Government and Separation of Power]**

- 1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.  
[...]*
- 2. The Assembly of the Republic of Kosovo exercises the legislative power.  
[...]*
- 4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control.*
- 5. The judicial power is unique and independent and is exercised by courts.*

#### **Article 7 [Values]**

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

#### **Article 40 [Freedom of Expression]**

- 1. Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.*
- 2. The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.*

#### **Article 42 [Freedom of Media]**

1. *Freedom and pluralism of media is guaranteed.*
2. *Censorship is forbidden. No one shall prevent the dissemination of information or ideas through media, except if it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.*
3. *Everyone has the right to correct untrue, incomplete and inaccurate published information, if it violates her/his rights and interests in accordance with the law.*

**Article 63**  
**[General Principles]**

*The Assembly is the legislative institution of the Republic of Kosovo directly elected by the people.*

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

*The Assembly of the Republic of Kosovo:*  
*[...]*

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

**LAW No. 04/L-046 ON RADIO TELEVISION OF KOSOVO**

**Article 3**  
**The Radio Television of Kosovo**

1. *Radio Television of Kosovo (hereafter: RTK) is the Public Broadcaster of Kosovo.*
2. *RTK shall be a legal non-profitable entity with the status of independent public institution of particular importance, which provides a public service in the field of media activity as provided for by the present law and other relevant laws and secondary legislation.*
3. *RTK's mission is informative, educative, cultural and entertaining.*

**Article 4**  
**The founder of the Radio Television of Kosovo**

1. *The founder of the Radio Television of Kosovo is the Assembly of the Republic of Kosovo.*
2. *The Assembly shall ensure the institutional autonomy and adequate financing for the execution of RTK's public service mission as provided for by the present law.*

**Article 24**  
**The RTK governing and managing bodies**

1. *Governing and managing bodies of RTK are:*
  - 1.1. *RTK Board;*
  - 1.2. *General Director*

**Article 25**  
**Composition of the Board**

1. *RTK Board shall be a collegial-steering body of RTK.*
2. *RTK Board shall comprise eleven (11) members.*

3. *The RTK Board shall be composed of public personalities with professional qualifications in various areas such as: culture, art, cinematography, journalism, law, business and financial management, public relations, international relations, academia, media and engineering.*
4. *Board members shall be individuals with credibility and high human, professional and moral authority. During their work, board members shall be fully dedicated, objective and impartial.*
5. *The members of the Board shall be appointed and shall act in their personal capacity and shall not represent any other interest external to RTK other than the public interest. They shall not request or accept any instruction related to the activities of the Board from any interest external to RTK.*
6. *The composition of the RTK Board shall reflect the multi-ethnic and gender character of Kosovo. At least two (2) RTK Board members shall be appointed out of the Serb community, and one (1) member shall be appointed from other non-majority communities, and at least two (2) members out of female gender. At least two (2) Board members shall fulfill the professional qualifications in financing, business managing and legal affairs.*
7. *The Board Members shall comply with applicable law in Kosovo, but shall not seek or accept instructions in the course of performance of their duties from any other authority.*
8. *Board members shall not abuse their position for personal gain, or for the benefit of any other party or entity including close family relations*

**Article 26**  
**Selection of the Board Members**

1. *The Board Members of RTK shall be appointed by the Assembly of Kosovo through the open and transparent procedure.*
2. *Candidates for the RTK Board shall be nominated according to the following procedures:*
  - 2.1. *within sixty (90) days prior to expiry of the term of the Board member or after the advertisement for job vacancy for other purposes, RTK makes a public announcement within a period of time not shorter than the deadline defined by law.*
  - 2.2. *five (5) days prior to closure of public advertisement, RTK shall submit all applications to the Kosovo Assembly, which establishes an ad-hoc Committee to review them vo.*
  - 2.3. *within a period of thirty (30) days, when the deadline has already been closed for the new applicants and subsequent to the interviewing two (2) candidates shall be recommended by the Committee for each Board positions, who are considered the most suitable based on their competencies, integrities and commitment to develop and advance RTK.*
  - 2.4. *based on the Rules of Procedure of the Assembly, the Assembly selects one of the proposed candidates with the majority of votes of the members of the Assembly, who are therein and vote.*
3. *The term of the Board members shall be as follows: Four members of the RTK Board members shall be appointed for a two-year mandate, four (4) members for a three-year mandate and three members for a four (4) year mandate. The definition of the duration of mandate of each group shall be determined by a draw.*
4. *The mandate of the Chair and Vice Chair of the Board shall be two (2) years with the possibility of re-election for one more mandate only.*
5. *Board members may be reappointed for one additional mandate of three (3) years.*

**Article 28**  
**Dismissal and Resignation of a Member of the Board**

1. A member of the RTK Board may be dismissed when it is considered that any of the grounds for dismissal set out in sub-paragraphs 3.3, 3.4 and 3.5 paragraph 3. of the present article and apply to the member.
2. The dismissal of a Board member shall be made according to the following procedures:
  - 2.1. proposal for dismissal comes from the RTK Board upon the request of the simple majority of the Board members/or any other initiative from outside according to the requirements defined under paragraph 3. of this Article;
  - 2.2. the Assembly of Kosovo with a simple majority shall decide whether to dismiss a Board member.
3. A Board member shall be dismissed if he or she:
  - 3.1. professional incapability – fails, demonstrably and consistently to fulfil the duties of a Board member;
  - 3.2. due to mental or physical disability to carry out his or her duties;
  - 3.3. fails to fulfil the requirements of Article 26 of the present Law;
  - 3.4. fails to carry out his/ her duties for more than three (3) consecutive months without the approval of the Board.
  - 3.5. if the member has been convicted for a criminal act over six (6) months imprisonment;
  - 3.6. fails to fulfil the requirements under sub-paragraphs 1.3, 1.4 and 1.5 of paragraph 1. of Article 27 of the present Law;
  - 3.7. due to over one (1) month unreasonable absence at work;
  - 3.8. actively participated in political activities, subsequent to his/her nomination a Board member.
4. The Board Member can resign, providing a written notification to the Board at least three (3) months in advance.

**Article 29**  
**Competencies of the RTK board**

1. RTK Board shall work and operate in compliance with provisions of the RTK law and statute.
2. Competencies of RTK Board include:
  - 2.1. approves the status of RTK;
  - 2.2. approves the Rules of Procedures of the Board and other Regulations determined by statute;
  - 2.3. reviews and approves, programs, programming bases and standards in accordance with programming policy, international law and standards of public information as per the General Director proposal.
  - 2.4. reviews and approves the draft program of RTK production that must comply with the financial possibilities of RTK
  - 2.5. reviews and approves the general programming scheme.
  - 2.6. appoints and dismisses the General Director of RTK.
  - 2.7. appoints and dismisses the Deputy General Directors-, the radio and television directors and the head of joint services with a simple majority vote, following the General Director's recommendation;
  - 2.8. approves the organizational structure and program concept and structure of RTK;
  - 2.9. reviews and approves the annual budget and management and staff salary schedules, and assures that RTK expenditures do not exceed its financial resources. The annual budget shall be a public document which after its debate in the board is addressed to its promoter for approval;

2.10. reviews and publishes by 31 March each year an annual financial report of income and expenditures for the previous year prepared by RTK management; this report shall be subject to independent outside audit; The report is then sent to its promoter for trainings and activities.

2.11. approves an annual program plan proposed by General Director that is consistent with international law and standards and the mandate of RTK as set out by the present law;

2.12. approves a comprehensive Code of Conduct for RTK and ensures its effective implementation;

2.13. oversees impartiality, objectivity and accuracy of information in RTK programming;

2.14. approves professional criteria for employment of staff, policies and procedures of performance evaluation;

2.15. ensures that remedial action is taken upon a determination by the RTK Board or IMC that a violation has occurred of standards or of applicable regulation or law;

2.16. decides on other important issues in accordance with the authorities and competences as set out by the Law and Statute.

### **Article 37** **Monitoring the Functioning of RTK**

1. Supervision of RTK activities shall be carried out by authorized bodies for such a thing from the law and the Statute.

2. An auditor body shall be responsible for supervision of regularities and consistency of actions and audit of acts for actions and acts for planned RTK actions within the framework of competencies exercised on entities that perform public activities.

3. Except authorized persons who require responsibility on behalf of members of the managing and monitoring bodies set out by the law, the Assembly of Kosovo is also authorized to require such responsibility.

4. RTK Board receives an audit report from an independent auditing expert for each year till 1 of June. Auditing expert cannot be a person who, two (2) years prior to accepting the duty by the General Director or by the RTK Board, has cooperated in any way commercially with RTK or with entities related to it. RTK and entities related to it can not cooperate commercially with selected auditing expert for two (2) years after submission of the audit report.

### **Article 38** **Public Character of Activity**

1. The activity of RTK shall be public. Annual Report shall be published in the way set under the Statute. Annual report should make a division of spending for providing services, content and channels from individual groups or program contents and from the report of RTK Board.

2. Annual report should be published on the RTK website.

3. Once a year, RTK shall organize a public debate regarding the content of the annual report and shall draft a report on the debate, which will be submitted to the  
RTK Board.

4. RTK shall submit the annual public, debate report and the opinion of the RTK Board on the public debate report for orientation purposes to the Assembly of Republic of Kosovo.

## **RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC OF KOSOVO**



(adopted on 29 April 2010; in force until August 9, 2022)

## Article 72

### Special procedures regarding the reports of independent bodies

1. *The annual work report of an independent body, established by the Assembly shall be reviewed by the functional committee that covers the scope of responsibilities of the independent body.*
2. *The committee shall review the annual report of the independent body and present to the Assembly a report with recommendations within three working weeks from the day of its receipt.*
3. *The review of the annual report in the Assembly meeting shall commence with a presentation of the report by the rapporteur of the functional committee. After the presentation of the report, discussion shall take place in the following order: representatives of parliamentary groups and members of the Assembly, to be concluded by a voting on the approval.*
4. *Notwithstanding the item 3 of this Article, the floor may be given also to the responsible person of the independent body, upon the request of the Assembly.*

### **ANNEX: 10. Committee for Public Administration, Local Government and Media**

*The Committee on Public Administration, Local Government and Media is a permanent committee. The Committee within its scope of work and responsibilities reviews all issues related to the functioning of the civil service, local administration and media.*

*The scope of work of this committee includes:*

*[...]*

- *Reviewing the list of board members for the Independent Media Commission and the Public Media Board;*

*[...]*

*While exercising its function, the committee cooperates with the respective Ministry and all other Ministries, from which it may request concrete data including reports of Ministers, or other responsible persons, when requested by the committee.*

### **The relevant principles and standards stemming from the Recommendations and acts of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe, the Opinions of the Venice Commission and the reports and acts of international professional organizations**

96. The Court will present below detached parts, relevant to the circumstances of the present case, from the soft law instruments of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe, the Opinions of the Venice Commission and the reports of the acts of international professional organizations. The Court will present the following: (i) Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of the independence of public service broadcasting, Annex and its Explanatory Memorandum; (ii) Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states; (iii) Recommendation CM/Rec(2012) 1 of the Committee of Ministers to member States on public service media governance; (iv) Parliamentary Assembly Resolution 1636 (2008): Indicators for media in a democracy (adopted by the Parliamentary Assembly on 3 October 2008); (v) Opinion of Venice Commission CDL-AD(2005)017 on the compatibility of the laws “Gasparri” and

“Frattoni” of Italy with the Council of Freedom of Expression and Pluralism of the Media; (vi) Opinion of Venice Commission CDL-AD(2015)015 on Media Legislation of Hungary; (vii) Report of the European Broadcasting Union "Public service media under Article 10 of the European Convention on Human Rights; (viii) European Union of Broadcasters Report "Legal focus: Governance Principles for public service media"; (ix) IRIS Plus report of the European Audiovisual Observatory "Governance and independence of public service media”.

