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

Prishtina, on 12 September 2023
Ref. no.: AGJ 2262/23

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JUDGMENT

in

cases no. KO216/22 and KO220/22

Applicants

KO216/22 Isak Shabani and 10 (ten) other deputies of the Assembly of the Republic of Kosovo;
KO220/22 Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo

Constitutional review of articles 9, 12, 46 and 99 of Law No. 08/L-197 on Public Officials

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Referral KO216/22 was submitted by Isak Shabani, Bekim Haxhiu, Enver Hoxhaj, Hajdar Beqa, Ganimete Musliu, Eliza Hoxha, Ariana Musliu-Shoshi, Rashit Qalaj, Mergim Lushtaku, Hisen Berisha dhe Elmi Reçica, deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), of the parliamentary group of the Democratic Party of Kosovo (hereinafter: PDK), who are represented by Përparim Gruda.

2. The Referral KO220/22 was submitted by Arben Gashi, Doarsa Kica-Xhelili, Armend Zemaj, Avdullah Hoti, Kujtim Shala, Vlora Dumoshi, Rrezarta Krasniqi, Valentina Bunjaku Rexha, Lumir Abdixhiku dhe Besian Mustafa, deputies of the Assembly, of the parliamentary group of the Democratic League of Kosovo (hereinafter: LDK), who are represented by Shkëmb Manaj (hereinafter referred jointly as: Applicants).

Challenged Law

3. The Applicants of Referral KO216/22 challenge the constitutionality of the procedure followed for the adoption of Law No. 08/L-197 on Public Officials (hereinafter: the challenged Law) as well as the constitutionality of Articles 9 (General requirements for admission of public official), 12 (Government of the Republic of Kosovo), 46 (Appointment and mandate of lower and middle management positions) and 99 (Transitional provisions) of the challenged Law, adopted by the Decision of Assembly [no. 08-V-454] of 22 December 2022. Whereas, the Applicants of the Referral KO220/22 challenge the constitutionality of Article 46 (Appointment and mandate of lower and middle management positions) and paragraph 2 of Article 99 (Transitional provisions) of the challenged Law, and request to declare the law invalid in its entirety on the grounds of procedural violations during the voting for its adoption.

Subject matter

4. The subject matter of the Referrals is the constitutional review of the procedure followed for the adoption of the challenged Law, which according to the Applicants' allegations, are not in compliance with articles: 77 [Committees] and 78 [Committee on Rights and Interests of Communities] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as the constitutional review of the provisions specified above of the challenged Law, which according to the Applicants' allegations, are not in compliance with articles: 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], 7 [Values], 16 [Supremacy of the Constitution], 19 [Applicability of International Law], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 46 [Protection of Property], 49 [Right to Work and Exercise Profession], 53 [Interpretation of Human Rights Provisions], 55 [Limitations on Fundamental Rights and Freedoms] and 101 [Civil Service] of the Constitution.

5. In addition, (i) the Applicants of Referral KO216/22 request the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) that the challenged Law be "*suspended ex-lege and not sent for implementation until the final decision of the Constitutional Court on the contested case is rendered*"; while (ii) the Applicants of Referral KO220/16 request the imposition of interim measure in relation to their Referral since the public interest would be protected, emphasizing, among other things, that "*not imposing the interim measure would have irreparable consequences for about 1,600 civil servants of middle management positions […]*".

Legal basis

6. The Referrals are 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).

7. 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 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

8. On 30 December 2022, the Applicants submitted the Referrals to the Court.

9. On the same date, the Court notified about the registration of the Referral KO216/22: (i) The President of the Republic of Kosovo (hereinafter: the President); (ii) The President of the Assembly, who was asked to notify the deputies of the Assembly regarding the Referral; and (iii) the General Secretary of the Assembly. The latter were asked to take into account the requirements of paragraph 2 of Article 43 of the Law, which stipulates*: "In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5 of the Constitution, such a law or decision shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest*". The President and President of the Assembly were also notified that they can submit their comments regarding the Applicants' Referral, if they have any, until 23 January 2023; while the General Secretary of the Assembly was asked to submit all relevant documents related to the subject matter of the referral by 23 January 2023. Also, on the same date, the Court notified about the registration of the Referral KO216/22 to: (i) the Applicants of the Referral KO216/22; (ii) to The Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); (iii) the Institution of the Ombudsperson of the Republic of Kosovo (hereinafter: the Ombudsperson); and (iv) the Ministry of Internal Affairs of the Republic of Kosovo (hereinafter: the Ministry of Internal Affairs or MIA), who were asked to submit their comments regarding the Applicant's Referral, if any, by 23 January 2023.

10. On 11 January 2023, the President of the Court, by Decision [No. GJR.KSH KO216/22], for case KO216/22, appointed Judge Enver Peci, as Judge Rapporteur, and the Review Panel, composed of: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci (members). On the same date, the President, for case KO220/22, by Decision [No. GJR.KSH KO220/22], appointed Judge Radomir Laban, as Judge Rapporteur and the Review panel composed of: Remzije Istrefi-Peci (Presiding), Nexhmi Rexhepi and Enver Peci (members).

11. On 13 January 2023, the President, in accordance with paragraph 1 of Rule 32 [Joinder and Severance of Referrals] of the Rules of Procedure, by Order [KO216/22 and KO220/22], ordered the joinder of Referral KO220/22 with Referral KO216/22. Based on paragraph 2 of the aforementioned rule, for the joint referrals, the Judge Rapporteur and the composition of the Review Panel remains in the same composition, as determined for the first Referral, namely KO216/22.

12. On 16 January 2023, the Court notified about the registration of Referral KO220/22, the joinder of referrals KO216/22 and KO220/22, as well as the Order for their joinder: (i) the Applicants; (ii) the President; (iii) the President of the Assembly; (iv) the Prime Minister; (v) the General Secretary of the Assembly; (vi) the

Ombudsperson); as well as (vii) the Ministry of Internal Affairs, who were requested to submit their comments regarding the joint referrals of the Applicants, if any, by 30 January 2023.

13. On 19 January 2023, the Energy Regulatory Office of the Republic of Kosovo (hereinafter: ERO), addressed the Court with comments regarding the challenged Law.

14. On 20 January 2023, the Assembly submitted to the Court the relevant documentation regarding the challenged Law.

15. On 23 January 2023, the Prime Minister submitted his comments regarding the challenged Law.

16. On 30 January 2023, the Ombudsperson submitted his comments regarding the challenged Law.

17. On the same date, the Parliamentary Group of the VETËVENDOSJE Movement! (hereinafter: LVV parliamentary group), through deputy Valon Ramadani, submitted relevant comments regarding the challenged Law.

18. On 7 February 2023, the Court notified about the receipt of comments related to referrals KO216/22 and KO220/22 to: (i) the Applicants; (ii) the President; (iii) the President of the Assembly; (iv) the Prime Minister; (v) the General Secretary of the Assembly; (vi) the Ombudsperson); as well as (vii) the Ministry of Internal Affairs, who were requested to submit their comments regarding the received comments, if any, by 14 February 2023. The Court did not receive comments from the parties, within the specified deadline.

19. On 4 May 2023, the Court addressed the Venice Commission Forum with the following questions regarding cases KO216/22 and KO220/22:

"a) Does the legal framework for the civil service in your country provide that for employment for specific positions in the civil service/state administration, in addition to necessary qualifications such as education and work experience, they also meet the criterion of "eligibility" and/or specific additional criteria? If the answer to this question is "Yes", are the specific positions and the "eligibility" criteria defined by a law adopted by the Parliament or by sub-legal acts?;

b) Does the legislation in your country define a career or post-based civil service system? More specifically, do middle and lower management level public officials in your country have a permanent employment mandate or a fixed term, after which, if the latter are not re-elected, they lose their position in the civil service? In this respect, have you had practice when a position with a permanent mandate was transformed into a position with a fixed term by law?;

c) If your country has undergone a state administration reform, moving from a career system to a post-based system, how was the issue of changing from a permanent mandate to a fixed-term mandate regulated? In case of reform, have the people affected by this reform lost their positions immediately or after a certain time? As a result, have they also lost the status of public official/civil servant?; and

d) Also, does your court have relevant case law regarding the above-mentioned issues."

20. Between 4 May 2023 and 25 May 2023, the Court has received 16 (sixteen) responses from the constitutional and equivalent courts of member states of the Venice Commission Forum, respectively from: the Constitutional Court of Liechtenstein, the Constitutional Court of Bosnia and Herzegovina, Constitutional Court of North Macedonia, Constitutional Court of Slovakia, Constitutional Court of Hungary, Constitutional Court of Croatia, Federal Constitutional Court of Germany, Constitutional Court of Austria, Constitutional Court of Lithuania, Constitutional Tribunal of Poland, Constitutional Court of the Czech Republic, Constitutional Court of Slovenia, the Council of State of the Netherlands, the Supreme Court of Sweden, the Constitutional Court of Kyrgyzstan and the Supreme Court of Mexico.

21. On 5 July 2023, the Review Panel considered the preliminary report proposed by the Judge Rapporteur and decided to postpone the review of the Referral to a next session after additional supplementations.

22. On 2 August 2023, the Review Panel reviewed the report of the Judge Rapporteur regarding the admissibility of the referrals and unanimously recommended to the Court the admissibility of the referral and its review on merits.

