



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, 02 August 2023

DISSENTING OPINION

of Judge

RADOMIR LABAN

in

case no. KO134/21

Applicant

Ramush Haradinaj and 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

Expressing from the beginning my respect and agreement with the opinion of the majority of judges that in this case, who by a majority of votes held that the Decision of the Assembly no. 08-V-036 is not in accordance with the requirements of paragraph 9, of Article 65 [Competences of the Assembly] of the Constitution.

However, I, as a single judge, have a dissenting opinion regarding the conclusion of majority and I do not agree with the opinion of majority. I consider that the Court was obliged to respond to all Applicant's allegations and to state them in the enacting clause of the judgment because only the enacting clause of the judgment obliges all individuals and legal entities to respect them.

As a judge, I agree with the factual situation as stated and presented in the judgment and I accept the same factual situation as correct. I, as a judge also agree with the way in which the Applicant's allegations were stated and presented in the judgment and I accept the same as correct.

However, I do not agree with the legal analysis regarding the admissibility of the case in one part and the position of the majority regarding the Applicant's allegations of violation of Articles 4 [Form of Government and Separation of Power], Article 7 [Values], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial

Protection of Rights], as well as Article 65 [Competencies of the Assembly] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Due to the above, and in accordance with Rule 56 of the Rules of Procedure of the Constitutional Court, to follow the reasoning of my dissenting opinion as easily and clearly as possible, I will **(I)** carry out a constitutional review regarding the non-compatibility of the challenged act with Articles 4, 7.1 and 65.9 of the Constitution **(II)** carry out a constitutional review, regarding the allegations of violation of individual rights from Chapter II of the Constitution, namely Articles 24, 31, 32, 45 and 54 of the Constitution; **(III)** Express an opinion regarding the request for the imposition of an interim measure;; **(IV)** present a conclusion regarding the alleged violations of the Applicant's rights guaranteed by Article 4 [Form of Government and Separation of Power], Article 7 [Values], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights], as well as Article 65 [Competencies of the Assembly] of the Constitution.

(I) Constitutional review regarding the non-compatibility of the challenged act with Articles 4, 7.1 and 65.9 of the Constitution

1. First of all, I refer to the Applicants' allegation regarding the non-compatibility of the challenged act with Articles 4 [Form of Government and Separation of Power] in conjunction with Articles 7 [Values] and 65.9 [Competencies of the Assembly] of the Constitution:

i. Regarding the allegation of violation of Article 4 in conjunction with Article 7.1 of the Constitution

2. I recall the content of Article 4, paragraphs 1, 2, 3 and 5 [Form of Government and Separation of Power] of the Constitution in conjunction with Article 7.1 [Values] of the Constitution, which establish:

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.

[...].