- (i) *Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting, adopted by the Committee of Ministers on 11 September 1996, Annex and its Explanatory Memorandum*

*“The rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference. These rules should, in particular, stipulate that the members of boards of management or persons assuming such functions in an individual capacity: exercise their functions strictly in the interests of the public service broadcasting organisation which they represent and manage; may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with the management functions which they exercise in their public service broadcasting organisation; - exercise their functions strictly in the interests of the public service broadcasting organisation which they represent and manage;- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with the management functions which they exercise in their public service broadcasting organisation.”* (Appendix to Recommendation No. R (96) 10 - Guidelines on the guarantee of the independence of public service broadcasting, II. Boards of management of public service broadcasting organisations, 2. Status, pg. 51)

*“The rules governing the status of the supervisory bodies of public service broadcasting organisations, especially their membership, should be defined in a way which avoids placing the bodies at risk of political or other interference. These rules should, in particular, guarantee that the members of the supervisory bodies: are appointed in an open and pluralistic manner; represent collectively the interests of society in general; may not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases; may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions; may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with their functions within the supervisory body. (Appendix to Recommendation No. R (96) 10 - Guidelines on the guarantee of the independence of public service broadcasting, III. Supervisory bodies of public service broadcasting organisations, 2. Status, pg. 52)*

*“As previously mentioned, the editorial independence and administrative autonomy of public service broadcasting organisations do not mean that these organisations need not answer for the way in which they accomplish their missions and use the resources which may be allocated to them by the community*

*for this purpose. Thus, the boards of management of public service broadcasting organisations, which according to Guideline No. 4 should be solely responsible for the day-to-day operation of these organisations, are accountable for the performance of their functions to their own supervisory bodies, as stipulated by Guideline No. 7". (Guideline No. 2, Explanatory Memorandum to Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting).*

*"The supervisory bodies of public service broadcasting organisations may vary in their nature, being either external (parliamentary commissions, broadcasting sector regulating agencies), internal (public service broadcasting organisation superintending boards, etc) or a combination of both. The actual composition of the supervisory bodies of public service broadcasting organisations and the manner of their appointment may also vary considerably. Whatever the composition and the appointment procedures, the rules governing the status of the supervisory bodies should be defined so as to avoid them being subject to any political or other interference. Attention is drawn in this connection to the stipulation in the Resolution on the future of public service broadcasting adopted at the Prague Ministerial Conference: "the independence of public service broadcasters must be guaranteed by appropriate structures such as pluralistic internal boards or other independent bodies". (Guideline No. 11, Explanatory Memorandum to Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the Guarantee of the Independence of Public Service Broadcasting)*

*(ii) Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states, adopted by the Committee of Ministers on 27 September 2006*

*"4. According to Recommendation No. R (96) 10, the legal framework governing public service broadcasting organisations should clearly stipulate their independence. (...)" (paragraph 4).*

*"6. (...) On occasion, the provisions relating to governing or supervisory bodies (as, for example, regarding the selection, appointment and termination of appointment of members) entail a risk of interference.. (...)" (paragraph 6).*

*"24. Due to its very nature, public service broadcasting should be accountable to society at large, both because it exists to serve the public in general and because, in most cases, it is financed at least partly from public resources (for example, state contributions) or from broadcasting fees, paid by the intended beneficiaries of the service. According to Resolution No. 1 adopted at the 4th European Ministerial Conference on Mass Media Policy, "public service broadcasters must be directly accountable to the public. To that end, public service broadcasters should regularly publish information on their activities and develop procedures for allowing viewers and listeners to comment on the way in which they carry out their missions. It goes without saying that accountability is also desirable as regards the sound management of the resources available to public service broadcasting organisations." (paragraph 24).*

*"25. (...) Many public service broadcasters publish relevant information on a regular basis, some being subject to statutory obligations to publishing yearly reports or submit such reports to parliament. This allows for desirable public scrutiny." (paragraph 25)*

(iii) *Recommendation CM/Rec(2012) 1 of the Committee of Ministers to member States on public service media governance, adopted by the Committee of Ministers on 15 February 2012*

*“2. The first priority for public service media must be to ensure that their culture, policies, processes and programming reflect and ensure editorial and operational independence. (...) 4. However, even in countries with more strongly developed and deeply rooted systems of public service broadcasting, the relationship between the public service media and the government, which sets their overall remit and secures their funding, is one that needs constant vigilance. Recent changes in certain member States to the funding arrangements or decisions to use the licence fee to fund services delivered by commercial media have once more focused attention on the relationship between public service media and the State.”* (paragraph 2, 4)

*“14. Traditional definitions of governance are insufficient to take full account of the new and more complex media environment. Narrow definitions typically focus on the precise legal and administrative steps taken to ensure the appropriate composition of boards and managing structures. They tend to concentrate on the detail of appointment procedures, the terms of tenure and permissible grounds for dismissal, conflicts of interest and methods by which the organisation will be held accountable. While these issues are all of fundamental importance in a proper and well-functioning governance system, they must be placed in a broader context.”* (paragraph 14)

*“17. An interlocking set of criteria that public service media organisations can use to assess their system of governance is proposed in the current guiding principles. The criteria are designed to operate at every level within the organisation: they relate to the highest decision-making level of the media organisation, but they are also directly related to structures, processes and behaviours operating throughout the organisation. They relate respectively to the principles of independence, accountability, effective management, transparency and openness as well as responsiveness and responsibility.”* (paragraph 17).

*“18. The model operates at three levels: A. The first tier is concerned with the formal structures and processes that, between them, make the essential features of the governance framework: (a) the steps taken to secure independence – the primary goal of any public service media governance framework, since without independence the public service media cannot be guaranteed to operate effectively or deliver against its wide set of public purposes and maintain its focus as purely to serve the public interest; (b) the accountability framework – the way in which a public service media organisation identifies its stakeholders and the mechanisms through which it is held to account, and which ensures that the independence of the organisation is focused on meeting the needs of its stakeholders. These two aspects of the organisation effectively balance each other: the independence granted to the public service media to protect them from undue influence from the State or any other party is balanced by the public service media organisations’ obligation to be fully accountable to the State and to its many stakeholders.”* (paragraph 18).

*“21. Independence is the core requirement for every public service media organisation. Without demonstrable independence of action and initiative, from government as well as from any other vested interest or institution, public service media organisations cannot sustain their credibility and will lose (or never gain) popular support as a forum for carrying forward the national debate and holding power to account.”* (paragraph 21)

*“22. Securing and safeguarding independence is therefore a primary role of any framework of public service media governance, and this is why independence has been at the heart of all of the relevant Council of Europe standards.” (paragraph 22)*

*“27. As public institutions, it is legitimate for the State to be involved in the appointment of the highest supervisory or decision-making authority within the public service media. To avoid doubt, this involvement should not normally extend to appointments at executive or editorial management level. Furthermore, any such appointment processes should be designed so that: there are clear criteria for the appointments that are limited, and directly related, to the role and remit of the public service media; the appointments are made for a specified term that can only be shortened in limited and legally defined circumstances – which should not include differences over editorial positions or decisions; in line with Council of Europe standards, representation of men and women in decision-making bodies should be balanced.” (paragraph 27)*

*“28. Public service media are ultimately, and fundamentally, accountable to the public. However, the public is composed of an increasingly complex range of institutional and other stakeholders: the public as represented by the State – through government and parliament, as well as other independent regulatory and supervisory bodies; the public directly as audience and as citizens and participants; the public as represented by civil society groups as well as wider communities of interest.” (paragraph 28)*

*(iv) Parliamentary Assembly Resolution 1636 (2008): Indicators for media in a democracy, adopted by the Parliamentary Assembly on 3 October 2008*

*“3. The Council of Europe has set standards for Europe on media freedom through Article 10 of the European Convention on Human Rights (ETS No. 5) and a number of related recommendations by the Committee of Ministers as well as resolutions and recommendations by the Parliamentary Assembly.” (paragraph 3)*

*“7. The Assembly considers it necessary for a number of principles concerning media freedom to be respected in a democratic society. A list of such principles would facilitate analyses of national media environments in respect of media freedom, which could identify problematic issues and potential shortcomings. This will enable member states to discuss, at European level, possible actions to address those problems.*

*8. The Assembly invites national parliaments to analyse their own media situation regularly in an objective and comparable manner in order to be able to identify shortcomings in their national media legislation and practice and take appropriate measures to remedy them. Such analyses should be based on the following list of basic principles: (...) 8.20. public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations; (...). (Paragraph 7, 8)*

*(v) Opinion of Venice Commission CDL-AD(2005)017 on the compatibility of the laws “Gasparri” and “Frattini” of Italy with the Council of Freedom of Expression and Pluralism of the Media, published on June 13, 2005*

*“52. Public broadcasting is a public service. Public broadcasters have obligations ranging from the provision of a universal service, to some form of social*

*representation, to the provision of a wide range of quality programmes<sup>31</sup>. In return, they enjoy a privileged access to resources and facilities.” (paragraph 52).*

*“53. Public service broadcasting is therefore expected to serve the public interest, to cater for the whole of the population on a universal and non-profit basis; it is a public duty and it should serve the democratic needs of contemporary societies.” (paragraph 53).*

*“54. Public service broadcasting must be free from the constraining forces of the state and, on the other hand, enjoy autonomy and independence from the market place. Its specific remit is essentially to operate independently of those holding economic and political power. (...)” (paragraph 54).*

*“151. In this respect, the Commission wishes to stress that a supervisory role of parliament on the national broadcaster is certainly acceptable and compatible with the democratic functions of parliament. It often reflects the political culture prevailing in the states concerned.” (paragraph 151).*

*“153. This parliamentary role, however, should mainly concern the establishment of guidelines and the solution to certain problems of public opinion, and should not be extended to interfere with the editorial work of the broadcaster or even with the appointment and dismissal of journalists.” (paragraph 153).*

*(vi) Opinion of Venice Commission CDL-AD(2015)015 on Media Legislation of Hungary (published on June 22, 2015)*

*“80. The Venice Commission emphasises that the requirement of independence which is applicable to the media regulatory bodies in general is also applicable to the bodies supervising the public media sector. Thus, Appendix to the Recommendation of the Committee of Ministers No. R(96)10 recommends that members of the PSM supervisory bodies are appointed in an open and pluralistic manner and represent collectively the interests of society in general.” (paragraph 80).*

*“81. The independence of public broadcasters has been elevated to the status of a principle of European human rights law. (...)” (paragraph 81).*

*“82. Indeed, the Court’s findings must be read in the light of the particular circumstances of the case [Manole and others v. Moldova]. In that case it was not the Court’s task to propose an abstract model which would guarantee the independence of a body supervising a major public TV company. Nevertheless, it is clear that where an overwhelming majority of the members of such body are selected by the ruling party, such body cannot be considered as independent. In this case the journalists of the TRM, a leading public TV station, complained of the furtive censorship exercised by the newly-appointed management obedient to the ruling majority. Therefore, the lack of independence of a supervisory body would lead to a violation of Article 10 of the Convention not as such, but only where it resulted in a specific interference with the journalistic freedom – such as censorship, for example. (paragraph 82, footnote 66).*

*(vii) Report of the European Broadcasting Union "Public service media under Article 10 of the European Convention on Human Rights", published in December 2013*

*“The existence of public service broadcasters benefits from protection by Article 10 of the European Convention on Human Rights (ECHR). This protection is a*

consequence of a State's deliberate decision to establish a public broadcasting system. The kind of protection and its scope are influenced by the standards which have been developed by the Council of Europe and the EU with regard to the essential role and contribution of public broadcasting within a democratic society. This contribution comprises all tasks through which a public broadcaster serves the democratic, social and cultural needs of a democratic society. (...) Due to its subsidiary nature, the human rights protection system of the ECHR is not intended to prescribe a certain model of how broadcasting should be organised in a given country. Nevertheless, Article 10 says more about the status of public service media than merely that a State "may decide" to establish a public service broadcasting system, or not. It gives existing public service media legal protection against State actions that are arbitrary or disproportionate, relative to legitimate aims that a State may pursue, and obliges the State to (re)establish a media system that meets the general requirements of Article 10 ECHR." (pg. 3)

"In the previously cited judgment *Manole and others v Moldova* of 17 December 2009 the ECtHR referred in §102 to "standards relating to public service broadcasting which have been agreed by the Contracting States through the Committee of Ministers of the Council of Europe" providing "guidance as to the approach which should be taken to interpreting Article 10 [ECHR] in this field". This implies that the ECtHR acknowledges legal sources other than the ECHR, which express a common understanding of the Member States, when it interprets the rights and freedoms, as well as legitimate restrictions, of the Convention." (pg. 12)

"Certainly in the *Manole* case the Court itself linked the notion of the State as "ultimate guarantor of pluralism" with positive obligations, namely the duty of the Moldavian State to provide legal safeguards for the protection of a pluralistic, independent public broadcasting organisation." (pg. 21)

"Although a comprehensive treatment of this topic would go into too great detail and would be beyond the scope of this study, we can reach the conclusion that Article 10 entails a legally binding positive obligation to take all necessary measures and provide for a pluralistic media system, which takes into account European developments and standards as manifested by recommendations and reports of the Council of Europe as well as studies comparing the respective laws of Member States of the EU and the CoE. Nevertheless, it remains unclear what this would entail for the status of public service media." (pg. 22)

"What follows quite clearly from *Manole* is that "where a State does decide to create a public broadcasting system" it has to respect its rights under Article 10. That includes its independence from economic or political pressures, and its ability to transmit impartial, independent and balanced news." (pg. 24).