23. On the same date, the Court decided to: (i) unanimously declare the referrals admissible; (ii) with 7 (seven) votes for and 1 (one) against, to hold that the procedure followed for the adoption of the challenged Law is not contrary to articles 77 [Committees] and 78 [Committees on Rights and Interests of Communities] of the Constitution of the Republic of Kosovo; (iii) unanimously, that the criterion of "*eligibility"* established in paragraphs 2 and 5 of Article 9 (General requirements for admission of public officials) of Law No. 08/L-197 on Public Officials is not in compliance with paragraph 1 of Article 3 [Equality Before the Law] and paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo; (iv) unanimously, to hold that the wording "*as well as supervise their implementation*" of point 1.1 of paragraph 1 and paragraph 2 of article 12 (Government of the Republic of Kosovo) and sub-paragraphs 1.1, 1.2, 1.5, 1.9 of paragraph 1 and paragraphs 3, 4 and 5 of Article 13 (Ministry responsible for public administration) of Law No. 08/L-197 on Public Officials are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 2 of Article 101 [Civil Service] of the Constitution of the Republic of Kosovo; (v) unanimously, to hold that the wording "*according to this Law"* of paragraph 3 of Article 27 (The right to information about the employment relationship and the right to appeal) of Law No. 08/L-197 on Public Officials is not in compliance with articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo; (vi) unanimously, to hold that paragraph 6 of Article 27 (The right to information about the employment relationship and the right to appeal) and paragraphs 3 and 4 of article 88 (The right to appeal of a public service employee) of Law No. 08/L-197 on Public Officials are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo; (vii) with 7 (seven) votes for and 1 (one) against, to find that Article 46 (Appointment and mandate of lower and middle management positions) of Law No. 08/L-197 on Public Officials is not contrary to paragraph 2 of Article 19 [Applicability of International Law] and Article 101 [Civil Service] of the Constitution of the Republic of Kosovo; (viii) unanimously, to find that paragraph 6 of Article 67 (Waiting List) of Law No. 08/L-197 on Public Officials is not in compliance with paragraph 1 of Article 3 [Equality Before the Law] and paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo; (ix) unanimously,

to hold that paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 (Transitional Provisions) of Law No. 08/L-197 on Public Officials are not compatible with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights; (x) to hold, unanimously, that paragraph 2 of Article 104 (Repeal) of Law No. 08/L-197 on Public Officials is not compatible with paragraph 1 of Article 3 [Equality Before the Law], paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo; (xi) to declare with 7 (seven) votes for and 1 (one) against, that based on Article 43 (Deadline) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, Law No. 08/L-197 on Public Officials is sent to the President of the Republic of Kosovo for promulgation; (a) without the wording "*eligibility for appointment to the position and/or*" in paragraph 2 and "*eligibility and/or*" in paragraph 5 of Article 9 (General requirements for admission of public officials); (b) without the wording "*as well as supervise their implementation*" of point 1.1 of paragraph 1 and without paragraph 2 of Article 12 (Government of the Republic of Kosovo) and without sub-paragraphs 1.1, 1.2, 1.5, 1.9 of paragraph 1 and without paragraphs 3, 4 and 5 of Article 13 (Ministry responsible for public administration); (c) without the wording "*according to this Law*" of paragraph 3 of Article 27 (The right to information about the employment relationship and the right to appeal); (d) without paragraph 6 of Article 27 (The right to information about the employment relationship and the right to appeal) and without paragraphs 3 and 4 of Article 88 (The right to appeal of a public service employee); (e) without paragraph 6 of Article 67 (Waiting List); (f) without paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 (Transitional provisions); and (g) without paragraph 2 of Article 104 (Repeal); (xii) to order with 7 (seven) votes for and 1 (one) against, in accordance with paragraph 1 of Article 116 [Legal Effect of Decisions] of the Constitution, the Assembly of the Republic of Kosovo, within 6 (six) months from the entry into force of this Judgment, take the necessary actions: (a) for supplementing and amending paragraph 6 of Article 67 (Waiting List) of Law No. 08/L-197 on Public Officials, in accordance with the Constitution and this Judgment; (b) for supplementing and amending paragraph 6 of Article 27 (Right to information about the employment relationship and the right to appeal) and paragraphs 3 and 4 of article 88 (Right to appeal of a public service employee) of Law No. 08/L-197 on Public Officials, in accordance with the Constitution and this Judgment; and (c) for supplementing and amending Article 6 (A civil servant with special status) of Law No. 08/L-197 on Public Officials, in relation to Independent Agencies according to Article 142 [Independent Agencies] of the Constitution, in accordance with the Constitution and this Judgment; and (xiii) to reject, unanimously, the request for interim measure.

Summary of facts

24. The initiative for the adoption of the challenged Law was preceded by the Judgment of 9 July 2020, of the Court in case KO203/19,, with the Applicant the *Ombudsperson*, regarding the constitutional review of certain articles of Law no. 06/L-114 on Public Officials, where it was found that certain articles thereof are not in compliance with the Constitution and that the Assembly should undertake the necessary actions to amend and supplement the Law No. 06/L-114 on Public Officials in harmony with the findings of this Judgment, as regards the employees of the institutions defined in item III of the enacting clause of this same Judgment, respectively those specified in Chapter VII regarding the Justice System, Chapter VIII regarding the Constitutional Court and Chapter XII regarding Independent Institutions.

25. On 23 November 2022, the Government of the Republic of Kosovo (hereinafter: the Government), in its 109th meeting, by Decision No. 04/109, approved the Draft Law on Public Officials.

26. On 24 November 2022, the Draft Law on Public Officials was distributed to the deputies of the Assembly for consideration.

27. On 2 December 2022, the Functional Committee for Public Administration, Local Government, Media and Regional Development (hereinafter: Functional Committee), approved its report regarding the Draft Law on Public Officials, proposing to the Assembly its approval in principle.

28. On 9 December 2022, the Assembly, after the first reading procedure, in the presence of 62 (sixty-two) deputies, with 61 (sixty-one) votes for, none against and 1 (one) abstention, approved in principle the Draft Law on Public Officials.

29. On 15 December 2022, the Assembly, by Decision [No. 08-V-449], decided that the review of the Draft Law on Public Officials will take place in an accelerated procedure in accordance with Article 123 (Avoidance of the Rules of Procedure) of the Assembly Rules of Procedure and appointed the functional Committee as well as the Committee for Legislation, Mandates, Immunities, the Rules of the Assembly and the Supervision of the Anti-Corruption Agency; Committee on Budget and Finance; the Committee on European Integration; as well as the Committee on Rights and Interests of Communities and Return (hereinafter: Permanent Committee), to review the Draft Law within the deadlines set in the aforementioned Decision, namely until 21 December at 12:00 to review the Draft Law and present to the Assembly the report with recommendations.

30. On 20 December 2022, the Functional Committee approved its report regarding the Draft Law on Public Officials, proposing 13 (thirteen) amendments to the draft law in question.

31. On 20 and 21 December 2022, the permanent committees except (i) the Committee on Budget and Finance; and (ii) the Committee on Rights and Interests of Communities and Return, reviewed the draft law and the proposed amendments and assessed that they are in compliance with the Constitution and the applicable law, as well as assessed that the issues regulated by the said draft law are not regulated by the European Union legislation.

32. Based on the case files, it appears that the Committee on Budget and Finance did not review the Draft Law with the amendments proposed by the Functional Committee, within the deadline set by the Assembly Decision [No. 08-V-449] of 15 December 2022.

33. On 21 December 2022, the final report of the Functional Committee, together with the 17 (seventeen) proposed amendments, was distributed to all deputies of the Assembly, with the recommendation that the Draft Law on Public Officials, together with the proposed amendments, be approved.

34. Based on case file, it results that on 22 December 2022, at 9:00 a.m., the Committee on Rights and Interests of Communities and Return, considered the draft law and the proposed amendments and assessed that they do not infringe and do not affect the rights and interests of communities.

35. On the same date, at 10:00, the Assembly held the plenary session, with 64 (sixty-four) votes for, none against and one (1) abstention, approved the challenged Law.

The challenged provisions of Law No. 08/L-97 on Public Officials and its relevant provisions that are related to those challenged

Article 2
Scope

"1. This Law shall apply to the public official in the public institution of the Republic of Kosovo.
2. Exceptionally, employment terms of the public official shall be regulated differently only when expressly provided by the present law.
3. For the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, this law applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution."

Article 3
Exemptions from the scope of the law

"1. This Law shall not apply to the following public officials:
1.1. elected;
1.2. members of the Government and their deputies;
1.3. functionaries appointed by the Assembly or the President of the Republic of Kosovo, President of the Republic of Kosovo, Government of the Republic of Kosovës, dignitaries or members of collegial managing bodies of independent institutions and agencies, exceptionally positions defined in paragraph 2 of Article 5 of the present Law;
1.4. political appointees at the central and local level, other than positions defined under paragraph 6 of Article 5 of this Law.
2. This Law shall also apply to the following categories:
2.1. judges and prosecutors
2.2. commanding and military personnel of the Kosovo Security Force or another successive organization;
2.3. employees of the Kosovo Intelligence Agency;
2.4. employees of the Kosovo Police;
2.5. employees at the Kosovo Customs;
2.7. employees in the Financial Intelligence Unit;
2.8. director or members of the collegial managing body of regulatory agencies;
2.9. personnel of public enterprises, owned by the Government or a municipality."

Article 5
Categories of public official

"1. The categories of the public official shall be:
1.1. a civil service employee;
1.2. a public service employee;
1.3. creator and performer of art and culture;
1.4. a technical and support staff; and
1.5. a cabinet employee.

2. A civil service employee shall be a public official within the civil service who participates in the formulation and/or implementation of policies, monitors the implementation of administrative rules and procedures and provides general professional and administrative support in implementation. A civil service employee shall perform the duties in the relevant position, starting from the professional official to the position of the senior manager, in the administration of the President of the Republic of Kosovo, in the administration of the Assembly of the Republic of Kosovo, in the Office of the Prime Minister of the Republic of Kosovo, in the Ministry, in executive agencies and their local branches, independent constitutional institutions, in independent and regulatory agencies, in the municipal administration and every employee whose status is defined as a civil service employee, by special law.
[...]
6. A cabinet employee shall be a public official performing the duty in the Cabinet of the President of the Republic of Kosovo, Speaker of the Assembly of the Republic of Kosovo, President of the Constitutional Court, Prime Minister, Deputy Prime Minister, Minister, or head of the independent constitutional institution and Mayor Deputy Mayor of the Municipality. A cabinet employee shall perform the duties of the head of the cabinet, adviser, assistant or spokesperson of the head of the cabinet, as well as the technical and support staff of the cabinet. The status of the cabinet employee shall also be held by an official who exercises duties for the Deputy Speaker of the Assembly of Kosovo and the parliamentary group"

Article 6
Civil servant with special status

"1. A civil servant with a special status shall be a subcategory of the civil servant, which shall include:
1.1. employees of the correctional and probation service of Kosovo;
1.2. mission staff members in the foreign service;
1.3. officials of the Civil Aviation Agency and Air Navigation Services Agency, who perform operational services in the field of air control and navigation;
1.4. members of the Commission on the Investigation of Aeronautical Accidents and Incidents;
1.5. personnel of the Ministry of Defense and its agencies;
1.6. Personnel of the Ministry of Internal Affairs and its agencies, except the Kosovo Police and the Police Inspectorate of Kosovo;
1.7. employees of the Tax Administration of Kosovo;
1.8. employees of the State Bureau for Verification and Confiscation of Unjustified Assets.
2. Regulation by a special Law on civil servants, as per paragraph 1 of this Article, should be done in accordance with principles stipulated in this Law and may be otherwise regulated only by the following elements of the employment relationship:
2.1. special or additional conditions for recruitment;
2.2. specific rights or obligations other than those provided for by this law;
2.3. special rules for career development, according to the grading system;
2.4. professional development and training needs;
2.5. transfer and systematization of employees;
2.6. determination of violations and additional disciplinary measures;
2.7. discipline and evaluation.
3. In case of regulation by a special law, for the civil servant with a special status - the prevailing provisions are the provisions of the special law.