3. Regarding these allegations, I recall the relevant parts of the general principles regarding the principle of separation of powers established by the case law of the Court, as in case KO219/19, in which it was emphasized that the principle of legal certainty and predictability are essential characteristics of the law and an integral part of the constitutional principle of the rule of law. Legal certainty is one of the main pillars of the rule of law and requires, among other things, that rules be clear and precise and strive to ensure that legal situations and relationships remain predictable. Predictability, first of all, requires that the legal norm be formulated with sufficient accuracy and clarity, in order to enable individuals and legal entities to regulate their behavior in accordance with it. Individuals and other legal entities must know exactly how and to what extent they are affected by a certain legal norm and how a new legal norm changes their previous status or situation provided by another legal norm. Public authorities, when drafting laws, must also take into account these basic principles of the rule of law, as an important part of the constitutional system of the Republic of Kosovo.
4. Regarding this allegation, I recall that the Applicants relate the violation of Article 4 of the Constitution with the method of dismissal of members of the RTK Board, arguing that such dismissal “...cannot be the prerogative of supervision, which represents an executive action, which is contrary to constitutional physiognomy of the Assembly, as a legislative body”. Therefore, according to their statements, this is in direct contradiction with the principle of separation and balancing of powers from Article 4, which at the same time represents a constitutional value within the meaning of Article 7.1 of the Constitution.
5. In this context, I first recall that the initiative to dismiss members of the RTK Board came to the Assembly from the functional parliamentary committees and from that moment the Assembly, based on Article 65.9 of the Constitution, Article 28 of the Law on RTK and Article 67 of the Rules of Procedure of the Assembly, and for which initiative a parliamentary debate was held afterwards, after which a special vote was taken to dismiss the members of the RTK Board, pending the adoption of the challenged act by the Assembly. Therefore, this allegation will be examined within the framework of paragraph 9 of Article 65 of the Constitution because the Applicants raise issues of content and the procedure followed.
6. The Applicants state that the principle of legal certainty, namely the principle of predictability, was also violated during the dismissal of members of the RTK Board, because neither the Law on RTK nor any other law foresees and does not allow the dismissal of all members of the RTK Board at once. In this regard, the Applicants emphasize that such a procedure, which is not established by law, violates all procedural principles established by the Law on General Administrative Procedure, in relation to the members of the RTK Board.
7. In this context, I recall that the allegation of the Applicants regarding the shortcomings of the Law on RTK and other laws raises the issue of their inconsistency with the Constitution. However, regarding the Law on RTK, I remind you that the Parliament adopted this law on 29 March 2013, and that the authorized parties have never challenged its constitutionality before the Court. Accordingly, such an allegation must be declared inadmissible because it does not meet the criteria prescribed by the Constitution, the Law and the Rules of Procedure of the Court. However, I emphasize that the Constitution, apart from the possibility to challenge the constitutionality of a law or a norm before the Court, reminds that the Constitution has established other modalities for the possibility of challenging the constitutionality of a certain norm of the law, and that through concrete (incidental) control, according to paragraph 8, of Article 113 of the Constitution. It seems that the members of the RTK Board missed

this constitutional opportunity, because they did not turn to the regular courts to take advantage of such an opportunity.

8. In addition, no other argument about the violation of Article 4 of the Constitution supports the allegation of the Applicants that the challenged act of the Assembly was rendered in violation of this fundamental right from the Constitution.

ii. Regarding allegation of violation of Article 65.9 of the Constitution

9. In this regard, I recall that the Applicants claim that the challenged act is in violation of Article 65.9 of the Constitution on the grounds of arbitrary exercise of the competences of the Assembly to oversee the work of public institutions, which violates the rights of dismissed members of the RTK Board, which derive from Chapter II of the Constitution, as well as international documents and instruments which, based on Article 22 of the Constitution, are directly applicable in the Republic of Kosovo.
10. In this regard, I note that the essence of the Applicants' allegations of violation of Article 65.9 of the Constitution is mainly related to the arbitrary exercise of the competences of the Assembly in the supervision of public institutions, in this case the RTK Board, which, according to them, occurred because of the violation of Article 28 of the Law on RTK.
11. In this context, I refer to the content of Article 113 [Jurisdiction and Authorized parties] of the Constitution, paragraph 5, which expressly states that "*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*".
12. Therefore, in the following I will analyze the procedure conducted by the Assembly until the adoption of the challenged act and the content of the challenged act, in order to reach an objective conclusion on whether there is a discrepancy between these two aspects with Article 65.9 of the Constitution.

a) Regarding the procedure followed

13. In connection with the procedure followed by the Assembly until the adoption of the challenges act, I refer to the case file submitted by the General Secretary of the Assembly and note that the proposal for the dismissal of the members of the RTK Board was submitted by the Committee for Public Administration, Local Governance, Media and Rural Development, which was adopted by the Assembly on 22 June 2021, and which, among other things, contains the reasons on which such a proposal is based (see paragraph 18 of this document).
13. This right of the relevant Committee derives from Article 28, paragraph 2.1 of the Law on RTK, which prescribes.

Article 28
[Dismissal and Resignation of a Member of the Board]

(...)