"We can state that an existing public service broadcaster is protected by Article 10. Its protection under the Convention is a consequence of the deliberate decision by the State to establish a public broadcasting system that provides pluralistic audiovisual media services or that makes major contributions to it, and it is influenced by the development of standards by the CoE and the EU with regard to the essential role and contribution of public broadcasting within a democratic society. This contribution comprises all tasks through which a public broadcaster serves the democratic, social and cultural needs of a democratic society, as defined in the public service remit of the broadcaster. It is most important in the field of information and current affairs, but not restricted to it." (pg. 25)

(viii) *European Union of Broadcasters Report "Legal focus: Governance Principles for public service media", published in December 2021*

*"At the same time, PSM [public service media] are embedded in a country's democratic system, they exist to serve citizens and society, they depend on public funding and they form part of an economic and cultural audiovisual ecosystem. PSM therefore cannot act in isolation but only in interaction with other stakeholders, or in other words, they have to be 'connected'; therefore 'absolute' independence from other stakeholders is not a realistic or justifiable objective. That said, the level of independence should be sufficiently high so that PSM organisations are able to fulfil their remit in an objective and impartial way, to contribute to media freedom and pluralism and to fulfil their democratic, social and cultural role for society, in line with the Preamble of the Amsterdam Protocol. To reduce the risk of undue interference, most countries have introduced legal safeguards and supervisory systems which distance PSM from political institutions, in particular from the executive and legislative branches, but also from political parties. These safeguards often take the form of independent supervisory bodies, which act at arm's length from the political powers and can serve as buffers between them and the management and editorial staff of PSM."* (pg. 8)

*"A high level of independence of PSM needs to go hand in hand with a high level of transparency and accountability. These should not be seen as conflicting objectives but as aims which can underpin each other. Transparency and accountability 'reconnect' PSM to the society which they serve and to the democratically legitimised institutions."* (pg. 9)

*"State broadcasting, which lacks safeguards for independence and pluralism, is not in line with the requirements of Art. 10 of the European Convention on Human Rights with regard to freedom of expression."* (pg. 10)

*"The supervisory bodies of PSM have a key role to play in respecting and ensuring the independence of PSM. It would be unrealistic to expect a supervisory body to fulfil its role of guarantor of independence if it is not itself independent and composed in a balanced or pluralistic way. In particular, State representatives or politicians must be prevented from gaining a determining influence in these bodies."* (pg. 11)

*"Members of the supervisory body should be appointed for a fixed but renewable term of reasonable duration (4-6 years). It can be useful to foresee membership on 'staggered' terms; for example, if a six year term is the rule, every two years one third of the members could be renewed. This can strengthen the independence and continuity of work and avoid a situation where after each election or change of government the supervisory body is completely recomposed. Members of the supervisory body also need legal protection for the independent exercise of their functions. They should not be bound by instructions, they should not fear revocation by those who nominated them and they should be protected against dismissal (apart from objectively justified cases specified by law, such as incapacity to fulfil their functions)."* (pg. 13)

*"While there must be a possibility for dismissal by the supervisory body if the management has failed in fulfilling its tasks or has otherwise lost the confidence of the supervisory body, there need to be safeguards against politically motivated dismissals. In particular, dismissals should require a qualified majority (e.g. two-thirds) in the supervisory body. Some countries provide that the management is dismissed if the annual report is rejected by parliament, after its presentation*



*by the PSM management to a parliamentary committee. Such a system opens the door to undue political interference, it undermines the role of the supervisory body, it may lead to self censorship with regard to editorial content and cause instability at management level. In fact, countries with such systems often have an overly high level of turnover of PSM directors general.” (pg. 16)*

*“Often PSM organisations are under a formal obligation to publish annual reports which must include a minimum set of information. In practice, annual reports are also used to showcase the PSM organisation and its services and achievements in a broader way. Annual reports are often the basis for a wider political debate on the role, remit and funding of PSM, for example in parliament. However, there should be no need for approval of the annual report by parliament; similarly, any rejection of the report should not automatically lead to the dismissal of the management (see paragraph 2.4.3 above).” (pg. 25)*

*(ix) IRIS Plus report of the European Audiovisual Observatory "Governance and independence of public service media", published on February 22, 2022*

*“As for independence of supervisory bodies, a good starting point according to the EBU is preventing state representatives and politicians from becoming members or influencing them, as well as maintaining a strict separation between managerial and supervisory bodies. The independence of their members should be guaranteed via appointment for a reasonable duration (four to six years) with the option to renew – ideally on staggered terms, as well as by protecting them against dismissal or revocation during their term. Moreover, appointments to these boards should be open and transparent, with the report recommending a qualified (3/5, 2/3 or 3/4) majority in parliament for the election of the members of a supervisory body.” (pg. 5)*

*“As for accountability and transparency, PSM should put in place governance frameworks to determine to whom and on what the organisations are accountable, and how this accountability is effectively achieved. PSM should not only inform the public about their activities and organisations, but also actively seek their feedback. Moreover, they should retain a permanent link with communities, organisations, and civil society in order to integrate the users of the services as co-creators as much as possible.” (pg. 6)*

*“The right to freedom of expression enshrined in Article 10 (1) of the European Convention on Human Rights (ECHR) is a multi-faceted right that unfolds into freedom to hold opinions, to receive and impart information and ideas, without interference by public authority and regardless of frontiers. This right comprises, as an integral part, media freedom, including independence, pluralism and diversity of media, and the safety of journalists and other media actors” (see, pg. 102 quotes Robert Spano speech, President of the European Court of Human Rights at ERA Annual Conference of European Media Law, of 18 June 2021).*

## **Admissibility of the Referral**

97. In order to be able to consider the Applicants’ referral, the Court initially examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution and further specified in the Law and the Rules of Procedure.
98. In this regard, the Court refers to paragraph 1 of Article 113 of the Constitution, which establishes:

Article 113

[Jurisdiction and Authorized Parties]

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

99. Regarding these criteria, the Court notes that the Applicants have filed their referral based on paragraph 5 of Article 113 of the Constitution, which provides as follows:

Article 113  
[Jurisdiction and Authorized Parties]

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

100. In the present case, the Court notes that the Referral was submitted by ten (10) deputies of the Assembly, which is the minimum threshold required by paragraph 5 of Article 113 of the Constitution and, therefore, this requirement has been fulfilled.
101. The Court also in the assessment of the second criterion “*within 8 days*”, notes that the referral was submitted to the Court on 16 July 2021, while the challenged Act was approved by the Assembly on 8 July 2021, which means that the referral was submitted within the deadline established in paragraph 5 of Article 113 of the Constitution.
102. In addition to the above criteria, the Court must also assess whether ten (10) or more deputies of the Assembly are legitimate as being “*authorized parties*” within the meaning of paragraph 5 of Article 113 of the Constitution to challenge the constitutionality of any law or act approved by the Assembly, both in terms of content and the procedure followed. In the present case, the deputies of the Assembly are legitimized as an authorized party, and therefore, based on paragraph 5 of Article 113 of the Constitution, they have the right to challenge the constitutionality of Act no. 01-V-136, approved by the Assembly, on 8 July 2021.
103. In addition, the Court also takes into account Article 42 [Accuracy of the Referral] and 43 [Deadline] of the Law governing the submission of the Referral based on paragraph 5 of Article 113 of the Constitution, which requires the following information to be submitted:

Article 42  
(Accuracy of the Referral)

*“1. In a referral made pursuant to Article 113, paragraph 6 of the Constitution, the following information shall, inter alia, be submitted:*

- 1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;*
- 1.2. provisions of the Constitution or other act or legislation relevant to this referral; and*
- 1.3. presentation of evidence that supports the contest”.*

Article 43  
(Deadline)

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

104. The Court, also, also refers to Rule 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) of the Rules of Procedure, which establishes that:

Rule 72

(Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law)

*“(1) A referral filed under this Rule must fulfil the criteria established in paragraph (5) of Article 113 of the Constitution and Articles 42 (Accuracy of the Referral) and 43 (Deadline) of the Law.*

*(2) A referral filed under this Rule shall have a suspensive effect.*

*(3) A referral filed under this Rule must, inter alia, contain the following information: (a) Names and signatures of all the members of the Assembly challenging the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo; (b) Provisions of the Constitution or other act or legislation relevant to this referral; and (c) Presentation of evidence that supports the contest.*

*(4) The applicants shall attach to the referral a copy of the law, or the challenged decision adopted by the Assembly, the register and personal signatures of the members of the Assembly submitting the referral and the authorization of the person representing them before the Court.*

*(5) The Court shall, immediately after having registered a referral filed pursuant to paragraph (5) of Article 113 of the Constitution, notify the Assembly of the Republic of Kosovo of the registration of the referral.*

*(6) In the event that a law or a decision of the Assembly that requires a decree by the President is challenged, the Court shall, immediately after the registration of the referral submitted in accordance with paragraph (5) of Article 113 of the Constitution and Articles 36 (Suspension Effect) and 43 (Deadline) of the Law, notify the President and the Assembly of the suspensive effect of the referral on entry into force of the challenged law or decision, until the Court issues a final decision regarding the case at stake.*

*(7) The referral under this Rule must be filed within eight (8) days from the date of adoption of the challenged law or decision.”*

105. The Court notes that the Applicants: (i) put their names and signatures on the Referral; (ii) specified the challenged Act of the Assembly [No. 01-V-036] of 8 July 2021 on the dismissal of the members of the RTK Board and submitted its copy; (iii) referred to specific constitutional provisions, whereby they claim that the challenged Act is not in compliance; (iv) submitted evidence and testimony to support their allegations; as well as submitted the Referral within the period of eight (8) days, as provided by paragraph 5 of Article 113 of the Constitution.

106. Therefore, the Court will further examine the merits of the referral in relation to the respective articles of the Constitution, as mentioned in the previous paragraph.