4. Employees of the administration within the justice system, the Constitutional Court, the Presidency, the Assembly of the Republic of Kosovo as well as independent constitutional institutions shall be civil servants with a special status, whose regulation shall be made by a special act.
5. In the event of establishing new agencies, institutions, functions and positions, the public institution in which the new position is created, other than the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall request from the ministry responsible for public administration to define the category of a public official for such function, position or title thereof based on equivalence."

Article 7
Public official's admission principles

"1. Admission to the office of a civil servant, public service employee, creator and performer of art and culture and administrative technical and support staff shall be based on principles of equal opportunities, merit, integrity, nondiscrimination and fair and proportional representation of genders and communities through an open and competitive procedure.
2. Admission to the office of a cabinet employee shall be done through a direct appointment by the head of the relevant cabinet."

Article 9
General requirements for admission of public officials

"1. The following shall be the general requirement that a person must meet in the recruitment procedure, to be admitted as a public official in any category or level:
1.1. be a citizen of the Republic of Kosovo;
1.2. have full capacity to act; according to the applicable laws;
1.3. be fluent in one of the official languages, in accordance with the Law on Languages;
1.4. be fit in the health aspect to carry out the respective duty;
1.5. have no record of conviction for the deliberate commission of a criminal offence;
1.6. have no enforceable disciplinary measures for serious violations in a public institution;
1.7. have the education, professional work experience and/or skills required for the relevant position, category, class or group; and
1.8. have successfully passed the selection procedures defined in this Law.
2. Exceptionally, for specific public official positions, eligibility for appointment to the position and/or specific additional criteria may be required. The procedure and requirements for meeting the eligibility and/or additional specific criteria shall be defined by a bylaw adopted by the Government, at the proposal of the ministry responsible for publicadministration.
[...]
5. Eligibility and/or specific additional criteria for appointment to a position according to this Article, for employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutionsshall be regulated by this Law and a special act adopted by the competent bodies of these institutions.
6. The criteria defined in this Article shall not be mandatory criteria to reach the employment terms of the cabinet employee."

Article 12
Government of the Republic of Kosovo

"1. Pursuant to the provisions of this Law, the Government of the Republic of Kosovo shall:

1.1. adopt and coordinate general state policies for the employment of public officials, as well as supervise their implementation; and

1.2. adopts bylaws based on this Law.

2. The government of the Republic of Kosovo shall report to the Assembly of Kosovo on the situation in the civil service by 31 March for each calendar year, for the previous year.

[…]"

Article 13
Ministry responsible for public administration

"1. The ministry responsible for public administration shall have the following responsibilities:

1.1. draft, propose, coordinate and supervise the implementation of policies for the public official;

1.2. supervise the implementation of legislation on public officials in the state administration institution;

1.3. propose and monitor the implementation of salary policies for public officials and public functionaries;

1.4. support and advise institutions in the implementation of this Law;

1.5. prepare an opinion on compliance with this Law, for any draft act proposed by other institutions, which is related to the employment terms of the public official;

1.6. organize admission procedures for state administration institutions in accordance with this Law;

1.7. carry out the systematization of civil servants, who have completed their mandate, in accordance with this Law;

1.8. approve and monitor the implementation of training programs for civil servants;

1.9. request and receive from the institutions of the Republic of Kosovo any necessary information in the area of labor relations;

1.10. administer and maintain the Human Resources Management Information System;

1.11draft and approve general instructions and manuals to guarantee the unified implementation of legislation on public official;

1.12. draft policies for the engagement of interns in public administration;

1.13. draft the general personnel plan;

1.14. prepare and publish the annual report on human resources management.

2. The ministry responsible for public administration shall establish responsible administrative units through which will exercise the powers vested under this Law.

3. Responsibilities defined in subparagraphs 1.1 and 1.9 of this Article, related to the public service employees, shall be exercised in cooperation with the ministry responsible for state policies for the relevant public service.

4. Each institution employing public officials, as well as each public functionary and public official, who has managerial decision-making powers, or who has information in this area, shall cooperate with the ministry responsible for public administration.

5. Ministry responsible for public administration shall be the only state administration institution having the authority to provide clarifications on definitions of this Law."

Article 15
Independent Oversight Board for the Kosovo Civil Service

"The Independent Oversight Board for the Civil Service of Kosovo shall be an independent body that ensures compliance with the rules and principles governing the civil service according to the Constitutions and the relevant law on the Independent Oversight Board for the Civil Service of Kosovo."

Article 19
Human Resources Management Information System

"[...]
4. Every institution is required to undertake all processes, actions and procedures related to human resource management through HRMIS. the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions use HRMSI, but they shall administer it themselves with the modules generated for their institution.
[...]
7. Rules on the content, administration, management and use of HRMIS shall be defined under a bylaw issued by the minister responsible for public administration, respecting the constitutional independence of independent institutions."

Article 27
The right to information about the employment relationship and the right to appeal

"1. A public official shall have the right to be informed of the procedures and decisions related to his or her employment relationship.
2. A *public official shall have the right of access to his or her individual file and to request the change and completion of the data in the file.*
3. The civil servant shall have the right to file an appeal to the Independent Oversight Board in relation to any action or omission that violates rights or legal interests, the rights deriving from the employment relationship in the civil service according to this Law.
4. The right to appeal to the IOBKCS shall also be recognized by every candidate in the civil service admission procedure.
5. Upon exhausting the right to appeal to IOBKCS under paragraphs 3 and 4 of this Article, an administrative conflict may be initiated before the competent court for administrative matters, according to the relevant applicable law.
6. A public service servant and technical and support employee shall be entitled to file an appeal to the Labor Inspectorate. Upon exhausting the right to appeal to the Labor Inspectorate, a labor dispute can be initiated before the competent court, according to the relevant applicable legislation."

Article 37
Employment relationship in the civil service

"[...]
7. The procedures for the implementation of paragraph 3 of this Article, for an employee in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions will be regulated by this law and by a special act approved by the competent bodies of such institutions."

Article 38
Classification of positions in civil service

"[...]
7. The procedures for the implementation of paragraph 6 of this Article, for an employee in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions shall be regulated by this Law and by a special act approved by the competent bodies of such institutions."

Article 39
Civil Service admission procedure

"[...]
15. The rules for the competition procedure and evaluation of candidates, for employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions will be regulated by this Law and by a special act approved by the competent bodies of such institutions."

Article 40
Admission Committee for professional category position

"[...]
7. The rules for the establishment and composition of the Commission, for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions shall be regulated by this Law and by a special act approved by the competent bodies of these institutions."

Article 41
Appointment to a professional category position

"[...]
3. The procedures for the establishment and appointment of an employee to a professional category in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions shall be regulated by this Law and by a special act approved by the competent bodies of such institutions."

Article 42
Admission Committee for the specialist category

"[...]
7. The rules for the establishment, composition and decision-making of the Commission, for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly

of the Republic of Kosovo, and the independent constitutional institutions shall be regulated by this Law and by a special act approved by the competent bodies of these institutions."

Article 43
Appointment to a specialist category position

"[...]
3. The procedures for the appointment of an employee to a specialist category in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions shall be regulated by this Law and by a special act approved by the competent bodies of such institutions."

Article 44
Admission to a position in the lower and middle management category

"[...]
7. The professional evaluation of candidates shall include a written test in electronic form which ensures the anonymity of the competitors, and an oral interview.
[...]
12. The rules for the recruitment procedure and evaluation of candidates for the lower and middle management category for employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo shall be regulated by this Law and by a special act approved by the competent bodies of such institutions."

Article 45
Admission Committee for the lower and middle management category

"[...]
7. The rules for the establishment, operation and decision-making of the committee, as well as the selection criteria and procedure of the committee members for employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions shall be regulated by this Law and by a special act approved by the competent bodies of such institutions."

Article 46
Appointment and mandate of lower and middle management positions

"1. A candidate applying for the position of a lower or middle management level, evaluated by the Admission Committee with the highest points and above the minimum threshold of 70% of the overall evaluation points, shall be considered the winning candidate and appointed to the corresponding position, for a mandate with a duration of four (4) years.
3. The extension of the term, in the case of state administration institutions, shall be approved by the responsible unit, at the proposal of the immediate supervisor, based on his or her performance during the mandate. For other state institutions, the decision on the extension of the term shall be taken by the responsible unit at the proposal of the immediate supervisor.
4. The proposal for the extension of the term shall be made at least three (3) months before the end of the term.

5.The extension of the term, in the case of municipal institutions, shall be approved by an ad hoc committee consisting of the immediate supervisor and two (2) representatives of the responsible unit.
6. The extension of the term under this Article shall be done if, at the end of the first term, the average performance of the civil servant's tern us evaluated at least by "meets expectations".
7. Upon the termination of the second term, or in case the term is not extended in accordance with this Article, a civil servant shall have the right to compete for the same position he or she held.
8. Those appointed in the middle or lower management category, who were in civil service before being appointed to the middle or lower management category, shall be appointed to a vacant position in the professional category, provided that they meet the criteria for appointment to the position concerned.
9. Exceptionally, those appointed in the middle or lower management category, who have not been in civil service, shall be released from civil service once their mandate ends.
10. Until the appointment to a professional category position, a civil servant shall be placed on the waiting list and shall enjoy the rights as defined in Article 66 of this Law.
11. Declining the appointment to a position of the professional category, assigned by the responsible unit, shall comprise a cause for the servant's dismissal from civil service.
12The Government of Kosovo shall, at the proposal of the minister responsible for public administration, through a bylaw, adopt the rules for the implementation of this Article.
13. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 47
Admission to a senior management category position

"[...]
13. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 48
Admission Committee for the senior management category

"[...]
9. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 49
Appointment and term of senior management positions

"[...]
15. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of

Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 52
Performance appraisal

" 1. Performance appraisal is an ongoing process including the assessment of the realization of preset objectives, the evaluation of the civil servant's professional capacity in achieving the objectives and the overall fulfillment of the unit's responsibilities.
[...]
13. The performance appraisal rating shall be:
13.1. outstanding achievement;
13.2. exceeds expectations;
13.3. meets expectations*;*
13.4. needs improvement;
13.5. unacceptable.
[...]
15. In case of appraisal at levels under paragraph 13, subparagraphs 13.4 and 13.5, in addition to the mandatory trainings, the immediate supervisor shall, in cooperation with the HRM unit of the institution, decide that the civil servant shall be subject to a special evaluation.
[...]
19. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 53
Performance appraisal for senior-level management category employees

"[...]
7. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 54
Professional inadequacy

" 1. Professional inadequacy shall mean a complete lack of skills of a civil servant to fulfil the tasks related to his or her position, a recurring lack of accuracy and dedication, and a recurring lack of professional improvement in the performance of tasks.
[...]
3. The measures that can be imposed on civil servants for professional inadequacy shall be:
3.1. mandatory attendance of training to improve professional skills;
3.2. redeployment to another position;
3.3. initiation of the procedure before the Disciplinary Committee."