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

15. Furthermore, I note that the Assembly, on 7 July 2021, notified the deputies about holding the next plenary session, where one of the items on the agenda was the consideration of recommendation no. 08/358/Do-238 of the Committee for Public Administration, Local Governance, Media and Rural Development for the dismissal of RTK Board members.
16. I note that after an exhaustive parliamentary discussion held in the Assembly on 7 July 2021 in connection with item five (5) of the agenda (consideration of recommendation No. 08/358/Do-238 of the above-mentioned Committee), the result is that the vote on the dismissal of members of the RTK Board was carried out for each member individually, as follows:
 - dismissal of member Sali Bashota: 64 votes for, 0 votes against and 1 abstention;
 - dismissal of member Agron Gashi: 64 votes for, 0 votes against and 1 abstention;
 - dismissal of member Lirim Geci: 64 votes for, 0 votes against and 1 abstention;
 - dismissal of member Ilir Bytyqi: 64 votes for, 0 votes against and 1 abstention;
 - dismissal of member Albinot Maloku: 64 votes for, 0 votes against and 1 abstention;
 - dismissal of member Bajram Mjeku: 64 votes for, 0 votes against and 1 abstention;
 - dismissal of member Petrit Musolli: 64 votes for, 0 votes against and 1 abstention;
 - and
 - dismissal of member Fadil Miftari: 64 votes for, 0 votes against and 1 abstention.
17. After the end of the voting process, the Assembly, on 8 July 2021, adopted the challenged act no. 08-V-036, which officially confirms the dismissal of 8 (eight) members of the RTK Board. According to the minutes, deputy Bekim Haxhiu objected to the method of voting, who was advised by the President of the Assembly to use the available legal instruments due to possible violations of the voting procedure.
18. In this context, I recall that the Applicants connect their allegation with the fact that the dismissal of the members of the Board was carried out in a “block” and collective manner. However, according to the case file, such an allegation is ungrounded because the voting procedure was carried out for each member of the RTK Board individually, and after the voting was closed, the President of the Assembly noted the dismissal of each respective member. The fact that all members of the RTK Board received an identical number of votes for, against and abstentions does not mean that their dismissal was carried out as a group and in violation of established constitutional and legal procedures.
19. In addition, the Applicants allege that the violation of Article 65.9 of the Constitution also occurred as a consequence of the arbitrary exercise of competences by the Assembly because the dismissal of RTK Board members was carried out in violation of the Law on RTK.
20. In this regard, the Court refers to the content of paragraph 2.2 of Article 28 of the Law on RTK and notes that it establishes the following:

Article 28

[Dismissal and Resignation of a Member of the Board]

(...)

“2.2 the Assembly of Kosovo with a simple majority shall decide whether to dismiss a Board member”.

21. This provision of the Law mentions a member of the Board, in the singular, but it does not mean that the Assembly is limited to vote on the dismissal of only one member or several members of the Board. In addition, the Court recalls that the meaning and purpose of the provision must be read in context, because if we refer to the meaning of the word “Board” which implies a “body” made up of several individuals, this does not mean that liability for failure to fulfill the purpose for which the “Board” was established should be individual and fall on the burden of only one or two members of the latter.
22. In this context, it is clear that the recommendation of the functional parliamentary committee makes the Board responsible as a whole and does not refer to a specific number of members. However, it is at the full discretion of the simple majority of the Assembly to decide by votes: *for, against or with abstentions* on the dismissal or not of each member of the Board, thus confirming the entrustment of their mandate.
23. Therefore, on the basis of the above, it follows that the procedure followed until the adoption of the challenged act is based on the Constitution and the law and that as such it is in accordance with the requirements of Article 65.9 of the Constitution, as well as with the above-mentioned provisions from Article 28 of the Law on RTK.