## Merits

107. The Court recalls that, after the holding of the parliamentary elections in 2021, and after the constitution of the VIII-th, (eighth) legislature of Assembly, the Committee for Public Administration and the Committee for Budget, initially (i) had recommended the rejection of the approval of RTK Annual Report for 2020, and then proposed the dismissal of all members of the RTK Board; then (ii) on 8 July 2021, the Assembly voted to reject the approval of the RTK Annual Report for 2020 and also voted to dismiss all, namely all 8 (eight) members of the RTK Board, who were elected by the Assembly in 2018 and 2020, respectively, with a three-year term, to exercise the duties of RTK Board members.
108. The Assembly accepted the proposal of the relevant committees for the dismissal of RTK Board members on 22 June 2021. In the meantime, the latter notified all deputies for holding the next plenary session, where one of the items on the agenda was the review of recommendation [No. 08/358/Do-238], of the Committee for Public Administration for the dismissal of all members of the RTK Board. On 8 July 2021, the Assembly reviewed the recommendation of this committee and after the discussions, invited the deputies to vote. From the minutes of the plenary session, it turns out that the relevant proposals for the dismissal of each member of the Board received sixty-four (64) votes “for”, no votes “against” and one (1) abstention. After the end of the voting, on 8 July 2021, the Assembly approved the challenged Act [No. 08-V-036], which also officially confirms the dismissal of all members of the RTK Board.
109. The Court also recalls that ten (10) deputies of the Assembly of Kosovo challenged the constitutionality of the decision of the Assembly by which all members of the RTK Board were dismissed, claiming, among other things, that (i) the Assembly contrary to the constitutional provisions, with an emphasis on the authorizations of the Assembly to exercise the competence of supervision, according to the provisions of paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution, but also of Articles 4 [Form of Government and Separation of Power] and 7 [Values] of the Constitution, has exceeded arbitrarily the relevant competence, collectively dismissing all members of the RTK Board, contrary to the provisions of the Law on RTK, approved by the Assembly; and (ii) as a result, they also violated the fundamental individual rights and freedoms of RTK Board members, guaranteed by the Constitution. The Court recalls that the Applicants’ allegations are supported by the comments submitted to the Court by the RTK, while they are opposed by the parliamentary group of the LVV.
110. The Court notes that the above claims specifically refer to exceeding the supervisory role of the Assembly towards RTK, as an independent and autonomous institution that provides public services in the field of media broadcasting and its governing bodies. Therefore, in this context, the Court will deal with and examine the Applicants’ allegations, within the framework of paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution, since in essence, the referral raises issues of the exercise of the supervisory function of the Assembly towards public institutions, namely the exercise of the oversight function towards the public broadcaster contrary to the respective authorizations of supervision according to the Assembly’s own determinations, through the approval of the Law on RTK.
111. In this context, the Court first emphasizes the role of the Assembly in exercising its essential function of supervision. In this context, the Court notes that based on paragraph 2 of Article 4 [Form of Government and Separation of Power] of the Constitution, the Assembly exercises legislative power. The Assembly exercises this function based on the competencies established in Article 65 of the Constitution,

including the competence (i) to adopt laws, resolutions and other general acts, as defined in paragraph 1 of this article; and (ii) to oversee the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law as defined in paragraph 9 of this article. Both of these competences of the Assembly constitute the essence of its constitutional function.

112. Having said that, in exercising these competencies, the Assembly is limited to respecting the constitutional provisions, including Article 74 [Exercise of Function] of the Constitution, based on which the deputies of the Assembly of the Republic of Kosovo exercise their function in the best interest for the good of the country and in accordance with this Constitution, laws and Rules of Procedure of the Assembly. Moreover, in the context of exercising the power of supervision, the Assembly is limited, among others, to the fundamental provisions of the Constitution, with emphasis on (i) the principle of separation and balancing of powers, as specified in Article 4 of the Constitution; and (ii) the fundamental values of the Republic of Kosovo, as specified in articles 3 and 7 of the Constitution, respectively. Moreover, in exercising the function of supervision, the Assembly is also limited to respect the applicable law which approves itself, according to paragraph 1 of Article 65 of the Constitution. The obligation to act in accordance with the applicable law is precisely established in (i) paragraph 9 of Article 65 of the Constitution; and (ii) Article 74 of the Constitution. Any exceeding of the constitutional and legal authorizations in the exercise of the supervisory competence of the Assembly may result in violation of the separation and balancing of powers as specified in Article 4 of the Constitution, but also Articles 3 and 7 of the Constitution, respectively, and also in violation of the constitutional and/or legal independence of the relevant institution, over which this supervision is exercised by the Assembly.
113. The Court emphasizes that the supervisory role of the Assembly over RTK as a public broadcaster, within the limits set by the Law on RTK itself, is not disputable. Such an oversight mechanism is also in accordance with the standards elaborated through the Venice Commission, certainly with requirements specified in the reports of the Venice Commission and the principles stemming from the international instruments elaborated above in this Judgment.
114. Having said that, and relevant in the circumstances of the present case, the exercise of the supervisory role of the Assembly is of special importance, especially in the field of media freedom considering its role and importance in a democratic society. This is also because freedom and pluralism of the media are precisely defined by the Constitution, namely in Article 42 [Freedom of Media]. This right is also closely related to the freedom of expression guaranteed by Article 40 [Freedom of Expression] of the Constitution and Article 10 (Freedom of expression) of the ECHR, an international instrument that is directly applicable in the legal order of the Republic of Kosovo based on Article 22 of the Constitution. Also, the Court recalls that the ECtHR interprets this Convention, while based on Article 53 of the Constitution, the Court and not only, is obliged to apply the interpretation of the Convention according to the case law of the ECtHR. The case law of the ECtHR establishes not only the obligation of the state not to interfere with the values of freedom and pluralism of the media and the freedom of expression, but also the positive obligations of the state in cases where they create public broadcasters, such as RTK in the Republic of Kosovo, to guarantee the provision of pluralistic services and sufficient protection against political and other interference (see, among others, the case of the ECtHR [\*Manole and others v. Moldova\*](#), no. 13936/02, Judgment of 13 September 2009, paragraphs 99, 100 and 101).
115. More precisely, the Court emphasizes the fact that based on the case law of the ECtHR, and as far as it is relevant in the circumstances of the present case, the category of independence of public broadcasters has been raised to the level of the principles of

fundamental rights and freedoms protected with Article 10 of the ECHR (see, case [Manole and others v. Moldova](#) and paragraph 81 of the Opinion of the Venice Commission [CDL-AD\(2015\)015-e](#), on the Media Legislation of Hungary published on 22 June 2015). Moreover, based on the same case law, a public broadcaster which does not have the necessary guarantees in the context of independence and pluralism, cannot be in accordance with the guarantees embodied in Article 10 of the ECHR (see, *inter alia*, the Report of [European Broadcasting Union](#), “Legal Focus: Principles of Public Service Media Governance”, published in December 2021).

116. The Court also emphasizes the fact that based on this case law of the ECtHR, including the international standards elaborated in this Judgment, as long as the states do not have the obligation to establish public broadcasters, in case they are established, within the scope of Article 10 of the ECHR, the state has the obligation to guarantee their legal independence, including protection from arbitrary and/or disproportionate actions of the state itself, in accordance with the relevant legitimate purpose, always with an emphasis on the essential role and contribution of public broadcasters and media in democratic societies. According to the ECtHR and among others, “*the right to freedom of expression enshrined in Article 10 (1) of the European Convention on Human Rights (ECHR) is a multi-faceted right that unfolds into freedom to hold opinions, to receive and impart information and ideas, without interference by public authority and regardless of frontiers. This right comprises, as an integral part, media freedom, including independence, pluralism and diversity of media, and the safety of journalists and other media actors*” (The European Audiovisual Observatory IRIS Plus report “Governance and independence of public service media”, published on 22 February 2022, p. 102, quotes the speech of Robert Spano, President of the European Court of Human Rights at the ERA Annual Law Conference European Media, 18 June 2021).

117. Based on the above clarifications, in the following the Court will (i) elaborate on the general principles stemming from the constitutional provisions and applicable international instruments regarding public broadcasters and as far as they are relevant in the circumstances of the present case; and then (ii) will apply the latter in the circumstances of the case, during the constitutional review of the challenged Act of the Assembly.

#### **I. The relevant principles stemming from the ECtHR case law and the relevant international instruments**

118. The Court initially, will briefly refer to the general principles regarding the status and role of public broadcasters and with the relevant supervision of the Assembly, including the relevant obligations and limitations, based on (i) the relevant Opinions of the Venice Commission; (ii) Recommendations of the Committee of Ministers; (iii) Reports and acts of international professional organizations/associations; (iv) the relevant case law of the ECtHR; and (v) the contribution of the Constitutional Courts and/or their equivalents through the Forum of the Venice Commission.

##### *(i) Relevant opinions of the Venice Commission*

119. In this context, the Court first emphasizes the relevant Opinions of the Venice Commission, detailed in the section of the relevant Provisions of this Judgment, and which, among other things, have elaborated issues related to the supervision of public broadcasters, including Opinion (no. 309/2004- CDL-AD(2005)017) on the compatibility of “*Gasparri*” and “*Fratini*” laws of Italy with the standards of the Council of Europe in the field of freedom of expression and media pluralism, approved by the Venice Commission at its 63rd plenary session (Venice, 10-11 June 2005)

(hereinafter: Opinion on Italy), through which the Venice Commission, among other things, clarifies that the public broadcaster is a public service that has obligations ranging from providing a universal service, to a form of social representation, to providing a wide range of quality programs. In return, they enjoy privileged access to resources and facilities (paragraph 52). Further the opinion emphasizes: *Public service broadcasting is therefore expected to serve the public interest, to cater for the whole of the population on a universal and non-profit basis; it is a public duty and it should serve the democratic needs of contemporary societies. Public service broadcasting must be free from the constraining forces of the state and, on the other hand, enjoy autonomy and independence from the market place. Its specific remit is essentially to operate independently of those holding economic and political power*” (See, Opinion no. 309/2004 - [CDL-AD \(2005\) 017](#) on Italy, cited above, paragraphs 53 and 54).

120. Furthermore, in terms of supervising the work of the public broadcaster, the Venice Commission also stresses: *“[...] a supervisory role of parliament on the national broadcaster is certainly acceptable and compatible with the democratic functions of parliament. It often reflects the political culture prevailing in the states concerned. [...]. This parliamentary role, however, should mainly concern the establishment of guidelines and the solution to certain problems of public opinion, and should not be extended to interfere with the editorial work of the broadcaster or even with the appointment and dismissal of journalists”* (see, Opinion on Italy, paragraphs 151 and 153). This opinion underlines that one of the most typical qualities of a public broadcaster is that it must act independently of those who have economic and political power. The independence of the public broadcaster is fundamental so that it can truly ensure internal pluralism (See, Opinion no. 309/2004- [CDL-AD \(2005\) 017](#) on Italy, cited above, paragraph 162).
121. Moreover, in the Opinion (no. 798/2015-CDL-AD(2015)015-e.) on Media Legislation on Media Services and Mass Media, CIV Act on Freedom of the Press and the Legislation on Taxation of Advertising Revenues of Hungary Mass Media, adopted by the Venice Commission at its 103rd plenary session (Venice, 19-20 June 2015) (hereinafter: Opinion on Hungary), the Venice Commission, among other things, states: *“[...] that the requirement of independence which is applicable to the media regulatory bodies in general is also applicable to the bodies supervising the public media sector. Thus, Appendix to the Recommendation of the Committee of Ministers No. R(96)10 recommends that members of the PSM supervisory bodies are appointed in an open and pluralistic manner and represent collectively the interests of society in general. The independence of public broadcasters has been elevated to the status of a principle of European human rights law”* (paragraphs 80 and 81). This opinion notes that there is no common European model of public media governance. Therefore, it is up to the state authorities to develop a legal framework that ensures pluralism within public media supervisory bodies and sufficient independence. The opinion on Hungary notes that the influence of the parliamentary majority on the appointment of members of the supervisory body of the public media and their the executive level should be reduced and that it should be ensured that in that body, all important political, social and relevant professional groups are properly represented (See, Opinion no. 798/2015-[CDL-AD\(2015\)015-e.](#) on Hungary, cited above, paragraphs 86 and 88).

*(ii) Recommendations of the Committee of Ministers*

122. In the context of parliamentary oversight of public broadcasters, the Court also refers to Recommendation no. R (96) 10 of the Committee of Ministers of 11 September 1996, on *“Guarantee of the independence of public service broadcasting”* (hereinafter: Recommendation no. R (96) 10), in which the ECtHR and the Venice Commission also referred to. The aforementioned recommendation details some guidelines that member

states should include in their domestic law, so as to guarantee the independence of public broadcasters, as a prerequisite for the functioning of a democratic society. The Committee of Ministers of the EC, when talking about the competences of the supervisory bodies of public broadcasters, emphasizes that the legal framework which governs the public broadcasting service must clearly and accurately define the powers of their supervisory bodies. Furthermore, regarding the status of supervisory bodies of public broadcasters, the recommendation states that the members of these bodies: “[...] *may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions*” (See, part III, point 2 “Status” of [Recommendation no. R \(96\) 10](#), cited above, p. 3).