Article 57
Disciplinary measures

" [...]
2. Disciplinary measures that may be imposed against a civil servant for serious violations shall be:
[...]
2. 4. demotion;
[...]
2. 7. dismissal from the Civil Service."

Article 60
Establishment and composition of the Disciplinary Committee

"[...]
12. The procedures and rules for the implementation of this Article for an employee in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions shall be regulated by this Law and by a special act approved by the competent bodies of such institutions."

Article 63
Temporary redeployment

"[...]
8. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 65
Permanent redeployment for state interest

"[...]
8. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 66
Redeployment in case of closure or restructuring

"[...]
8.The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 67
Waiting list

"1. Civil servants who, after the closure or restructuring of the institution, have not been redeployed in accordance with Article 66 or other cases provided by the law cannot be systematized, shall be placed on the waiting list.

2. The Ministry responsible for public administration shall take care of the systematization of waiting civil servants in the same civil service category, as well as the training for the relevant position where they are systematized.
3. Refusal to undergo training, according to point 2 of this Article, shall constitute grounds for removal from civil service.
4. If within nine (9) months, a civil servant is not reassigned to any vacant position in the civil service, this shall constitute grounds for removal from the civil service.
5. The rights and obligations under this Article shall apply as long as the civil servant on the surplus list does not have another employment relationship.
6. The rights and obligations of waiting civil servants, including their salaries and training, shall be determined by the Government by a bylaw at the proposal of the ministry responsible for public administration and the ministry responsible for finance."

Article 69
Ex officio suspension

"[...]
4. The rules for implementation of this Article for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, shall be regulated by this Law and by a special act adopted by the competent bodies of these institutions."

Article 74
Dismissal from the civil service

" 1. The civil service employment relationship shall be terminated by dismissal from civil service in the following cases:
[...]
1.3. after two (2) "unsatisfactory" performance evaluations for two (2) times in a row. After two times in a row, a special evaluation shall also be considered;
[...]"

Article 84
Performance appraisal

"[...]
5. In case of periodic evaluation of a public service employee at the "unacceptable" level according to paragraph 13, subparagraph 13.5 of Article 52 of this Law, he or she shall be subject to a special appraisal.
[...]"

Article 88
The right to appeal of a public service employee

"1. A public service employee may file an appeal when he or she alleges that his or her employment relationship rights have been violated. Candidates under the public service recruitment procedure shall also enjoy the right to appeal.
2. The appeal under paragraph 1 of this Article shall be filed according to the deadlines defined in the law on the administrative procedure from the day of the receipt of the final decision.
3. The Appeals Committee shall have the authority to review the appeals.

4. Upon exhausting the right to appeal to the Labour Inspectorate, the employee may initiate an action before the competent court, according to the relevant applicable legislation."

Article 98
Decentralized recruitment

"1. Notwithstanding the provisions of this Law, the centralized recruitment procedure for civil servants, conducted by the responsible unit within the ministry responsible for public administration, shall begin to be implemented eighteen (18) months after the entry into force of this law.
2. Until the period according to paragraph 1 of this Article, the HRMU of the relevant institution shall conduct the recruitment procedure.
3. The Government shall, at the proposal of the ministry responsible for public administration, through a bylaw, adopt the procedure rules for the recruitment, establishment of the committee, evaluation and appointment of candidates in accordance with this Article."

Article 99
Transitional provisions

"1.A civil servant employed in civil service pursuant to Law No. 06/L-114 on Public Officials and who holds a position equivalent to positions of civil servants regarding their functions and responsibilities shall be considered a civil servant according to Article 2 paragraph 3 of this Law, as of the date of entry into force of this Law.
2. One (1) year after the entry into force of this Law, the recruitment procedure shall be announced for all low and middle-level management positions through an open and public competition, except for positions that have been vacant and were completed during the transitional phase of the recruitment according to Article 98 of this Law.
3. In the recruitment procedure announced according to paragraph 2 of this Article, a public official who has been appointed to a position by the time of the announcement of the recruitment procedure for such position shall enjoy the right to compete.
4. If a public official, as in paragraph 3 of this Article, after the end of the recruitment procedure, is not announced the winner for appointment to the relevant position, he or she shall be systematized in the professional category, provided that he or she meets the criteria for appointment to the position concerned.
5. A public official, as in paragraph 4 of this Article, shall benefit from compensation which shall be equal to the difference between the basic salary of the managerial position he or she exercised and the salary of the professional category in which he or she is systematized:
5.1. 100% of the salary difference, during the first year after the systematization in the professional category;
5.2. 75% of the salary difference, during the second year after the systematization in the professional category;
5.3. 50% of the salary difference, during the third year after the systematization in the professional category;
5.4. 25% of the salary difference, during the fourth year after the systematization in the professional category.
6. Until the appointment to a professional category position, according to paragraph 5 of this Article, a civil servant shall be placed on the waiting list and shall enjoy the rights defined under Article 67 of this Law. The refusal to be

appointed to the position of the professional category shall constitute a ground for the dismissal of the employee from the service.
7. The rights under paragraphs 2, 3, 4, 5 and 6 of this Article shall apply once, for the period and circumstances determined according to such paragraph.
8. For vacant low and middle-level management positions for which the recruitment procedure has been announced and completed according to Article 98 of this Law, a public official that has been appointed to that position during the transitional period shall be considered to have commenced the initial term for the respective position at the time of his or her appointment to such position.
[…]"

Article 104
Repeal

"1. The following laws shall be repealed upon the entry into force of this Law:
1.1. Law No. 03/L-149 on the Civil Service of the Republic of Kosovo;
1.2. Law No. 06/L-114 on Public Officials; and
1.3. Law No. 08/L-128 on Amending and Supplementing Law No. 06/L-114 on Public Officials.
2. Any other provisions in contradiction with this Law shall be repealed upon the entry into force of this Law."

Applicants' allegations in Referral KO216/22

36. Applicants of this referral allege that articles: 9 (General requirements for admission of public officials), 12 (Government of the Republic of Kosovo), 46 (Appointment and mandate of lower and middle management positions) and 99 (Transitional provisions) of the challenged Law are not in compliance with articles: 4 [Form of Government and Separation of Power], 7 [Values], 16 [Supremacy of the Constitution], 19 [Applicability of International Law], 22 [Direct Applicability of International Agreements and Instruments], 49 [Right to Work and Exercise Profession], 77 [Committees], 78 [Committees on Rights and Interests of Communities] and 101 [Civil Service] of the Constitution.

37. The Court will further summarize the allegations of the Applicants KO216/22 regarding the incompatibility of the aforementioned articles of the challenged Law with the aforementioned articles of the Constitution, respectively the allegations of (i) procedural violations during the adoption of the challenged Law in violation of Articles 77 and 78 of the Constitution; and the incompatibility of: (ii) Article 9 of the challenged Law with Articles 7 and 101 of the Constitution; (iii) Article 12 of the challenged Law with Article 4 of the Constitution; (iv) Article 46 of the challenged Law with articles 3, 7, 16 and 19 of the Constitution; and (v) Article 99 of the challenged Law with articles 3, 7, 22 and 49 of the Constitution; and (vi) the request for interim measure.

(i) Allegations of procedural violations during the adoption of the challenged law in violation of Articles 77 and 78 of the Constitution

38. Regarding the procedure of adoption of the challenged Law, the Applicants allege that*: "The challenged Law from a procedural point of view did not meet the requirements of the parliamentary review in the permanent parliamentary committees of the Assembly because being treated in an accelerated procedure - avoidance from the procedural deadlines provided by paragraph 4 of Article 34 par. 4, Article 52, par. 1 and Article 76, par. 3 and 8 of the Rules of the Assembly, was adopted without being examined at all in the Permanent Committee on Budget,*

Labor and Transfers and the Committee on Rights and Interests of Communities and Return." Consequently, the Applicants consider that in this case the Assembly is the one that*: "[...] by adopting the challenged law, has also violated decision no. 08-V-449, dated 15 December 2022, according to which, in addition to the responsibilities defined for the functional Committee on Public Administration, Local Government, Media and Regional Development, in point 1.3 of this decision, it expressly provided that the permanent committees review the draft law until 21 December 12:00."*

39. In this regard, the Applicants emphasize that *"[...] the challenged law was adopted in a parliamentary procedure that resulted in essential violation of the provisions of the Rules of Procedure of the Assembly - violating both Article 77 [Committees] and Article 78 [Committees on Rights and Interests of Communities], of the Constitution of the Republic of Kosovo".*

40. The Applicants also consider that*: "[...] the challenged law, from a procedural point of view, also contradicts Article 76 (Review of draft laws in committees), of the Rules of Procedure [of the Assembly], in which it is expressly foreseen the obligation for the permanent Committees to examine the draft law with the eventual proposed amendments".*

(ii) Allegations about the incompatibility of Article 9 of the challenged Law with Articles 7 and 101 of the Constitution

41. Regarding the "*eligibility*" criteria for appointment to specific positions of the public official, stipulated by paragraph 2 of Article 9 of the challenged Law, the Applicants allege that: *"The use of the term "eligibility" as an additional criterion for employment goes against the principle of legal certainty and predictability, the elements of the rule of law according to the Rule of Law Checklist of the Venice Commission*", which principle is implemented in Article 7 of the Constitution.