b) Regarding the substantive aspect

24. As for the substantive aspect, I recall that the Applicants state that the challenged act is in contradiction with paragraph 9 of Article 65 of the Constitution, due to the arbitrary exercise of the competences of the Assembly to oversee the work of public institutions and that, therefore, the challenged act violated the rights of dismissed members of the RTK Board, which derive from Chapter II of the Constitution, as well as international documents and instruments which, based on Article 22 of the Constitution, are directly applicable in the Republic of Kosovo.
25. The Applicants further allege that the fact that the challenged act does not mention the reasons from Article 28 of the Law on RTK for the dismissal of members of the RTK Board implies that the Assembly exercised its constitutional competence established by Article 65.9 of the Constitution arbitrarily and beyond the conditions established by Article 28 of the Law on RTK. Moreover, the Applicants claim that the dismissal of members of the RTK Board cannot be a prerogative of supervision, which represents an executive action, which is contrary to the constitutional physiognomy of the Assembly, as a legislative body.
26. In connection with the Applicant’s allegation that the challenged act “*does not mention the reasons from Article 28 of the Law on RTK, for the dismissal of the members of the RTK Board*”, I assess that the reasons for the dismissal of the members of the RTK Board were given in a comprehensive and detailed manner by the competent parliamentary committee. I concluded that based on the findings and proposals of the committee in question, the Assembly opened a parliamentary discussion, in order to give each deputy the opportunity, before continuing with the voting, to express his views and objections, in connection with the proposal for the dismissal of members of the RTK Board, and whether such a proposal was objectively justified and based, in order to vote *for, against or abstain from it*.
27. I also recall that the representatives of the RTK Board and its members were regularly invited to be heard before the relevant parliamentary committee, so that they could express their objections to the committee’s findings regarding the failure to fulfill the duties and purpose for which the committee was established.

28. Considering the circumstances of the present case, I note that the challenged act of the Assembly, in fact, contains the legal basis on which it was adopted; the names of the eight (8) dismissed members of the RTK Board and the date of its entry into force. Moreover, paragraph 9 of Article 65 of the Constitution, which is claimed to have been violated by the majority in the assembly, does not determine how the form and content of the parliamentary act should look, or more clearly, whether the act (decision) of the Assembly must contain reasons for expression of the will of deputies by free voting. Moreover, I remind you that the content of the challenged act confirms and legitimizes the reasoning of the relevant parliamentary committee, as well as its proposal for the dismissal of RTK Board members.
29. Therefore, the Applicants' allegation that the challenged act does not contain a reasoning for the dismissal of the members of the RTK Board, in itself, does not represent a well-argued claim about the violation of the substantive aspects of Article 65.9 of the Constitution, because the reasons for the dismissal of the said board members were already known by the findings of the committee and were duly presented to the Assembly, in accordance with the provisions in force.
30. Regarding the Applicants' allegation that the dismissal of members of the RTK Board cannot be a prerogative of supervision, which represents an executive action, which is contrary to the constitutional physiognomy of the Assembly, as a legislative body, I refer to the content of paragraph (9) of Article 65 of the Constitution, which establishes that the Assembly:
- “9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law”.*
31. In terms of the sentence *“other public institutions that report to the Assembly in accordance with the Constitution and the law”*, I refer to Article 30 [RTK Board activity and the manner of work], paragraph 8 of the Law on RTK, which establishes:
- “8. The RTK Board under this law shall report on its work to the founder, in regular and extraordinary fashion”.*
32. Furthermore, to determine the “founder of RTK” within the meaning of paragraph 8 of Article 30 of the Law on RTK, I refer to Article 4 [The founder of Radio Television of Kosovo] of the Law on RTK, which establishes:
- “1. The founder of the Radio Television of Kosovo is the Assembly of the Republic of Kosovo”.*
33. Therefore, from the meaning of the provisions of Articles 30 (8) and 4 (1) of the Law on RTK, it is clear that the Board of RTK reports on its work to its founder, that is, to the Assembly. In this context, it is not disputed that the Board of RTK must report on its work to the Assembly, which in this case oversees its work in terms of paragraph (9) of Article 65 of the Constitution. The situation would be different if the Law on RTK established that the RTK Board reports about its work to the Government, but this is not the case.
34. Therefore, in the light of the circumstances of this case, it is not about exceeding the competences of the Assembly, nor its interference in the domain of the Government. This confirms that the allegation of the Applicants that the Assembly acted contrary to paragraph (9) of Article 65 of the Constitution and that the performance of the Assembly's activities is contrary to the role of the Assembly, according to Article 65 (9) of the Constitution, is ungrounded.