123. Meanwhile, Recommendation CM/Rec (2012) 1, of the Committee of Ministers dated 15 February 2012, on “*Governance of public media*” (hereinafter: Recommendation CM/Rec (2012) 1.) emphasizes that public media must operate and develop within a stable governance framework that enables both the necessary editorial independence and public accountability. This recommendation emphasizes that a framework for the governance of public media should contain two basic characteristics: independence and accountability. As for independence, it should be the primary goal of each framework for public media governance, because without independence, public media cannot act effectively nor serve the public interest. On the other hand, the governance of public media must adhere to the principle of accountability and have the necessary mechanisms to identify shareholders and be accountable. These two aspects balance each other, so that the independence recognized by the public media serves to protect them from inappropriate influences from the state or other parties and is balanced by the obligation of these media to be fully accountable to the state and other shareholders (See, [Recommendation CM/Rec \(2012\) 1](#), cited above, paragraph 18).
124. The Court also notes that according to this recommendation, independence is an essential prerequisite for any public media organization. Without independence in action and initiatives, both from the government and from other interests or institutions, public media cannot maintain credibility. Therefore, securing and safeguarding independence is the primary role of the public media governance framework and also are at the heart of the relevant standards of the Council of Europe (See, [Recommendation CM/Rec \(2012\) 1](#), cited above, paragraphs 21 and 22).
125. The Recommendation also states that it is legitimate for the state to be involved in the appointment of the highest supervisory or decision-making authority within the public service media. To avoid doubt, this involvement should not normally extend to appointments at executive or editorial management level. Any such appointment processes should be designed so that: (i) there are clear criteria for the appointments that are limited, and directly related, to the role and remit of the public service media; (ii) the appointments cannot be used to exert political or other influence over the operation of the public service media; (iii) the appointments are made for a specified term that can only be shortened in limited and legally defined circumstances, which should not include differences over editorial positions or decisions; and (iv) in line with Council of Europe standards, representation of men and women in decision-making bodies should be balanced (Shih, [Recommendation CM/Rec \(2012\) 1](#), cited above, paragraph 27).
126. In terms of accountability, the recommendation highlights three shareholders to whom the public media must be accountable, and which, depending on the regulations of the respective states, are (i) the public as represented by the State – through government and parliament, as well as other independent regulatory and supervisory bodies; (ii) wide public,



thus citizens; as well as (iii) civil society. nature of this accountability will necessarily differ between countries, determined by the political and cultural and civil society systems. However, the governing principles should specify to whom public media organizations should be accountable and how they should do so. Accountability systems should clarify the public purpose and responsibilities for which public media must be accountable (See, [Recommendation CM/Rec \(2012\) 1](#), cited above, paragraphs 28 and 30).

*(iii) Reports and acts of international professional organizations/associations*

127. The Court also refers to the IRIS Plus Report, of the European Audiovisual Observatory on “*Governance and independence of the public service media*”, published on 22 February 2022 (hereinafter: the IRIS Plus Report), which analyzes in detail the normative regulation and the different practices on the European continent in terms of public media, both from the point of view of the Council of Europe and from the point of view of the European Union.
128. As far as it is relevant in the circumstances of the present case, this report emphasizes that there are different models regarding the structure, financing, scope and governance of public media. However, as common principles of each of these models, independence, accountability, transparency and sustainability can be highlighted (see [IRIS Plus Report](#), cited above, p. 4). As a way to guarantee the independence of supervisory bodies of public media, the report mentions: (i) appointment for a reasonable duration (four to six years) with the option to renew – ideally on staggered terms that do not begin and end at the same time; (ii) by protecting them against dismissal or revocation during their term; and (iii) open and transparent, with the report recommending a qualified 3/5, 2/3 or 3/4 majority in parliament for the election of the members of a supervisory body (See, [IRIS Plus Report](#), p. 5). Meanwhile, regarding accountability and transparency, the report emphasizes that the internal rules should determine to whom and for what the public media should be accountable. Transparency is achieved through the publication of annual reports and important information on the website, as well as through the drafting of transparency standards that identify the documents and information that the public media must make accessible on an ongoing basis (See, [IRIS Plus report](#), cited above, p. 6).
129. The Court also notes that the [European Broadcasting Union](#) (EBU), in Report “*Legal focus: Governance principles for public service media*”, published on 13 December 2021 (hereinafter: Principles of Public Media Service Governance), highlights independence, accountability, transparency and sustainability as fundamental principles. The EBU defines these four elements as basic requirements of public media governance, which stem from the role and function these media have in democratic societies (See, *Principles of Public Media Service Governance*, p. 6). Regarding independence as a fundamental principle, this report notes that public service media can only fulfill their role if they are perceived to be truly independent from government and other political and economic forces. Since these media are somehow dependent on political decisions and funding, they are always vulnerable to external political pressures. Therefore, their independence should never be taken for granted (See *Principles of Public Media Service Governance*, p. 8).
130. The Report further analyzes the organizational structure of public media services, emphasizing that public media services must be independent institutions, committed to the values of public service. The lack of measures that protect the independence and pluralism of public broadcasters results in non-compliance with the requirements of Article 10 of the ECHR (See, *Principles of Public Media Service Governance*, p. 10). Supervisory bodies have a key role in respecting and ensuring the independence of public media; a supervisory body that is not itself independent and pluralistic cannot

fulfill the role of a guarantor of independence for public media (See, *Principles of Public Media Service Governance*, p. 11). As a way to ensure the independence of the supervisory body of the public media service, the Report enumerates: (i) appointment through a qualified parliamentary majority (majority of 3/4, 2/3 or 3/4 of the relevant parliament); (ii) depending on the political system, the cooperation of various state institutions in the appointment process; (iii) appointment of a number of members of the supervisory body by the parliamentary majority and other members by the parliamentary minority; and (iv) nomination of members by civil society (See, *Principles of Public Media Service Governance*, p. 12). As another essential precondition for the independence of these bodies, the Report mentions that members should not receive instructions or fear revocation from those who appointed (nominated) them and that they should be protected from dismissal, except in cases of objectively reasonable and specified in law, such as the inability to fulfill the functions (See, *Principles of Public Media Service Governance*, p. 13).

131. The Court also emphasizes that this report analyzes the preconditions regarding the independence of the executive-managerial level of the public media. The later notes that there are systems in which, according to the relevant laws, the management of the public broadcaster is dismissed in case of rejection of the annual report by the Assembly, after the latter has been presented to a parliamentary committee. The EBU notes that these systems open the way for inappropriate political interference, undermine the role of the supervisory body and may lead to self-censorship of editorial content and cause instability at the managerial level (See, *Principles of Public Media Service Governance*, p. 16).
132. In terms of accountability, the Report notes that in modern democratic societies, the public should have full access to how a public media is organized and managed, how money is spent and how the work of journalism is carried out. The report notes that it is important that the oversight of public media services is not done by democratically elected institutions, but by independent oversight bodies. The role of the parliament and the government is only to establish the legal framework for public media services and never to interfere in operational and oversight matters. In this sense, the report notes that it is important that the central role of oversight bodies is not undermined by parallel or overlapping accountability mechanisms (See, *Principles of Public Media Service Governance*, p. 20).

*(iv) Relevant case law of the ECtHR*

133. Finally, the Court also refers to the case law of the ECtHR, with emphasis on the case of Manole and others against Moldova, and in which, the ECtHR considered the claims of the Applicants for violations, among others, of their freedom of expression, guaranteed by Article 10 of the ECHR. More precisely, the Applicants, journalists employed at “Teleradio-Moldova” (TRM), a state-owned company and at the same time the only television and radio station in Moldova, claimed before the ECtHR that during the time they had worked as journalists at TRM, they had been subject to a regime of censorship by those of the state of Moldova. Although the circumstances of the case are different from the circumstances of the present case, the Court brings to attention the breakdown that the ECtHR makes of Article 10 of the ECHR in the context of the positive obligations of the state and some principles related to public broadcasters.
134. In examining the claims of the applicants, as far as it is relevant to the circumstances of the present case, the ECtHR first emphasized the fundamental importance of freedom of expression guaranteed by Article 10 of the ECHR, one of the essential foundations of a democratic society and one of the basic conditions for its progress (paragraph 96). Referring to previous practice, in cases [Özgür Gündem v. Turkey](#), [Fuentes Bobo v. Spain](#)

and [Appleby and Others v. The United Kingdom](#), the judgment in question stresses that the genuine, effective exercise of freedom of expression does not depend merely on the State's duty not to interfere, but may require it to take positive measures of protection, through its law or practice (see, for more the ECtHR case [Manole and Others v. Moldova](#), cited above, paragraph 99).

135. As far as the field of audio-visual broadcasting is concerned, these positive obligations, according to the relevant ECtHR case, imply the obligation of the state to ensure, first, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting *inter alia* the diversity of political outlook within the country. Secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment. The Strasbourg Court further observed that the means of achieving these goals depend largely on local circumstances, therefore states enjoy a wide margin of appreciation (see, [Manole and Others v. Moldova](#), cited above, paragraph 100).
136. Having said that, while the ECtHR has observed that a public broadcasting service system contributes to program quality and balance, Article 10 of the ECHR does not oblige states to create public broadcasters, as long as other ways are used towards the realization of positive obligations such as above (see, [Manole and Others v. Moldova](#), cited above, paragraph 100). However, in cases when state creates a public broadcasting system, it follows from the principles outlined above that domestic law and practice must guarantee that the system provides a pluralistic service (see, [Manole and Others v. Moldova](#), cited above, paragraphs 101 and 107). Especially in cases and circumstances where private stations are still less developed and therefore the public broadcaster dominates, it is a fundamental prerequisite for the functioning of democracy that the latter broadcasts impartially, independently and provides a forum for public discussion in which a wide spectrum of views and opinions can be expressed (See, [Manole and Others v. Moldova](#), cited above, paragraph 101).
137. In this context, the Judgment in the case of Manole and others v. Moldova refers to the soft law instruments of the Committee of Ministers of the Council of Europe, presented above in this Judgment, emphasizing, among other things, that “*The Court notes that in “Resolution No.1 on The Future of Public Service Broadcasting” (1994), the participating States undertook “to guarantee the independence of public service broadcasters against political and economic interference”. Furthermore, in the Appendix to Recommendation no. R(96)10 on “The Guarantee of the Independence of Public Service Broadcasting” (1996), the Committee of Ministers adopted a number of detailed guidelines aimed at ensuring the independence of public service broadcasters. These included the recommendation that “the legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy”, (...)The Guidelines also emphasised that the rules governing the status and appointment of the members of the boards of management and the supervisory bodies of public service broadcasters should be defined in a way which avoids any risk of political or other interference.*” (par. 103). The Judgment emphasizes that the standards developed by the Committee of Ministers should serve as a guide for the approach to be followed to interpret Article 10 of the ECHR in this area (See, [Manole and Others v. Moldova](#), cited above, paragraph 107).
138. Finally, the ECtHR found a violation of Article 10 of the ECHR, *inter alia*, because the Moldovan authorities had failed to fulfill positive obligations in light of Article 10 of the ECHR, because the legal framework had not provided sufficient protection to political interference in the senior management of TRM and consequently, also in its editorial policies.

## II. Constitutional review of the challenged Act of the Assembly

139. Based on the principles detailed above, the Court will further elaborate (i) the interaction between the Assembly of the Republic of Kosovo and the public broadcaster, namely RTK, based on paragraph 9 of Article 65 of the Constitution and the relevant provisions of the Law on RTK; then it will assess (ii) whether the Assembly, by the challenged Act, has exceeded the competence of supervision in the dismissal of all members of the RTK Board; and finally will clarify the issues related to (iii) other Applicants' allegations; (iv) the request for interim measure; and (v) the effect of the Judgment.