42. The Applicants consider that: "*The term "eligibility" as an additional criterion for employment paves the way for abuse and arbitrariness during the recruitment procedures, because it will be a tool in the hands of admission committees to decide for or against a candidate and not in compliance with the principle of merit".*

43. Moreover, the Applicants claim that this criterion *"[...] should be specific, established in the law and not by a sub-legal act of the Government"* and in this context, they emphasize paragraph 1 of Article 101 of the Constitution. According to the Applicants*: "[...] the civil service constitutes a professional, neutral to politics, civil and meritorious, permanent mechanism".*

(iii) Allegations about the incompatibility of Article 12 of the challenged Law with Article 4 of the Constitution

44. In relation to paragraph 1 of Article 12 of the challenged Law, which, among other things, determines that the Government adopts and coordinates general state policies for the employment of public officials, as well as supervises their implementation, the Applicants claim that it is incompatible with Article 4 of the Constitution because, according to them, *"[...] allows the direct iinterference of the government in employment in the Assembly, in the judiciary and other independent institutions, which independence is guaranteed by the Constitution of the Republic of Kosovo and elaborated by the judgment of the Constitutional Court (CCK), of 9 July 2020, AGJ: 1582/20, case no. KO203/19, respectively with paragraphs 205, 206, 207 of this judgment."*

(iv) Allegations about the incompatibility of Article 46 of the challenged Law with Articles 7, 16 and 19 of the Constitution

45. In relation to paragraph 1 of Article 46 of the challenged Law, which defines the mandate with a duration of 4 (four) years with the right of extension without competition only for another mandate of the same duration for lower and middle management positions, the Applicants claim that such a rule *"[...] is not applicable in any member country of the European Union and contradicts the Principles of Public Administration of SIGMA that apply to candidate and potential candidate countries for membership in the European Union, as is Kosovo".*

46. In this context, the Applicants refer to the SIGMA Report on the challenged Law, and emphasize the following: "*According to the recommendations of SIGMA, the limited time mandates for all lower and middle management employees constitute a high degree of instability, a violation of the professional growth of the civil service".*

47. Furthermore, the Applicants claim that such a rule contradicts Article 120 of the Stabilization and Association Agreement between the Republic of Kosovo, on the one hand, and the European Union and the European Atomic Energy Community, on the other (hereinafter: SAA), by which Kosovo has made a commitment to the European Union to reform the public administration in accordance with the principles of SIGMA, as well as, according to them, this has been ascertained by the Head of the EU Office by the letter of 14 December 2022, where, among other things, it recommends that: *"[...] not to proceed with this initiative in the first place due to the great risk in ensuring the instability of human resources management in the public administration. [...] Casting doubts on the competences of all current managers and forcing them to sign a new recruitment procedure sends a harmful signal to all civil servants. This unjustified step will create chaos in the administration, moreover, this state of flux will last, since it is not possible to organize hundreds of recruitments in a period of days or weeks (there are over two thousand positions in the lower and middle management in Kosovo)."*

48. In this regard, the Applicants add that *"[...] the challenged law cannot be contrary to the SAA, as an agreement ratified in the Assembly, hence an international obligation for Kosovo, since, according to Article 16 paragraph 3 of the Constitution, expresses the commitment that: the Republic of Kosovo respects International Law".* Further, the Applicants emphasize that through the SAA, *"[...] Kosovo has taken the obligation to harmonize its internal legislation with the Law of the European Union, part of which is also the Charter of Fundamental Rights of the European Union",* where in its article 30 (Protection in the event of unjustified dismissal), it is determined that*: "Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices*".

49. Also, the Applicants mention Article 7 of the Constitution, which underlines the principle of the rule of law, which according to the Rule of Law Checklist of the Venice Commission, contains the category of "*Legality*", which includes the subcategory "*Relations between international law and domestic law*", which clearly requires that states respect their international principles, this also includes the obligation not to violate those obligations when adopting laws. In this context, the Applicants allege that: "*Article 46 of the challenged law contains provisions that conflict with Article 7 of the Constitution, because they violate the principle of the rule of law protected by this article, which must be interpreted in the spirit and letter of Venice Commission Rule of Law Checklist".*

(v) Allegations about incompatibility of Article 99 of the challenged Law with Articles 7, 22 and 49 of the Constitution

50. In relation to paragraph 2 of Article 99 of the challenged Law, which provides that no later than 1 (one) year, for all positions of middle and lower management level, the recruitment procedure will be announced according to the planned order, the Applicants claim that: *"[...] all the persons holding the positions of middle and lower management level, will lose their jobs, since public competitions will be announced for their positions"*. Moreover, the Applicants emphasize that according to Article 67 of the same challenged Law *"[...] they are placed on the waiting list, but if within the period of 9 (nine) months they are not reassigned to any other civil service position, this is grounds for dismissal. So they will remain without jobs"*.

51. The Applicants emphasize that they have acquired these positions by previous legislation, respectively, Law No. 03/L-149 on Civil Service (hereinafter: previous Law on Civil Service) and currently by Law No. 06/L-114 for Public Officials (Current Law on Public Officials). In this context, the latter claim that "*The obligation imposed to undergo the recruitment procedure for these civil servants, who have carried out their recruitment procedure a long time ago based on the previous civil service law, have been exercising their function for years or decades, constitutes a violation of the acquired legal right, violates legitimate expectations and contrary to the principle of the rule of law embodied in Article 7 of the Constitution of the Republic of Kosovo and elaborated in the Rule of Law Checklist of the Venice Commission."* Consequently, the Applicants consider that*: "All civil servants of lower and middle management level, being appointed by permanent appointment acts, that is, without a limited time mandate, have created legitimate expectations*", which, according to them, are a subcategory of "*legal certainty*" of the Rule of Law Checklist of the Venice Commission, where the principle of the rule of law is one of the values protected by Article 7 of the Constitution.

52. Likewise, the Applicants allege that "*Such an obligation to civil servants who have established employment relationships, especially the risk that they may even lose their jobs, constitutes a violation of the constitutional guarantees of the right to work, provided by Article 49 paragraph 1 of the Constitution of the Republic of Kosovo, which emphasizes that: "The right to work is guaranteed"*.

53. In this context, the Applicants raise the issue of the "*acquired rights*" principle, therefore, they refer to the Judgment [no. 832] of 1987 of the Administrative Tribunal of the International Labor Organization (hereinafter: ILO), which states that *"[...] changing a rule to the detriment of an official and without his consent constitutes a violation of an acquired rights where the structure of the appointment contract has been changed or there is damage to any fundamental term of the appointment in consideration of which the official accepted the appointment*". In this regard, they also cite Article 155 [Prohibition of Retroactive Effects of Legal Acts] of the Constitution of Slovenia, which states that: "*Laws, regulations and other general legal acts cannot have retroactive effect. Only the law can determine that some of its provisions have retroactive effect, if such is dictated by the public interest and provided that no acquired right is infringed"*.

54. The Applicants also claim that: *"[...] the civil servant's employment relationship is not with a political entity or with the Government, but with the state*". In this respect, according to them, by the previous legislation, *"[...] the state has offered them permanent appointment acts (without a limited time mandate), while now the state decides to change this rule by issuing the challenged law announcing the positions of them in the public competition and forcing them to undergo the recruitment*

procedure again for their position, and with this, risking them to remain unemployed". The Applicants emphasize that "This clearly contradicts the legitimate expectations, which they have built in a very reasonable and fair way, based on the "promise" that the state has given them with the laws that were in force at the time of the creation of those legal rights", contrary to Article 7 of the Constitution and the Universal Declaration of Human Rights, which is directly applicable based on Article 22 of the Constitution.

(iv) Regarding the suspension of the implementation of the challenged law

55. The Applicants request the Court, *"[...] without prejudice to the admissibility or merits of the referral, to inform the involved parties that the contested law approved by the Assembly of the Republic of Kosovo and challenged under Article 113 paragraph 5 of the Constitution, is suspended ex-lege and is not sent for implementation until the final decision of the Constitutional Court on the contested case".*

56. Finally, the Applicants request the Court to (i) declare the referral admissible; and (ii) hold that Law No. 08/L-197 on Public Officials, is not in compliance with Articles 4, 7, 16, 19, 22, 49 and 101 of the Constitution.

Allegations of Applicants KO220/22

57. The Applicant of this Referral allege that Article 46 (Appointment and mandate of lower and middle management positions) and paragraph 2 of Article 99 (Transitional provisions) of the challenged Law are not in compliance with articles: 3 [Equality Before Law], 7 [Values], 19 [Applicability of International Law], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 46 [Protection of Property], 49 [Right to Work and Exercise Profession], 53 [Interpretation of Human Rights Provisions], 55 [Limitations on Fundamental Rights and Freedoms] and 101 [Civil Service] of the Constitution.

58. In the following, the Court will summarize the Allegations of applicants KO220/22 regarding the incompatibility of the aforementioned articles of the challenged Law with the aforementioned articles of the Constitution, namely the claims for the incompatibility (i) of Article 46 of the challenged Law with the Constitution; and (ii) Article 99 challenged with the Constitution; as (iii) procedural violations during the adoption of the challenged Law, including (iv) the request for interim measure.

(i) Allegations about the incompatibility of Article 46 of the challenged Law with the Constitution

59. The Applicants emphasize that Article 46 of the challenged Law contradicts Articles 3, 7, 16, 19, 21, 22, 24, 46, 49, 53, 55 and 101 of the Constitution. The latter allege that by this challenged provision *"[...] the career system in the civil service of the Republic of Kosovo is destroyed and in its place is established a system based on temporary positions with a mandate for all middle and lower management positions, thus essentially affecting the civil service, as a professional, impartial and independent body from direct political influence,"* and, among other things, emphasize that this law*: "[...] the civil service and public administration is not reformed in general, on the contrary, degrades it. All the reform supported by the EU and other international mechanisms for the advancement of the role of the civil service, by the Law on Public Officials, returns to the zero point, causing irreparable damage to the career system in the civil service".*

60. Furthermore, the Applicants, among other things, emphasize that*: "Even SIGMA, the EU Office, civil society, opposition parties, and even the Legal Office of the Prime Minister's Office have opposed this Law during the of drafting in the Government as well as during the parliamentary procedure, emphasizing that in this form the civil service is affected, the latter risks being politicized to the extreme due to the possibility of changes with the mandate of key positions in the service".* Also, the ltter claim that*: "[...] the definition of a 4-year mandate for middle and lower management positions has a very negative effect on the stability of the civil service, political neutrality, the professionalism of the civil service, and the implementation of medium-term and long-term development policies due to the lack of institutional memory and administrative experience".*