35. Therefore, I consider that the content of the challenged act is not inconsistent with Article 65 (9) of the Constitution.

(II) Constitutional review regarding allegations of violation of individual rights from Chapter II of the Constitution, namely Articles 24, 31, 32, 45 and 54 of the Constitution

36. When further assessing the admissibility of the Applicants' allegations that the challenged act violated the constitutional rights of the members of the RTK Board from Chapter II of the Constitution, I will assess the essence of the allegations made about each of the relevant articles of the Constitution.

Regarding violation of Article 24 [Equality Before the Law] of the Constitution

37. I note that the essence of the Applicants' allegations regarding the violation of the right to equality before the law is connected with 1) the procedures of the previous legislatures of the Assembly, arguing that the Assembly had never before dismissed board members before the expiration of their three-year mandate, which brings the dismissed members of the RTK Board into unequal position in relation to the former members of the previous boards, and 2) unequal treatment of the members of the RTK Board themselves, due to the fact that the Assembly did not distinguish between the three (3) members of the RTK Board who served almost a full term of office compared to the five (5) other members of the Board who have been in office for less than a year since their appointment.

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

38. I note that the essence of the allegations of the Applicants regarding the violation of the right to fair and impartial trial is related to the violation of the right to be heard of the members of the RTK Board by the Assembly and the inability to present their counterarguments regarding the facts and issues.

Regarding the violation of Article 32 [Right to Legal Remedies] in connection with Article 54 [Judicial protection of rights] of the Constitution

39. I note that the essence of the Applicants' allegations regarding the violation of these articles of the Constitution is related to the fact that the Law on RTK did not foresee effective legal remedies that can be used against acts of the Assembly related to the possible dismissal of members of the RTK Board. In addition, the Applicants state that this is not possible even through a regular administrative procedure.

Regarding the violation of Article 45 [Freedom of Election and Participation] of the Constitution

40. I note that the essence of the Applicants' allegations regarding the violation of this constitutional right is based on the argument that the members of the RTK Board are not accepted under general conditions of equality for the performance of their functions because their dismissal was undertaken outside the conditions established by the Law on RTK, namely Article 28, which takes the challenged decision as a basis, not providing equal conditions, compared to the way the Assembly acted towards the members of the RTK Board, from its establishment until now, namely during the time when the current Law on RTK was in force.