*(i) interaction between the Assembly of the Republic of Kosovo and Public Broadcaster – RTK*

140. Emphasizing the constitutional principles and those established through international standards in the field of media freedom and pluralism, also in the context of public broadcasters, and which emphasize, among other things, the importance of independence and the exercise of oversight, including parliamentary one, based on criteria accurately defined through relevant laws, but at the same time also the importance and obligation of public broadcasters for transparency and accountability, in the following Court will elaborate on the interaction between the Assembly of Kosovo and the public broadcaster, namely RTK, as established in paragraph 9 of Article 65 of the Constitution and the Law on RTK approved by the Assembly itself, and within which, based on the aforementioned paragraph, the Assembly exercises its supervisory function over RTK.

141. In this context, the Court first emphasizes the fact that based on paragraph 1 of Article 65 of the Constitution, the Assembly has approved the Law on RTK. Based on the same Law, and taking into account the importance of media freedom and the independence of the public broadcaster in the Republic of Kosovo, namely RTK, the Assembly of the Republic of Kosovo has determined (i) the principles of this independence; and (ii) the manner of RTK supervision, including related restrictions.

142. Initially and in relation to the institutional independence of RTK, the Assembly, through the aforementioned Law, has defined two provisions of particular importance, namely (i) in its Article 3 (The Radio Television of Kosovo), has defined that "*RTK is a legal non-profitable entity with the status of independent public institution of particular importance*"; and (ii) in its Article 4 [The founder of the Radio Television of Kosovo], among other things, it has determined that the Assembly of the Republic of Kosovo is the founder of RTK and has the responsibility to "*ensure the institutional autonomy and adequate financing for the execution of RTK's public service mission as provided for by the present law*".

143. On the other hand, with regard to the supervision of the operation of the RTK, the Assembly, by Articles 37 (Monitoring the Functioning of RTK) and 38 (Public Character of Activity) of the Law on the RTK, has defined the general principles of supervision and transparency of RTK. Initially, in its Article 37, it has determined, among other things, that the supervision of RTK activity is carried out by the bodies authorized for such a thing by the law and the Statute. For this purpose, it has been specified that a body of auditors is responsible for supervising the regularity and consistency of actions and audit of acts and planned actions of the RTK within the framework of the competencies that it exercises on the entities that perform public activities. Further, and in clarifying the role of the Assembly, the aforementioned article of the Law on RTK has specified that in addition to the persons authorized to claim responsibility on behalf of the

members of the managing and monitoring bodies set out by the law, the Assembly of Kosovo is also authorized to require such responsibility.

144. Furthermore, Article 38 (Public Character of Activity) of the Law on RTK, defines the public activity of RTK. In this context and with an emphasis on the Annual Report of the RTK, relevant in the circumstances of the present case because the rejection of its approval by the Assembly has resulted in the process of dismissal of all the members of the Board of the RTK, the Law itself approved by the Assembly emphasizes that (i) the Annual Report must be published in the way defined by the Statute and must contain a division of spending for providing services, content and channels from individual groups or program contents and from the report of RTK Board; (ii) Annual report should be published on the RTK website; (iii) Once a year, RTK shall organize a public debate regarding the content of the annual report and shall draft a report on the debate, which will be submitted to the RTK Board; and (iv) RTK shall submit the annual public, debate report and the opinion of the RTK Board on the public debate report for orientation purposes to the Assembly of Republic of Kosovo. The obligation to submit the Annual Report to the Assembly in the context of funding sources is also defined by Article 21 (Funding Sources) of the Law on RTK.
145. The role of the Assembly and the relevant interaction with the RTK Board is also defined in (i) Article 22 (Subscription) of the Law on RTK, among others, in the context of the subscription fee; (ii) Article 29 (Competencies of the RTK board) of the Law on RTK, in the context of the approval of the annual budget and the scheme for the salaries of management and other personnel, also with the competence to ensure that the expenses of RTK- do not exceed their financial resources and the obligation to send the financial reports to the Assembly, “*for training and activities*”; and (iii) Article 30 (RTK Board activity and the manner of work) of the Law on RTK, in the context of the obligation of the RTK Board to report to the founder, namely the Assembly, in a regular manner and extraordinary.
146. Based on the above, the Court notes that the Assembly, as the founder of the RTK based on the Law on the RTK, in the approval of the latter, has in fact guaranteed the institutional independence of the RTK, taking over the protection of its autonomy, and limiting its supervisory role, in principle, to the circumstances defined in articles 22, 29, 37 and 38 of the Law on RTK, namely (i) in seeking the responsibility of “supervision of regularities and consistency of actions and audit of acts for actions and acts for planed RTK actions within the framework of competencies exercised on entities that perform public activities in the context of Article 37 of the Law on the RTK”; (ii) in accepting the annual report, the report on the public debate and the RTK Board’s opinion on the public debate report “for orientation purposes”; (iii) approval of RTK budget; and (iv) approving the mechanism for collecting the subscription fee, including the level of the fee in the manner specified in this law.
147. The Court notes that based on the provisions of the Law on RTK, while the latter specifically defines the competence of the Assembly to approve the budget of RTK and the “*mechanism for collection of subscription fee*”, the competence of approval is not determined in relation to the annual report of the RTK, and which based on Article 38 of the Law, together with the report on the public debate and the opinion of the Board of the RTK in the report of the public debate, is sent to the Assembly of the Republic of Kosovo “for orientation purposes”.
148. Beyond the aforementioned provisions, the Law on RTK also defines the role of the Assembly for the selection and dismissal of RTK Board members. In this context, articles 26 (Selection of the Board Members) and 28 (Dismissal and Resignation of a Member of the Board) of the Law on RTK are relevant. The first determines the election

of Board members, while the second determines the dismissal and resignation of the Board member.

149. Regarding the election of the members of the Board, Article 26 of the Law on the RTK, determines, among other things, the manner of announcing vacancies, reviewing applications and interviewing candidates and their election by the Assembly with the majority of deputies' votes present and voting. It is more important to emphasize that Article 26 of the Law on RTK, defines mandates with different durations of the members of the Board, namely emphasizing that four (4) members of the RTK Board will be appointed with a mandate of two (2) years, four (4) members with a three (3) year mandate and three (3) members with a four (4) year mandate, and the determination of the duration of the mandate from each group will be done by a draw. The purpose of this norm and such a regulation by the Assembly itself, is precisely related to Articles 3 and 4 of the Law on RTK respectively, namely the independence and autonomy of the public broadcaster and the importance for the members of the RTK Board to reflect pluralism in the context of the majority of the Assembly which elected them. Such an approach is also in line with the EBU Report "*Legal Focus: Governance Principles for Public Service Media*", published in December 2021, detailed above.
150. For this purpose, it is important to emphasize two more provisions, namely Article 25 (Composition of the Board) and Article 27 (Impossibility to be Board member). These two provisions, among other things, determine the criteria that must be met by the members of the Board and the incompatibility of the respective function. The first, among other things, determines that the members of the RTK Board are distinguished personalities from different fields, they must be individuals with high human, professional and moral credibility and authority; are appointed and act in their personal capacity and do not represent any interest outside RTK, other than the public interest, and are not allowed to seek or accept any instructions regarding the activities of the Board from any interest outside RTK. While the second, namely the impossibility to be a member of the Board, among other things, determines the circumstances which are incompatible with the function of a member of the RTK Board.
151. Regarding the dismissal of Board members, Article 28 of the Law on RTK, establishes (i) the procedure; and (ii) the basis of dismissal. Regarding the former, namely the procedure, the aforementioned article specifies that (i) the proposal for dismissal comes from the Board of RTK, at the request of a simple majority of the number of members of the Board or of any other initiative from outside and that in such cases, the Assembly of Kosovo, by simple majority, will decide on the dismissal or not of the member of the Board. The Court notes that while the competence of the Assembly to decide on the proposal for dismissal or not is precisely established in the law, this is not the case with the competence to initiate the dismissal procedure, and which the law recognizes to the RTK Board and /or "*any other initiative from outside*". Whereas, with regard to the latter, namely the grounds for dismissal, the Law defines the grounds for the dismissal of the member of the RTK, namely (i) professional incapability – if fails, demonstrably and consistently to fulfil the duties of a Board member; (ii) mental or physical disability to perform the member's duties; (iii) if the member does not fulfill the requirements of Article 26 of this law, this article which in fact determines the method of election of RTK members; (iv) has failed to perform his/her duties for more than three (3) consecutive months without approval by the Board; (v) if the member has been convicted of a criminal offense punishable by more than six (6) months imprisonment; (v) if the member does not fulfill the requirements under sub-paragraphs 1.3, 1.4 and 1.5 of paragraph 1. of Article 27 of this law, the article related to the impossibility to be members of the relevant Board, namely incompatibility with the function; (vi) absence from work for more than one (1) month without reason; and (vii) active participation in political activities after being appointed as a member of the Board.

152. The Court recalls that in the circumstances of the present case, the Board of the public broadcaster was dismissed collectively for “*professional incapability*” respectively, according to the Law’s own definition, because “*if fails, demonstrably and consistently to fulfil the duties of a Board member*” and as explained above, the procedure of the proposal for dismissal was initiated in the Assembly, by two Committees of the Assembly, the Committee for Public Administration and the Committee for the Budget, respectively, after reviewing the Annual Report of RTK and the recommendation that the approval of the latter should be rejected. In this context, in the circumstances of the present case, the Court must assess whether the Assembly exceeded the constitutional and legal authorizations in the exercise of the oversight function, stipulated by paragraph 9 of Article 65 of the Constitution, by collectively dismissing the Board of the public broadcaster, namely RTK, through the refusal to approve the annual report and the subsequent finding that the Board of RTK is “*professionally incapable*” in its entirety.

*(ii) if the Assembly, by the challenged Act, has exceeded the competence of supervision in the dismissal of all members of the RTK Board*

153. In this context, the Court recalls paragraph 2 of Article 3 of the Law on RTK, according to which RTK, being the public broadcaster of the Republic of Kosovo, is an “*independent public institution of particular importance*”. Moreover, based on paragraph 2 of Article 4 of the Law on RTK, the Assembly has defined itself the obligation to protect the autonomy of this institution. As presented above, the case law of the ECtHR and a series of soft law instruments and acts of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, reports of the Venice Commission and reports of international professional organizations, highlight the role of the public broadcaster to serve the public interest and emphasize the protection of the independence of the public broadcaster, as a primary principle and at the same time as a constant challenge of the public broadcasters. As emphasized in the Judgment of the ECtHR in the case of *Manole and others v. Moldova*, while according to Article 10 of the ECHR, the states are not obliged to create public broadcasters, in cases where they create public broadcasters, such as RTK in the Republic of Kosovo, the state has a positive obligation to guarantee the provision of pluralistic services and sufficient protection against political and other interference (See, [Manole and Others v. Moldova](#), cited above, paragraph 100 and 101).

154. Moreover, the Court recalls that the question of the competence of the state power to appoint and dismiss the members of the supervisory body of the public broadcaster is closely related to the question of the latter’s independence. This is also emphasized by the recommendations of the Committee of Ministers of the Council of Europe. More precisely, Recommendation on “*Guarantee of the independence of public service broadcasting*” emphasizes that the members of these bodies: “[...] *may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions*” (See, part III, point 2 “*Status*” of [Recommendation no. R \(96\) 10](#), cited above, p. 3). Meanwhile, the Recommendation on “*Governance of public media*”, among other things, states that the appointments of the members of the supervisory body of the public broadcaster must be made for a specific mandate, which can be shortened in limited circumstances and specified in the law, and that should not include changes in views regarding editorial or decision-making positions (See, [Recommendation CM/Rec \(2012\) 1](#), cited above, paragraph 27).