61. The Applicants note that in the introductory part of the Constitution: *"[...] the intention of the people of Kosovo for European integration [...] has been expressed*", recalling its obligation, through Article 120 of the SAA , *"[...] for further development of an efficient and accountable professional public administration [...]",* as well as emphasize the direct opposition of the Office of the European Union, which for the challenged law state as follows: "*The new law on public officials is problematic in terms of ensuring a merit-based civil service that can effectively manage human resources, as it adds excessive freedom of action to recruitment, transfer and disciplinary procedures for civil servants, making the civil service potentially vulnerable to politicization".*

62. As a result, the Applicants consider that the challenged Law: *"[...] endangers the integration processes of Kosovo in the European Union, because the reform of the public administration is one of the essential prerequisites for the integration processes of our state*", and consider that: *"[...] it is a constitutional violation because ratified international agreements and legally binding norms of international law have precedence over the laws of the Republic of Kosovo and the latter are applicable".*

(ii) Allegations about the incompatibility of Article 99 of the challenged law with the Constitution

63. In relation to paragraph 2 of Article 99 of the challenged Law, the Applicants, among other things, claim that: "*Current civil servants of lower and middle management level have permanent appointment acts in the positions they hold within the civil service. Thus, they have an acquired right and an employment relationship with the state, which is also related to the level of their salary and plans based on salary, which is considered an acquired property right".*

64. The Applicants also point out that: "*The collective dismissal of about 1,600 middle and lower civil servants is contrary to constitutional principles because it violates the legal security of current public officials, without an evaluation of their performance in compliance with the current legislation based on the career system*". Specifically, they consider that *"[...] the termination of the employment relationship by the Law on Public Officials within a period of one year, is a violation of human rights and freedoms, is a violation of property rights that is related to the value of the salary in the position acquired and violation of legal certainty".*

65. In this context, the Applicants cite the case law of the European Court of Human Rights (hereinafter: ECtHR) (ECtHR cases, *Hasani v. Croatia*, no. 20844/08, Decision on Inadmissibility of 30 September 2010, and *Asmundsson v. Island*, no. 60669/00, Judgment of 12 October 2004) and that of the Court, namely, Court case KO219/19, case cited above, namely its paragraphs 302 and 303, where relevant

aspects of property rights and legitimate expectations of all persons are clarified who may be affected by the following legal changes: *"[…] during the drafting of legislation related to salaries in the public sector, either through a general law or through some special laws or even the amendment of existing laws, take into account relevant aspects the property rights and expectations of all persons whose rights are affected by any legal amendment, supplement or change".*

(iii) Allegations of procedural violations during adoption of the challenged law

66. The Applicants allege that: *"The Assembly of the Republic of Kosovo has violated the Rules of Procedure of the Assembly, in the procedure of adopting the law in question, in the way that it has proceeded in the plenary session for voting amendments which have not passed in the permanent committees of the Assembly […]",* which committees, according to the Applicants, are "*constitutional categories*", established in articles 77 and 78 of the Constitution.

67. Furthermore, the Applicants emphasize as follows: "*We are dealing with misleading the deputies of the Assembly of the Republic of Kosovo regarding the authenticity of the amendments and the procedure followed in relation to them. These amendments were voted in plenary session and became part of the law".*

68. In relation to this allegation, the Applicants claim that: *"In the official documents from the plenary session of the Assembly of Kosovo regarding the voting of the law in question, you will see that there are two different documents with different amendments from the Committee on Administration Public, Local Government, Media and Regional Development, for illustration, see the documents: Report with amendments for Draft Law no. 08/L-197 on Public Officials with no. protocol 08/3241/L-197, dated 20.12.2022, as well as the other document Report on Draft Law no. 08/L-197 on Public Officials with no. protocol 08/3252/L-197, dated 21.12.2022. Compare e.g. Amendment 10 to these two documents mentioned above, we are dealing with two different texts/contents of the amendments. For more, see the remark of the Head of the LDK Parliamentary Group, Mr. Arben Gashi regarding this procedural violation committed in the plenary session of the Assembly of Kosovo."*

(iv) Request for interim measure

69. The Applicants request the imposition of an measure in relation to their referral since the public interest would be protected, with the following reasoning: "*a). Failure to impose the inerim measure would have irreparable consequences for approximately 1,600 civil servants in middle and lower management positions whose employment relationship would be terminated; b). Moreover, as a result of the termination of the employment relationship for about 1600 civil servants in middle and lower management positions, the latter would have consequences in the reduction of salaries, causing financial problems in the time of the inflation crisis in our state as well as in their plans and obligations as a debtor, counting on the current salary; c). The automatic announcements of competitions, transfer to other positions without the consent of the employee as well as the appointment of new employees to these positions would have irreparable consequences for individuals who currently hold these positions because the current employees in these positions in an arbitrary and unfair manner risk losing the job for which they have a legal permanent appointment act, without subjecting you to a preliminary assessment of their performance, thereby violating legal certainty and predictability as principles and fundamental rights guaranteed to every citizen of the Republic of Kosovo by the Constitution and law."*

70. Finally, the Applicants request the Court to (i) declare the challenged Law, respectively, Article 46 and paragraph 2 of its Article 99, which is not in compliance with articles 3, 7, 19, 21, 22, 24 , 46, 49, 53, 55 and 101 of the Constitution; and (ii) to declare invalid these provisions of the challenged Law as well as in its entirety due to procedural violations of the Rules of the Assembly and Articles 77 and 78 of the Constitution.

Comments submitted by the Prime Minister on 23 January 2023

71. On 23 January 2023, the Prime Minister, on behalf of the Government, submitted to the Court his comments on the Applicants' allegations, as well as attached the following documents: (i) Principles of Public Administration of the Organization for Economic Cooperation and Development (hereafter: OECD/SIGMA), January 2023 edition; and (ii) the explanatory memorandum of the Draft Law on Public Officials together with its two appendices, namely, a) the illustrative table with the findings of the Progress Report over the years in the Civil Service (2008-2021); and b). Table of comments from the consultation process for the Draft Law on Public Officials.

72. In the following, the Court will summarize the Prime Minister's comments regarding the Applicants' allegations and the challenged Law, including those related to (i) Article 9 of the challenged Law; (ii) Article 12 of the challenged Law; (iii) Article 46 of the challenged Law; (iv) paragraph 2 of Article 99 of the contested Law; and (v) "*the general interest*".

(i) Regarding the allegations of the Applicants KO216/22 of Article 9 of the challenged Law

73. In relation to Applicants' allegation that Article 9 of the challenged Law violated the principle of legal certainty, the Prime Minister, among other things, considers that *"[...] such a claim is unfounded because eligibility does not violate security legal and does not question the constitutionality of the challenged Law"*. The Prime Minister emphasizes that *"[...] the principle of legal certainty does not have an absolute character and, in particular, it must be balanced with the general public interest*", referring to a paragraph of the decisions of the Constitutional Court of the Republic of Albania, namely, decisions no. 26, dated 02.11.2015, and no. 37, dated 13.06.2012, which define as follows: *"[...] the principle of legal certainty does not guarantee any kind of expectation of non-change of a favorable legal situation [...]."*

74. The Prime Minister in his comments, further states that *"[...] The challenged law is part of the concept of administrative law and does not have the same level of necessity for the principle of predictability as it could have in criminal legislation",* and that this principle *"[...] as far as it is necessary is fulfilled in its entirety, namely in Article 99, paragraph 3, 4 and 5"*.

75. Moreover, the Prime Minister claims that: *"[...] the general public interest is of primary importance. This is because the eligibility criteria are aimed at filling the positions in the public sector with eligible individuals in terms of integrity in relation to the relevant position, duties and responsibilities for specific positions*", and that "*Eligibility is an element of the interest of general public for the reform in the public administration which is a prerequisite for good governance, transparency, accountability, efficiency and effectiveness."*

76. Regarding the Applicants' allegation that the specifics of the "*eligibility criterion*" should be provided by law and not by sub-legal act, the Prime Minister emphasizes the

practice of the United States of America (hereinafter: the USA), which proves that the determination of eligibility criteria can also be done through a sub-legal act and not necessarily by law. In this regard, the Prime Minister has mentioned the Code of Federal Regulations, section 731.202 (b) (Criteria for making suitability determinations, specific factors), which is a sub-legal act that defines eligibility criteria for employment in the civil service.

(ii) Regarding the Applicants' allegations KO216/22 of Article 12 of the challenged law

77. Regarding the Applicants' allegations that Article 12 of the challenged Law is incompatible with Article 4 of the Constitution, the Prime Minister claims that the Applicants *"[...] does not offer any argument as to why this article is in conflict with the Constitution"*. The Prime Minister, among other things, considers that*: "According to the practice of the Constitutional Court of the Republic of Kosovo, raising the claim in itself is not sufficient to establish a violation of the constitutional articles"*.

78. In this context, the Prime Minister emphasizes that *"[...] chapter II of the challenged Law defines how and by whom the administration of public officials is done, while article 12 defines the Government as the main body for the adoption and coordination of general policies state for the employment of the public official from its own constitutional scope",* and further that*: "This determination at no time violates Article 4 of the Constitution because it should not be read separately from the other articles of the challenged Law [.. .]*". In this regard, the Prime Minister cites the articles of the challenged Law that contain the specific authorizations for the independent constitutional institutions, which have the prerogative of issuing special acts arising from this law.

(iii) Regarding the Applicants' allegations of Article 46 of the challenged law

79. The Applicants' allegations that Article 46 of the challenged Law is in conflict with Article 120 of the SAA and Articles 3, 7, 16, 19, 21, 22, 24, 46, 49, 53 and 101 of the Constitution, the Prime Minister considers them as manifestly ill-founded because the Court's jurisdiction *"[...] does not include the constitutional review of the law with international agreements*", and the latter are not subject to constitutional review either.

80. Despite the aforementioned comments, the Prime Minister argues that the challenged Law is in accordance with Article 120 of the SAA, because the issues of professionalism, efficiency and accountability, meritocracy, accountability in recruitment procedures are guaranteed by specific articles of the challenged Law of. The Prime Minister also emphasizes that Article 120 of the SAA specifies that *"[...] cooperation will focus, among other things, on career development in the public service, which is guaranteed by the Contested Law, which enables every employee to advance in position through open and public competitions"*.

81. In this regard, the Prime Minister emphasizes that: *"[...]career cannot be developed explicitly only through one system*". In this context, the Prime Minister before the Court presents the comparative data for the concept of career development in the civil service, which based on the practices of the European Union countries can be: career system, dual system or position system. According to these data which compare the countries that, over the years, have been determined for the respective systems, namely, the data of 2018 in relation to the year 2021, it results, according to the submitted comments, that the EU member states have a trend of moving away from

the career system to other systems, e.g. since 2018, Denmark has switched from a career system to a position system.