Admissibility analysis in relation to the respective articles

41. I recall, regarding the criteria for constitutional review of “laws” adopted by the Assembly and “decisions” adopted by the Assembly, in the sense of Article 113.5, I emphasize that challenging the constitutionality of a law adopted by the Assembly is significantly different from challenging the constitutionality of a decision. This difference consists precisely in the fact that what determines the content of the act, namely what are the legal consequences produced by the act of the Assembly, namely whether the content of the written norm of the act of the Assembly affects has *erga omnes* effect on particular subject (individual).
42. Therefore, what the Court had to assess in relation to the Applicants’ allegations regarding the violation of rights and freedoms from Chapter II of the Constitution, is the question of what legal consequences the challenged act of the Assembly produced for the Applicants in the light of the circumstances of the present case in order to further assess whether such allegations of the Applicants raise constitutional issues under Article 113.5 of the Constitution and whether the Applicants are legitimized as authorized parties to raise such allegations.
43. In this context, I also refer to the case law of the Constitutional Court of the Republic of Albania, namely Decision no. 29/09, of 21 October 2009, Applicant: *Group of 30 deputies of Albania*, by which, among other things, it was requested to annul the Decision of the Assembly [No. 190] of 16 June 2008, due to failure to give consent for the appointment of Mr. Z.P, for a member of the Supreme Court. In order to ascertain its jurisdiction, the court assessed whether the subject of constitutional review is an act of normative character and whether its intentions raise issues of conflict of jurisdiction between central or local authorities. Considering the circumstances of the case, the court in question found: *„The court has previously expressed that in trials of an abstract nature it is not competent to control acts of an individual nature. Given that the decision of the Assembly, which is subject to review, reflects the will of the Assembly not to give consent for the appointment of a member of the Supreme Court, the Court accepts that this act has an individual character. In these circumstances, the Court considers that it is not competent to control the decision of Assembly no. 190, of 16.06.2008. In conclusion, the Court concludes that the request initiated by a group of at least one-fifth of deputies (1/5) referred to the annulment of the decision of the Assembly no. 190 of 16.06.2008 should be quashed due to **the lack of legitimacy of the applicants** and the lack of jurisdiction of this court.*
44. I note that the Applicants’ allegations that the challenged act of the Assembly violate the constitutional rights of the members of the RTK Board, guaranteed by Articles 24, 31, 32, 45 and 54 of the Constitution, raise constitutional issues, but not from paragraph 5 of Article 113 of the Constitution, in the circumstances of the present case because the challenged act qualifies as a legal act that affects only individual rights of the RTK Board members in particular.
45. Therefore, I consider that the dismissed members of the RTK Board, in such circumstances, are potential victims of violations of their individual rights by the challenged act. Therefore, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties of the Constitution], which stipulate that:

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

[...]

7. *Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.*
[...]

46. In assessing the admissibility criteria prescribed in paragraph 1 of Article 113 of the Constitution, I assess that the Applicants do not legitimize themselves as an authorized party to raise issues of violation of the individual rights of members of the RTK Board, guaranteed by Articles 24, 31, 32, 45 and 54 of the Constitution, through abstract preventive control, which falls within the scope of Article 113.5 of the Constitution.
47. In the following, I recall that the Applicants claim that the members of the RTK Board have their individual rights violated because the Law on RTK does not **provide for effective legal remedies** against the challenged act of the Assembly. However, I assess that this should not be understood a priori that members of the RTK Board are exempt as a legal category from exhausting all effective legal remedies in regular proceedings against the challenged act of the Assembly, because it directly affects their constitutional rights.
48. In this regard, the Applicants have raised allegations of violation of the individual rights of RTK Board members, only on the basis of the argument that the Law on RTK “*does not provide for legal remedies*”, that legal protection of rights is sought against the challenged act before regular courts.
49. In this regard, based on the constitutional norms, in its case law, and referring to the principles defined by the ECtHR, I recall that our legislation does not expressly provide for the exclusion of this category of individuals exercising public functions from seeking judicial protection of their rights before regular courts. Moreover, their right to effective access to justice stems from the Constitution, even if such a thing is not expressly determined by the Law on RTK (See analogously the ECtHR case [Vilho Eskelinen and others v. Finland](#), no. 63235/00, Judgment of 19 April 2007, paragraph 62, and the Court case KI214/21, with Applicant *Avni Kastrati*, Judgment of 7 December 2022, paragraph 125).
50. I also recall that Law No. 03/L-202 on Administrative Conflicts provides effective legal remedies for solving cases of the Applicants. In this regard, the Court initially emphasizes that the very purpose of the LAC as a law, as defined in Article 2 [Aim] is to ensure the judicial protection of the rights and interests of natural and legal persons and other parties, whose rights and interests are violated by: (i) individual acts; or (ii) actions of public administration bodies. Further, Article 3, paragraph 1.1 of LAC stipulates that public administration bodies are central administration bodies, while paragraph 1.2 of the same defines as an administrative act any decision of the administrative body issued in an administrative procedure in the exercise of public authorizations and which directly or indirectly infringes the rights, freedoms or interests of legally recognized natural and legal persons. In addition to the provision defining the purpose of the law, more specifically Article 10 of LAC, *inter alia*, provides for the possibility of initiating an administrative conflict against acts for which a natural or legal person considers that a right or legal interest has been violated. (See KI214/21, cited above, paragraphs 115 and 116).
51. It would be considered a waiver of their constitutional right if members of the RTK Board left the right to seek judicial protection before the court to the mercy and will of the Applicants, where the case law of the Court and the ECtHR accurately specifies that „*anyone who considers that there has been unlawful interference in the exercise*