155. The Court also recalls that based on the answers submitted to the Court by the Constitutional Courts or the relevant equivalents, in relation to the public broadcasters and/or the relevant supervisory and managerial boards/structures, there are different arrangements. With the exception of Liechtenstein, which reflects more specific regulations, as far as it is relevant to the circumstances of the present case, in principle, members of the boards/supervisory structures of public broadcasters can be dismissed according to the provisions of the applicable laws. The common denominator of legal grounds/possibilities for the dismissal of members of boards/supervisory structures of public broadcasters, in principle, but with exceptions, such as the case of Austria, reflect (i) precise legal grounds, such as, among others, non-participation in the respective supervisory boards/structures for certain periods of time, or/even punishments for criminal offences; and (ii) criteria of incompatibility with holding the relevant function, including membership in a political party. The criteria of a more general nature are included in the case of the Czech Republic, according to which relevant law, the relevant member of the Board of the Public Broadcaster may be dismissed, *inter alia*, (i) if he/she no longer meets the requirements for performing the duties of a member of the Board established in Article 5; and (ii) if he/she has seriously violated the dignity of office of another member of the Board or if he/she has committed conduct that calls into question his/her independence or impartiality in the performance of his/her duties as a member/ of the Board. The legal bases similar to the criterion of “*professional incapability*” exist in some of the applicable laws, including Croatia, the latter according to the respective answers, apply only to individual dismissals.
156. On the other hand, the possibility of dismissing the board/supervisory structure in its entirety is possible according to the relevant answers when it is accurately defined in the relevant applicable law. This is the case, among others, with South Africa, where the possibility of dismissing the entire relevant Board is precisely foreseen by law. Also, it should be emphasized in two other responses of member states of the Venice Commission Forum, and based on the applicable laws of which, the total dismissal of the boards/supervisory structures of Public Broadcasters is possible, such as the case of Slovakia and Czechia, respectively. Having said that, in both cases, both the possibility of dismissing the entire board/supervisory structure, and the legal basis and circumstances in which this may be the case, are expressly provided by the applicable law. More precisely, in the case of Slovakia, the dismissal of the Board as a body can be done in two cases, namely (i) when the Slovak Parliament approves two (2) resolutions within six (6) months, by which it is stated that the Board is not exercising its duties according to the law; and (ii) when the Board refuses three (3) times in a row to approve the draft budget for the public broadcaster presented by the General Director and has initiated before the relevant parliamentary committee the dismissal of the Director, but the Parliament has decided not to dismiss him. Whereas in the case of the Czech Republic, collective dismissal is possible if the Boards repeatedly fail to fulfill their obligations under the law or if the Chamber of Deputies does not approve the annual report on the activities of Czech Television or Czech Radio or the annual report on management of Czech Television or Czech Radio twice in a consecutive year in the manner established in the relevant law.
157. The Court states that it is not disputed that one of the competences of the Assembly, stipulated by the Law on RTK, is also the dismissal of RTK Board members in the circumstances defined by Article 28 of the Law on RTK. The competence to dismiss the members of the boards/supervisory structures of public broadcasters is also possible according to the international principles referred to in this Judgment, and also according to the answers submitted to the Court through the Forum of the Venice Commission, of course as far as the Constitution is respected and/or the law, and therefore, the independence of the relevant public broadcaster. Having said that, in the circumstances of the present case, the disputable issue is whether the Assembly, in the



exercise of its supervisory competence, had the legal authorization to recommend and simultaneously dismiss all the members of the RTK Board, through the refusal to approve the Annual Report for 2020 and on the basis of “*professional incapability*”.

158. In this regard, the Court notes that the relevant Committees of the Assembly that have recommended the collective dismissal of the members of the Board of the public broadcaster, have argued, among other things, the use of the plural in the wording of Article 28 of the Law, while the Applicants have argued the opposite, namely the use of the singular in the wording of Article 28 of the Law on RTK, to argue and counter-argue whether the Assembly had the competence to collectively dismiss the Board of RTK. The Court notes that Article 28 of the Law on the RTK, (i) uses the singular in determining the initiation of the procedure for the dismissal of a member of the RTK, in its paragraph 1 and 2; while (ii) both the singular and the plural, in determining the bases for the relevant dismissal. Having said that, the Court emphasizes that whether the Law on RTK enables the individual or collective dismissal of the members of the Board of RTK, it must be assessed in the joint reading of all the provisions of the Law on RTK and the applicable standards stemming from international instruments and not in the interpretation which is reduced and/or in an extremely formalistic way focuses on the linguistic use of singular or plural in a single article of the Law on RTK. In this context, the Court emphasizes the fact that in accordance with international standards, the issue of determining the exact grounds for dismissal of the supervisory body of the public broadcaster is closely related to the preservation of independence of public broadcasters, as their fundamental principle and value. As determined by the Recommendation of the Committee of Ministers on “*Governance of public media*”, the grounds for dismissal of the supervisory body of the public broadcaster must be precisely and clearly defined in the law (See, [Recommendation no. R \(96\) 10](#), cited above, paragraph 27).
159. In this context, the Court recalls the fact that (i) based on paragraph 2 of Article 3 and 4 of the Law on the RTK, the RTK is an “*independent public institution of particular importance*” and (ii) the independence of this institution necessarily means the independence of its Board members, in the exercise of the competencies defined, among others, in Articles 29 and 30 of the Law on RTK, respectively. Precisely for this reason, the Law establishes precise criteria for the selection of RTK members, foreseen in Article 26 of the Law and the incompatibility of the function, as defined in Article 27 of the Law.
160. The Court further emphasizes paragraph 5 of Article 25 (Composition of the Board) of the Law on RTK and which specifically states that “*The members of the Board shall be appointed and shall act in their personal capacity and shall not represent any other interest external to RTK other than the public interest (...)*”. The exercise of the function, including the corresponding rights and obligations, of the members of such boards in a personal/individual capacity is also emphasized in Recommendation no. R (96) 10 of the Committee of Ministers of the Member States on Guaranteeing the Independence of Public Broadcasters.
161. While the Law specifically emphasizes the “*individual capacity*” of each member of the RTK Board, the Court also notes that by through paragraph 3 of Article 26 of the Law in question, such a way of choosing Board members has been determined, with mandates of different durations, so as to ensure the continuity of the Board as the supervisory body of RTK, but also to reduce the possibility that all members’ mandates expire at the same time, and since the membership is elected by a parliamentary simple majority, to reduce the possibility of politicization of the Board, through their election by the same parliamentary majority. Thus, by this provision, the lawmaker has defined a mechanism to ensure (i) the continuity of the RTK Board, as a supervisory body of

essential importance for the regular operation and smooth running of RTK work, as a public broadcaster; and to ensure (ii) the independence of RTK, as a primary principle for the regulation and operation of a public broadcaster. Such a method of election, with mandates that may in principle have the same duration, but that do not start and end at the same time, is also mentioned in the reports of the European Audiovisual Observatory and those of the European Broadcasting Union (See, [IRIS Plus Report](#), cited above, p. 5 and Report “Legal Focus: Governance Principles for Public service Media”, of [European Broadcasting Union](#), cited above, p. 13).

162. As a result, the Law on RTK stipulates that the members of the RTK Board are appointed to serve in an individual capacity and therefore, their dismissal on any of the grounds according to paragraph 1 of Article 28 of the Law on RTK, can be done after it has been proven that the individual responsibility of the designated member exists, based on one of the established legal bases that enables dismissal. Furthermore, and as clarified in the responses received by the Venice Commission Forum, in the circumstances in which the applicable laws of the respective countries have enabled the collective dismissal of the relevant supervisory boards/structures, they have precisely defined the procedure and the legal basis on which collective dismissal is possible as opposed to individual dismissal. This is not the case with Article 28 of the Law on RTK.
163. Furthermore, the Court emphasizes the fact that the collective dismissal of RTK Board members was justified on the basis of “*professional incapability*” of all RTK Board members, and “*professional incapability*” was argued by the relevant committees of the Assembly through the review of the RTK Annual Report for 2020.
164. In this context, the Court first recalls that the issue of the Annual Report of the RTK is foreseen in Article 38 (Public Character of Activity) of the Law on the RTK. This article precisely defines that (i) the Annual Report must be published in the manner defined by the Statute and must contain a division of spending for providing services, content and channels from individual groups or program contents and from the report of RTK Board; (ii) The annual report must be published on the RTK website; (iii) Once a year, RTK shall organize a public debate regarding the content of the annual report and shall draft a report on the debate, which will be submitted to the RTK Board ; and (iv) RTK shall submit the annual public, debate report and the opinion of the RTK Board on the public debate report for orientation purposes to the Assembly of Republic of Kosovo.
165. The Court, first of all, notes that based on the Rules of Procedure of the Assembly in force at the time when all members of the RTK Board were dismissed, namely Article 72 (Special procedures regarding the reports of independent bodies), the review of the annual report of the relevant independent body, “*is concluded by a voting on the approval*”. Having said this, the Court emphasizes that in any provision of the Law on the RTK, the competence of the Assembly to reject and/or approve the Annual Report of the RTK is not determined. This is different from the cases when the legislator, namely the Assembly, through the approval of the Law on RTK, has specified its competence of approval, namely in the circumstances of (i) the mechanism for collecting the subscription fee immediately after approval by the Assembly; and (ii) RTK budget.
166. Secondly, the Court notes that the EBU Report “*Legal Focus: Governance Principles for Public Service Media*” notes that there are systems in which the management of the public broadcaster is dismissed in case of rejection of the annual report by the Assembly, after the latter has been presented to a parliamentary committee. The EBU through this report points out that these systems pave the way for inappropriate political interference, underestimate the role of the supervisory body and can lead to self-censorship of editorial content and cause instability at the managerial level. In this

context, the EBU, among other things, emphasizes that, “Some countries provide that the management is dismissed if the annual report is rejected by parliament, after its presentation by the PSM management to a parliamentary committee. Such a system opens the door to undue political interference, it undermines the role of the supervisory body, it may lead to self-censorship with regard to editorial content and cause instability at management level”. Moreover, the latter states that “Annual reports are often the basis for a wider political debate on the role, remit and funding of PSM, for example in parliament. However, there should be no need for approval of the annual report by parliament; similarly, any rejection of the report should not automatically lead to the dismissal of the management”. (See, Report of [European Broadcasting Union](#) “Legal Focus: Governance Principles for Public Service Media”, published in December 2021, p. 25).

167. Thirdly, the Court notes that, based on the responses received from the Forum of the Venice Commission, it results that in those cases where the rejection of the Annual Report can constitute a basis for the dismissal of members of the boards/supervisory structures of public broadcasters, the relevant laws define such possibility specifically. This is the case of the Czech Republic, where the relevant law stipulates that if the Chamber of Deputies does not approve the annual report on the activities of Czech Television or Czech Radio or the annual report on the management of Czech Television or Czech Radio twice in a consecutive year in the manner specified in the relevant law, this may result in the complete dismissal of the respective boards.
168. The Court reiterates that in the circumstances of the present case, the entire Board of RTK was dismissed collectively, as a result of the refusal to approve the Annual Report of RTK, and the rejection of this report has resulted in the finding by the relevant Committees of the Assembly, that the RTK Board as a whole is “*professionally incapable*”, as the basis defined in Article 28 of the Law on RTK for the dismissal of a member of the RTK Board, “*if fails, demonstrably and consistently to fulfil the duties of a Board member*”.
169. Having said this, the Court emphasizes the fact that all the principles stemming from the relevant instruments and reports elaborated in this Judgment, based on which, taking into account the importance of the independence of public broadcasters, the dismissal of members of boards/their supervisory structures, must be based on a clear legal basis. The Court notes that in the context of the Law on RTK, there is no specified legal basis (i) for the collective dismissal of the RTK Board; and (ii) nor for the dismissal of one or more members of the RTK Board as a result of the rejection of the Annual Report, the competence for approval and/or rejection of which by the Assembly is also not established in the Law on RTK.
170. The Court also emphasizes the fact that (i) based on the Law on RTK, the Board members are appointed and act in their personal capacity; and consequently (ii) the argument that a Board member “*fails, demonstrably and consistently to fulfil the duties of a Board member*”, and therefore qualifies as “*professionally incapable*”, must be argued in the personal/individual capacity of each member of the Board. Moreover, the dismissal of the entire Board as a result of the review of the Annual Report, is not only is not established in the law, but, among other things, is also contrary to the standards established/recommended by the EBU in its aforementioned report.
171. The Court once again emphasizes the fact that the competence of the Assembly to exercise supervision over the Government and other public institutions, which, based on the Constitution and laws report to the Assembly, is an essential competence of the Assembly of the Republic. The Court also emphasizes that this competence is exercised based on the limitations defined in the Constitution and/or the laws approved by the

Assembly itself. The latter, through the adoption of laws, including in the field of public broadcasters, as in the case of the Law on RTK, has determined the limits of the exercise of its supervisory competence, including the circumstances in which the members of the RTK Board, as the highest body of an institution, which the Assembly itself defines as an “*independent public institution of particular importance*”, which undertakes to protect its “*institutional autonomy*”. In exercising the function of supervision, the Assembly cannot exceed the limits which it has determined through the adoption of the relevant law.