82. The Prime Minister also claims that: "*Regarding the applicant's claims that the principles of SIGMA were not taken into account, when political influence and the like are mentioned, it should be noted that the correct reference is missing.*" In this aspect, the Prime Minister emphasizes that *"[..] to the knowledge of the Constitutional Court that the principles related to the field of public administration of this professional institute that cooperates with the EU are developing and changing and currently are published the "Draft revised Principles of Public Administration, 16 January 2023", for which the Republic of Kosovo Government has been invited to provide comments"*.

83. The Prime Minister adds that in the spirit of transparency, the drafter of the challenged Law has consulted with the interested parties and that he has addressed a large number of comments, respectively, he underlines that: "*Out of approximately ninety-three (93) SIGMA comments, less than fourteen (14) comments were not received and addressed, that is, less than 15% of them*".

(iv) Regarding the Applicants' allegations of paragraph 2 of Article 99 of the challenged law

84. In relation to the Applicants' allegations that paragraph 2 of Article 99 of the challenged Law contradicts Articles 7, 22, 46 and 49 of the Constitution, the Prime Minister, among other things, states that "*In the challenged Law adopted by the Assembly there is no provision that contradicts the Universal Declaration of Human Rights*". The Prime Minister claims that *"[...] all persons holding lower and middle management positions will not lose their jobs, and moreover, their employment relationship will not be terminated indefinitely, according to the act of appointment"*.

85. The Prime Minister claims that: "*The right acquired in the form claimed by the applicants is not related to Article 49 of the Constitution",* which guarantees the right to work. The Prime Minister also points out that*: [...] neither the Constitution nor international Conventions nor the jurisprudence of the Constitutional Court include the privilege of holding a certain management position forever*".

86. In this context, the Prime Minister emphasizes that: "*The employment relationship as defined in each act originates from the status of being a civil servant and not from the corresponding position in the public administration"* and that the same cannot be considered an acquired right. In this regard, the Prime Minister refers to the case law of the ECtHR (respectively, the cases of the ECtHR, *Marckx v. Belgium*, no. 6833/74, Judgment of 13 June 1976 and *X v. Germany* no. 7705/76, Decision on inadmissibility of 5 July 1977) and that of the Court (respectively, case of the Court KI189/19, with Applicant *Alban Miftaraj*, Resolution on inadmissibility of 17 December 2020), where it states that this jurisprudence does not: *"[...] affirm the "acquired right" to guarantee receiving of benefits from the work which is performed in the future"*. Respectively the Prime Minister considers that: *"[...] the legitimate expectations are addressed in cases of possession, assets and existing property. In no case is the position in the civil service related to the possession and existing property"*.

87. Furthermore, the Prime Minister adds that *"[...] articles 99 and 67 of the challenged law respect the acquired right, predictability and legitimate expectations as elements of legal certainty, due to the fact that even in cases where the employee is not a candidate successful for the designated management position, the public servant, for*

a certain period of time (4 years) is guaranteed the right to a salary in accordance with the position he enjoyed according to the law."

(v) Regarding the general interest

88. The Prime Minister emphasizes that *"[...] the general public interest determined by the public authority in this case includes but is not limited to the creation of an efficient, professional, comprehensive administration and on the basis of meritocracy to guarantee the provision of quality services towards the citizens as the common good of the whole society"*.

89. Likewise, the Prime Minister mentions that: "*Another essential aspect of the public interest is the opening of the possibility for the inclusion of women, non-majority communities and persons with disabilities in middle and lower management positions of the civil service as the content of the challenged law allows"*. In this context, he cites the statistics of the participation of women in high management positions which is 19 (nineteen) %, at the middle level 16 (sixteen) % and at the lower level 30 (thirty) %.

90. In the end, the Prime Minister concludes that the claims of the Applicants *"[...] are manifestly ill-founded and therefore the articles challenged by them are fully in accordance with the Constitution of the Republic of Kosovo and the international conventions included in it and which are respected by the Republic of Kosovo."*

Comments submitted by the Ombudsperson on 30 January 2023

91. On 30 January 2023, the Ombudsperson submitted his comments to the Applicants' allegations, where he initially emphasized that he had received a complaint from the Trade Union of Kosovo Administration, with the request that the challenged Law be sent to the Constitutional Court for compatibility assessment with the Constitution.

92. The Ombudsperson, among other things, claims that: *"[...] he noticed that the challenged law has taken into account most of the positions of the Constitutional Court presented by Judgment KO 203/19, but despite this fact, it is still necessary to clarify some issues that the Ombudsperson considers that the Constitutional Court should take into account during the assessment of the Referral KO 216/22."*

93. In relation to Article 9 of the challenged Law, the Ombudsperson states that: *"[...] he noticed that according to LPO, for specific positions of the public official, eligibility can be required as well as/or additional specific criteria (Article 9, paragraph 2)"*. In this context, the Ombudsperson claimed that he noted that by the challenged Law *"[...] it is not determined what positions are considered specific positions, for which the eligibility and additional specific criteria must be required",* therefore, the latter considers that*: "[...] the norm as defined in Article 9, paragraph 2, is unclear and can produce legal uncertainty [...] makes it impossible to predict the norm, these elements of the rule of law"*.

94. Regarding Article 12 of the challenged Law, the Ombudsperson, among other things, claims that this article *"[...] does not define the limitation of the competence of the Government towards the personnel of the institutions defined in Article 6 paragraph 4, but of the same law, which results in the violation of the principle of separation of power as well as the violation of the organizational independence of independent constitutional institutions*". Moreover, the Ombudsperson considers that: *"[...] the Assembly of the Republic of Kosovo in this case has failed to implement the referral*

of the Constitutional Court, defined in paragraph 115, as well as the findings defined in paragraphs 134 and 135 of the Judgment KO 203/19".

95. Regarding Article 46 of the challenged Law, the Ombudsperson considers that*: […] the transfer of lower and middle managers from career positions to mandate positions, not only undermines the stability of the civil service, but also the legitimate expectation, because the establishment of the employment relationship was realized through the rules (legislation) which guaranteed the duration of the employment relationship without a deadline".* In this context, the Ombudsperson emphasizes, among other things, as follows:

> *"The concept of legitimate and reasonable expectation in the protection of subjective rights is a comprehensive concept of interpretation in international case law. According to the ECtHR (see cases Kopecky v. Slovakia, judgment of 28 September 2004, paras. 45-52; Gratzinger and Gratzingerova v. Czech Republic (dec.), no. 39794198, para. 73, ECtHR 2002-VIJ), "the legitimate expectation" must be of a concrete nature and must be based on legal provisions and legal acts. In the present case, the legitimate expectation of civil servants of lower and middle management level, the exercise of the rights derived from the employment relationship, is based on the right acquired by the provisions of the Law on Civil Service, during the period that this law has been implemented."*

96. Moreover, the Ombudsperson, taking into account *"[…] the positions of the Court presented in paragraphs 177, 178 and 185 in Judgment KO171/18, emphasizes that in accordance with the situation highlighted above, even in the present case the difference in the treatment of civil servants of lower and middle management level with other management employees, as far as the issue of the duration of the employment relationship is concerned, results in the violation of Article 24 [Equality Before the Law] of the Constitution".*

97. Finally, the Ombudsperson requests the Court to (i) assess whether paragraph 2 of Article 9; (ii) paragraph 1 of Article 12; and (iii) Article 46 of the challenged Law, are in compliance with the Constitution, respectively, the separation of powers and the organizational independence of independent constitutional institutions, as well as articles 7 and 24 of the Constitution.

Comments submitted by the deputy Valon Ramadani, on behalf of the LVV parliamentary group, on 30 January 2023

98. On 30 January 2023, Mr. Valon Ramadani, deputy of the Assembly, submitted to the Court the comments of the LVV parliamentary group regarding the cases KO216/22 and KO220/22.

99. The Court will further summarize the comments of the Parliamentary Group of the LVV regarding the Applicants' allegations and the challenged Law, including those related to (i) the procedural part and the substantive part, namely (ii) Article 9 of the challenged Law; (ii) Article 12 of the challenged Law; (iii) Article 46 of the challenged Law; and (iv) paragraph 2 of Article 99 of the challenged Law.

(i) Regarding the allegations of procedural violations during the adoption of the challenged Law

100. Regarding the allegations of procedural violations during the review and adoption of the challenged Law, the LVV parliamentary group initially considers them as

manifestly ill-founded and based on the jurisprudence of the Court, they are not constitutional issues and thus cannot be the subject of review before it.

101. The Parliamentary Group of the LVV claims that Article 77 of the Constitution regulates the appointment of permanent, functional and ad hoc committees and in relation to these committees states the following: *"[...] they do not in any way regulate the constitutional procedure of adoption of laws in these committees. Thus, the procedure for reviewing and adopting draft laws in the bodies of the Assembly is a legal matter and is regulated by the Rules of Procedure of the Assembly*". In this context, they refer to Court case KO115/13, Resolution on Inadmissibility of 16 December 2013, where in paragraphs 37, 46 and 47, it is emphasized as follows:

> *"37. Article 113.5 of the Constitution only allows the Constitutional Court to decide the Constitutionality of "... any law or decision adopted by the Assembly ...". It does not authorize the Court to decide whether other internal acts or decisions of the Assembly are compatible with the Constitution.*
> *[...]*
> *46. The "decision" of the Presidency of the Assembly, is different than a decision of the Assembly requiring a majority vote of the deputies present and voting.*
> *47. In order for an act of the Assembly to be a decision, it has to go to the voting process in the Assembly as foreseen by Article 65.1 of the Constitution."*

102. The parliamentary group of the LVV also emphasizes that: "*The review and voting of the Draft Law No. 08/L-197 on Public Officials by the Assembly of the Republic of Kosovo has been fully in compliance with the Rules of Procedure of the Assembly, the clear definitions of the Rules for the functions of the committees, their role in reviewing draft laws and reports with amendments, deadlines within which they operate, as well as the effects of failure to act within the deadlines set either by the Rules or by the decision of the session on the shortening of those deadlines".*

103. In addition, the parliamentary group of the LVV clarifies the procedure for adopting draft laws when this is done within the framework of Article 123 (Avoidance of the Rules of Procedure) of the Rules of Procedure of the Assembly, in which case, states as follows: "*Based on the Rules of Procedure of the Assembly, the review of the draft law by permanent committees is foreseen within the established deadlines. The function of the committees of the Assembly is to help the Assembly. The review or not of a draft law in the permanent committees does not represent a condition for the ranking or not, for the review or not in the plenary session. The non-review of the draft law by any or all permanent committees within the set deadline cannot and does not block the review and adoption of the draft law in the plenary session."*

104. Likewise, the parliamentary group of the LVV in relation to the claim that the draft law was not reviewed by the Committee on Rights and Interests of Communities as a permanent committee of the Assembly, repeats the arguments that according to the practice of the Assembly, the latter was sent for review in this Committee within the deadline set in the relevant Decision to avoid the Rules of Procedure, and if after this deadline, the committee' recommendations have not been prepared, the draft law continues for consideration and adoption in the plenary session.