of his/her civil rights and claims that the possibility to challenge a specific claim before a court has been limited, may refer to Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR, being called upon to the relevant right of “access to justice” (see, KI214/21, cited above, paragraph 107). In this regard, no one prevented the RTK board members from requesting access to the competent civil court to resolve their dispute, which exclusively falls within the area of employment relationship, by referring to Article 31 of the Constitution and Article 6.1 of the ECHR.

52. Therefore, I consider that the allegation of the Applicants, that the members of the RTK Board are not provided with effective remedies to exercise their civil rights, is ungrounded and is not objectively justified because no legal or constitutional provision prohibits the members of the latter the right to seek legal protection of their rights in the regular proceedings, as it is established by Article 54 of the Constitution.
53. Therefore, based on the above, I consider that the Applicants are not an authorized party to challenge the constitutionality of the challenged act, in conjunction with the human rights guaranteed from Chapter II of the Constitution, in accordance with Article 113.5 of the Constitution, as well as that the members of the RTK Board cannot be exempted from the constitutional obligation to exhaust all effective legal remedies provided by the applicable laws in the regular proceedings, as required by paragraph 7 of Article 113 of the Constitution.
54. In such a way, I consider that the request of the Applicants regarding violations of the individual rights of members of the RTK Board, guaranteed by Articles: 24, 31, 32, 45 and 54 of the Constitution, does not meet the admissibility criteria for further consideration of the merits of the Referral.

(III) Request for imposition of interim measure

55. As for their request for the need to impose an interim measure, the Applicants based their allegation on Article 27 of the Law, arguing that it is necessary to eliminate risks or irreparable damage and that the imposition of an interim measure is in the public interest.
56. However, I recall that I consider the Applicant’s allegations regarding the admissibility of the referral, in the part related to the constitutional rights of members of the RTK Board from Chapter II of the Constitution, inadmissible, and that the request of the Applicants regarding the allegation of the non-compliance of the challenged act with Articles 4, 7 and 65.9 of the Constitution, in my opinion, did not result in a violation of the respective articles. In view of the above, I do not consider it necessary to specifically examine the Applicants’ allegations regarding the imposition of an interim measure.
57. Therefore, I agree that the request for the imposition of an interim measure should be rejected, in accordance with Article 27 of the Law.

(IV) Conclusion regarding alleged violations of the Applicants’ rights

58. Based on the above, and taking into account the considerations of the Applicants’ allegations in their referral:
 - I. I CONSIDER THAT the Court should have DECLARED the referral admissible for consideration of merits of the Applicants’ allegations regarding Article 4

[Form of Government and Separation of Power] in conjunction with Article 7 [Values] and Article 65.9 [Competencies of the Assembly of the Constitution];

- II. I CONSIDER THAT the Court should have HELD that the Decision of the Assembly no. 08-V-036 did not violate Articles 4 [Form of Government and Separation of Power], 7 [Values] and 65.9 [Competencies of the Assembly of the Constitution];
- III. I CONSIDER THAT the Court should have DECLARED the referral inadmissible for consideration of merits of the Applicants' allegations regarding the violation of the constitutional rights of the members of the Board of Radio -Television of Kosovo, guaranteed by articles: 24.1 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] in conjunction with Articles 54 [Judicial Protection of Rights] and 45 [Freedom of Election and Participation] of the Constitution;
- IV. I AGREE with the Court's conclusion to REJECT the Applicants' request for the imposition of an interim measure;

Dissenting Opinion is submitted by Judge;

Radomir Laban, Judge

On 02 August 2023 in Prishtina