172. Likewise, through the exercise of the oversight function, the Assembly cannot dismiss the Board of the public broadcaster in entirety, contrary to the purpose of Article 25 of the Law on RTK, according to which the mandates of the members of the RTK Board, must be mandates of different duration initially, so that not all members are elected at the same time and by the same parliamentary majority in the Assembly, precisely to ensure the continuity and independence of the operation of the RTK Board. Moreover, the Assembly cannot simultaneously dismiss all the members of the RTK Board, without a specified legal basis. The existence of the latter, according to all international reports and instruments detailed in this Judgment, is essential to guarantee the independence of the boards/supervisory structures of public broadcasters. As has already been explained, the RTK Board has been dismissed in its entirety on the grounds of “*professional incapability*”, as a result of the rejection of the annual report, which based on the Law approved by the Assembly, (i) is submitted to the latter “*for orientation purposes*”; (ii) it does not determine the competence of the Assembly for its rejection and/or approval; and (iii) does not constitute a basis for the dismissal of one or more members of the RTK Board.
173. Accordingly, the Court must find that in the collective dismissal of the Board of the public broadcaster, namely RTK, as a result of the refusal to approve the Annual Report, the Assembly has exceeded the competencies established in the law that it has approved itself, namely the Law on RTK and, as a result, has exceeded the limits of the exercise of the supervision function defined in paragraph 9 of Article 65 of the Constitution. The Court recalls that in cases where the Assembly has exercised this function within the authorizations defined in the relevant law, such as the case with Law no. 04/L-063 on Kosovo Railways, the members of which Board had also been dismissed by the Assembly, the Court did not find a violation of the aforementioned article of the Constitution, emphasizing the full competence of the Assembly to exercise the supervisory competence within the framework of constitutional and/or legal authorizations (See, [KO139/21](#) Applicants *Fadil Nura and 9 other deputies*, Judgment of 5 April 2023, in which the Act no. 08-V-036 of the Assembly of 21 July 2021 was also challenged).
174. The Court also wishes to recall some principles mentioned by the ECtHR, in case [Manole and Others v. Moldova](#), which are related to guaranteeing the independence of public service broadcasters, namely public broadcasters, from possible political interference. In paragraph 102 of the Judgment, it is emphasized: “*The Court notes that: “Resolution No. 1 on The Future of Public Service Broadcasting” (1994), the participating States undertook “to guarantee the independence of public service broadcasters against political and economic interference”*. Moreover, the Court recalls that even the ECtHR, in addressing the case before it, referred to Recommendation no. R(96)10, which specifically speaks about the guarantee of the independence of public service broadcasting” (1996), where the Committee of Ministers adopted a number of detailed guidelines aimed at ensuring the independence of public service broadcasters. These included the recommendation that “*the legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy*”, (...) The Guidelines also emphasized that,

*“the rules governing the status and appointment of the members of the boards of management and the supervisory bodies of public service broadcasters should be defined in a way which avoids any risk of political or other interference.”*

175. In the following, the Recommendation states that: *“In order to guarantee the independence of the boards of management of public service broadcasting organisations, it is essential that the boards are not subject to any form of political or other interference in the exercise of their functions (...). It is equally essential that these representatives exercise their functions in complete independence vis-à-vis the political powers. Stricter provisions might, as appropriate, be laid down - for example, that the status of a member of a board of management of a public service broadcasting organisation is incompatible with the exercise of a political mandate at the national and/or European regional or local level”* (See, [Recommendation no. R \(96\) 10](#), cited above, paragraph 24).
176. The Court further recalls Opinion no. 309/2004] [CDL-AD\(2005\)017](#), of the Venice Commission on the compatibility of *“Gasparri”* and *“Frattini”* laws of Italy with the standards of the Council of Europe, in the field of freedom of expression and media pluralism, approved at its 63rd plenary session on 10-11 June 2005. In this opinion it is emphasized, among other things that, *“Public service broadcasting is therefore expected to serve the public interest, to cater for the whole of the population on a universal and non-profit basis...Public service broadcasting must be free from the constraining forces of the state and, on the other hand, enjoy autonomy and independence from the market place. Its specific remit is essentially to operate independently of those holding economic and political power”* (See, Opinion no. 309/2004- [CDL-AD\(2005\)017](#), cited above, paragraphs 53 and 54).
177. The Court, by this Judgment, emphasizes the importance of the independence of the public broadcaster, but also the positive obligations of the state, namely the Republic of Kosovo, to protect and guarantee the freedom and pluralism of the media and all the guarantees stemming from the constitutional rights defined in the context of freedom of expression and the media, including as interpreted by the case law of the European Court of Human Rights and stipulated by applicable international instruments in the constitutional order of the Republic of Kosovo.
178. However, the Court also emphasizes that the principle of independence and autonomy of public broadcasters and, consequently, the obligation of the supervisory authority to respect the latter, is in balance with the principle of transparency and accountability of the public broadcaster and, therefore, the corresponding obligation to the supervisory authority, namely Assembly and the public. The members of the board of the public broadcaster, namely the members of the RTK Board, are subject to the obligations of the Law on RTK and all applicable laws of the Republic of Kosovo, including the principles of full accountability and transparency towards the supervisory authority, in the manner determined by law and applicable international instruments.
179. The Court also emphasizes that the above-mentioned finding of the Court that the challenged Act of the Assembly was rendered by exceeding the authorizations of the Assembly stipulated by paragraph 9 of Article 65 of the Constitution, does not in any way mean that the institutions subject to the supervision of the Assembly, including the public broadcaster, are not subject to the principles of balance and control and full responsibility to exercise their functions in accordance with the obligations arising from the applicable law. The principles of accountability and transparency are in balance with the principle of independence and autonomy of public broadcasters also based on all the principles stemming from the international instruments elaborated in this Judgment. Among other things, according to [Recommendation CM/Rec \(2012\) 1](#), *“the*

*independence granted to the public service media to protect them from undue influence from the State or any other party is balanced by the public service media organisations' obligation to be fully accountable to the State and to its many stakeholders ”.*

180. In this context and in relation to RTK, the Court emphasizes that as far as the Assembly is limited in exercising its supervisory functions based on the authorizations of the applicable law, the members of the Board of the public broadcaster are equally obliged to exercise their functions in full compliance with the applicable law. The Court emphasizes the fact that the public broadcaster, especially considering its independence, and the important function in the field of public information, is precisely subject to the obligations of the law and those arising from international principles, including the obligation for transparency and full accountability. Non-fulfillment of the obligations of RTK Board members, as foreseen in the Law on RTK, may necessarily result in individual dismissal, always according to the procedure and specified legal bases established in the Law on RTK as and principles stemming from applicable international instruments

### **III. Regarding other allegations**

181. The Court recalls that in addition to the allegations of unconstitutionality of the challenged Act and its incompatibility with Article 4, paragraph 1 of Article 7 and paragraph 9 of Article 65 of the Constitution, the Applicants have raised other allegations from Chapter II of the Constitution, however, as the Court has already found that the challenged Act of the Assembly is not in compliance with the requirements of paragraph 9 of Article 65 and paragraph 1 of Article 7 of the Constitution and the Law on RTK, and accordingly, the declaration of the challenged Act invalid from the entry into force of this Judgment, does not consider it necessary to address and examine separately the other allegations raised in the referral .

### **IV. regarding the request for interim measure**

182. The Court emphasizes that the Applicants request the Court to impose an interim measure for the suspension of the implementation of the challenged Act, until the final resolution of the Referral. However, the Court assesses that the issues raised in the referral have already received an epilogue by the decision on the merits of the referral. Having said this, the Court does not consider it necessary to deal separately with the Applicants' allegations for the imposition of the interim measure.
183. Therefore, the request for imposing an interim measure is rejected in compliance with Articles 44 and 45 of the Rules of Procedure.

### **V. Regarding the effect of this Judgment**

184. The Court recalls that in its case law, the issues of the effect of the Judgment have been raised in several different cases, including in cases of election issues (see in this respect, the Court's case [KI207/19](#), the Applicant *NISMA Social Democratic , the New Kosovo Alliance and the Justice Party*, Judgment of 5 January 2021, paragraph 240; see also Court's Judgment in case [KI193/18](#), Applicant *Agron Vula*, Judgment of 22 April 2020, paragraphs 149-151 where, among other references, the ECtHR case is also cited, *Kingsley v. the United Kingdom*, Judgment of 28 May 2002, paragraph 40; [KI10/18](#), Applicant *Fahri Deqani*, Judgment of 8 October 2019, paragraphs 116-120; [KI108/18](#), Applicant *Blerta Morina*, Resolution on Inadmissibility of 1 October 2019, paragraph 196).

185. Regarding the effect of this Judgment, the Court clarifies that it produces at least two important effects. First, by this Judgment, the Court emphasizes the importance of freedom of expression and freedom and pluralism of the media and their essential role in a democratic society, clarifying that the latter, including according to the case law of the ECtHR, extend their protection also in the context of independence and autonomy of public broadcasters, the guarantees which the state has a positive obligation to protect and respect. The Judgment also emphasizes the fact that the supervisory competence of the Assembly, established in paragraph 9 of Article 65 of the Constitution, is among the most essential competencies of the Assembly, having said that, the latter is subject to the limitations defined by the Constitution and the laws itself, which are adopted by the Assembly .
186. Secondly, the Judgment clarifies that the declaration of the Decision [no. 08-V-036] of 8 July 2021 of the Assembly invalid, for objective reasons and in the interest of legal certainty, cannot produce a retroactive legal effect regarding the mandates of the new members of the RTK Board. In this respect, the Court clarifies that based on the principle of legal certainty, this Judgment does not have a retroactive effect and does not affect the rights of third parties acquired, before the declaration of the challenged act of the Assembly in violation of the Constitution by this Judgment. The Court also reiterates this time the fact that although it does not have legal authorizations to determine any compensation for damage in cases where it finds a violation of the respective constitutional provisions, such an aspect does not mean that the affected parties do not have the right to request compensation from the public authorities in case of finding a violation of their rights and freedoms based on the Constitution and applicable laws in the Republic of Kosovo (see, similarly, the joint cases of the Court, [KI45/20](#) and [KI46/20](#), Applicants *Tinka Kurti and Drita Millaku*, Judgment of 26 March 2021, paragraphs 148-153).

## **FOR THESE REASONS**

The Court, in accordance with Articles 113.5 and 116 of the Constitution, Articles 20, 27, 42 and 43 of the Law and based on Rules 44, 45, 48 (1) (a) and 72 of the Rules of Procedure, on 1 August 2023:

### **DECIDES**

- I. TO DECLARE, unanimously, the Referral admissible;
- II. TO HOLD, with five (5) votes “for” and two (2) “against” that Decision [no. 08-V-036] of the Assembly of 8 July 2021 is not in compliance with paragraph 1 of Article 7 [Values] and paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution;
- III. TO REJECT, unanimously, the Applicants’ request for the imposition of an interim measure;
- IV. TO HOLD that this Judgment does not have retroactive effect and does not affect the acquired rights of third parties;
- V. TO NOTIFY this Judgment to the parties;
- VI. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20.4 of the Law;
- VII. TO HOLD that this Judgment enters into force on the date of its publication in the Official Gazette of the Republic of Kosovo, in accordance with Article 20 (5) of the Law.

**Judge Rapporteur**

**President of the Constitutional Court**

Nexhmi Rexhepi

Gresa Caka-Nimani