105. In the end, the parliamentary group of the LVV states that: "*The assumption that a draft law must necessarily be considered by each permanent committee without a set deadline, would make impossible the main function of the Assembly, such as that of adopting laws, nor such a thing is not a constitutional requirement".*

(ii) Regarding the Applicants' allegations of Article 9 of the challenged Law

106. In relation to the Applicants' allegations of violation of the principle of legal certainty through the obligation for the eligibility criterion, the LVV parliamentary group considers that this claim is unfounded. The latter emphasize in this context that: *"[...] the principle of legal certainty does not have an absolute character and, in particular, it must be balanced with the general public interest: "... the principle of legal certainty does not guarantee any kind of expectation for non-change of a favorable legal situation. This principle cannot prevail in every case. This means that, if the case arises that a different legal regulation of a relationship is directly affected by an important public interest, with all its essential elements, this interest may take precedence over the principle of legal certainty."*

107. The parliamentary group of the LVV states that: "*Even though, according to the evaluation of the Venice Commission, predictability is necessary in criminal legislation and has relatively less weight in the administrative field, as is the case with the challenged Law, there is no doubt that predictability even in the present case has been fulfilled".* This parliamentary group also claims that*: "[...] the general public interest is of primary importance. This is because the eligibility criteria aim to fill specific positions in the public sector with individuals who are eligible in terms of integrity in relation to the relevant position, duties and responsibilities for specific positions".* In this regard, the parliamentary group of the LVV points out that*: "[...] the non-use of eligibility criteria can cause a risk for important state interests. Precisely in such cases, the "preventive approach" has been assessed by the Venice Commission as necessary for the state and public interest".*

108. Whereas, as regards the claim of not regulating the eligibility criterion through the challenged Law but through a by a sub-legal act, the parliamentary group of the LVV refers to the practice of other countries, namely the USA, which in this case has defined the criterion of eligibility by a sub-legal act, specifically by Code of Federal Regulations, section 731.202 (b) [Criteria for making suitability determinations, specific factors.] Moreover, they emphasize that the eligibility criteria provided by this by-law are determined exclusively by the sub-legal act, and are not mentioned in advance anywhere in the law that serves as the basis for the issuance of this act.

(iii) Regarding the Applicants' allegations of Article 12 of the challenged Law

109. Regarding the Applicants' allegations that Article 12 of the challenged Law is not compatible with the principle of separation of powers, defined by Article 4 of the Constitution, the parliamentary group of the LVV states that the Applicants: *"[...] do not offer any argument as to why this article is contrary to article 4 of the Constitution"* and he also adds that*: "According to the practice of the Constitutional Court of the Republic of Kosovo, raising the claim in itself is not sufficient to establish a violation of the constitutional articles*".

110. In this context, the LVV parliamentary group emphasizes that: *"[...] chapter II of the Contested Law defines how and by whom the administration of public officials is carried out, while its article 12 defines the Government as the main body for adoption and coordination of general state policies for the employment of public officials. This determination at no time violates Article 4 of the Constitution - because it should not be read separately from other articles of the challenged Law [...]".* Likewise, the parliamentary group of the LVV in this regard cites the articles of the challenged Law that contain the specific authorizations for independent constitutional institutions, which have the prerogative of issuing special acts stemming from this law.

(iv) Regarding the Applicants' allegations of Article 46 of the challenged Law

111. The claims of the Applicants that Article 46 of the challenged Law is contrary to Article 120 of the SAA and the provisions of the Constitution, the parliamentary group of the LVV considers them as manifestly ill-founded because the Court based on its constitutional jurisdiction does not carry out the constitutional control of the law with international agreements, and neither are the latter subject to constitutional control.

112. In the capacity of the opposing party and in respect of the Court, the LVV parliamentary group argues before the Court that the challenged Law is in compliance with Article 120 of the SAA, for the reason that *" [...] the employment relationship , including recruitment, is based on the principle of merit, equal opportunities, professionalism and integrity, non-discrimination and fair and equal representation of gender and communities, through an open and competitive procedure as defined in articles 7 and 8 of the challenged Law"*. Among other things, the LVV parliamentary group emphasizes that the aforementioned article of the SAA requires that: *"[...] cooperation will focus, among other things, on career development in the public service, which is guaranteed through the chalenged Law, which enables every employee to advance in position through open and public vacancies"*.

113. In this regard, the LVV parliamentary group emphasizes that: *"[...] the SAA's request that the Republic of Kosovo ensure career development does not mean that careers can only be developed through one system"*. The same in this respect, claim that career development is achieved with any system currently applicable by the European Union states, which can be summarized in position system, career system and dual systems.

114. The parliamentary group of the LVV also claims that the Applicants have not supported their claims regarding the violation of the principles of SIGMA and the best practices of the member states of the European Union, because the correct reference is missing in these principles, and states that: *"[..] to the knowledge of the Constitutional Court that the principles related to the field of public administration of this professional institution that cooperates with the EU are developing and changing and currently were published "Draft revised Principles of Public Administration, 16 January 2023", for which the Republic of Kosovo Government has been invited to provide comments"*.

115. In this context, they also add that: *"[...] the regulation of the scope of civil servants of the institutions of the member states does not have a homogeneous regulation*", which, according to them, is confirmed by the Legal Opinion on Compatibility with the *acquis* of the EU on the Draft Law on Public Officials, with no. ref. 608-2624-2-2022, 18 November 2022.

116. The parliamentary group of the LVV finally emphasizes that in the spirit of transparency, the drafter of the challenged Law has consulted with the interested parties and that he has addressed a large number of comments, especially those of SIGMA. Regarding these comments, they emphasize that: "*Out of approximately ninety-three (93) SIGMA comments, less than fourteen (14) comments have not been accepted and addressed, that is, less than 15% of them"*.

(v) Regarding the Applicants' allegations of Article 99 of the challenged Law

117. In relation to the allegations of the Applicants that paragraph 2 of Article 99 of the challenged Law contradicts Articles 7, 22, 46 and 49 of the Constitution, the LVV parliamentary group emphasizes that the values protected by these constitutional

provisions *"[...] not that they are not affected in any case and under any circumstances by the challenged law, but they are raised and valued".*

118. Regarding the claim for collective dismissal of 1,600 (one thousand six hundred) civil servants, the LVV parliamentary group emphasizes the following: *"[...] all persons holding lower and medium-level management positions will not lose their jobs and, moreover, their employment relationship will not be terminated indefinitely, according to the appointment act. Thus, according to Article 99, paragraph 4, all these persons will remain part of the civil service, subject to the rules provided by this law. The announcement of these positions is a reflection of the intention of the legislator that the lower and middle management positions are positions with a certain time limit, not as a limitation but as an expansion of opportunities.*" Moreover, the same claim that the announcement of these competitions does not affect the employment relationship of the current public officials that originates from the status of being a civil servant, therefore, the current position should not be equated with the status of a civil servant because the civil service laws do not regulate the position but the employment relationship of the civil servant.

119. In this regard, the LVV parliamentary group argues as follows: "*As long as the permanent status of the civil servant, namely the employment relationship, is not affected, the very concept of the position in the civil service does not have any elements of acquired rights. Positions in the civil service depend on the evolution and continuous changes of the development of the institutions, they are not static and as such they cannot create any expectation outside of that regulated by law for the holders."*

120. The parliamentary group of the LVV also asserts that: "*The right acquired in the form claimed by the Applicants is not related to Article 49 of the Constitution*", which guarantees the right to work. The latter also emphasize that: [...] *neither the Constitution nor the international Conventions nor the jurisprudence of the Constitutional Court include the privilege to hold a certain management position forever".*

121. In this context, the LVV parliamentary group points out that: *"The employment relationship as defined in each act originates from the status of being a civil servant and not from the corresponding position in the public administration*" and that the latter cannot be considered acquired right. For this, refers to the case aw of the ECtHR (respectively, the cases of the ECtHR, *Marckx v. Belgium* and *X v. Germany*, cases cited above) as well as that of the Court (see Court case KI189/19, case cited above), emphasizing that this jurisprudence does not: *"[...] affirm the "acquired right" to guarantee the benefit of the work performed in the future*". Respectively, the LVV parliamentary group considers that: *"[...] legitimate expectations are dealt with in cases of possession, assets and existing property. In no case is the position in the civil service related to the possession and existing property".*

122. Also, the parliamentary group of the LVV emphasizes that the challenged Law reflects the general public interest which, according to them, consists but is not limited to the creation of an efficient, professional, comprehensive administration and on the basis of meritocracy to guarantee the provision of quality services to citizens as the common good of the whole society, as well as enabling the inclusion of women, non-majority communities and persons with disabilities in middle and lower management positions of the civil service.

123. In the end, the parliamentary group of the LVV concludes that: *"[...] the Applicants' allegations are manifestly ill-founded and therefore the challenged articles by them*

are fully in accordance with the Constitution of the Republic of Kosovo and international conventions included in it and respected by the Republic of Kosovo."

Comments submitted by ERO on 19 January 2023

124. On 19 January 2023, ERO submitted to the Court comments regarding the challenged Law, where it initially emphasized that it is an independent agency of the Republic of Kosovo, established by Law No. 05/L-084 for the Energy Regulator (hereinafter: ERO Law) in accordance with paragraph 5 of Article 119 [Economic Relations] and Article 142 [Independent Agencies] of the Constitution.

125. In the following, the Court will summarize the comments of the ERO regarding (i) the objections to the challenged Law; (ii) the functional, organizational and financial independence of ERO according to international legislation and the requirements of the *Acquis* for the energy sector; (iii) legislative provisions about the financing of ERO – "*Dedicated Revenues*"; (iv) other laws that interfere with the "*competence*" of ERO; (v) requirements of international organizations; and (vi) ERO "*ability*" to respond to the requirements of the Energy *Acquis*.

(i) Objections regarding the challenged Law

126. ERO considers that, as an independent agency established by law based on Article 142 of the Constitution, it should not be included in the definition of sub-paragraph 2, paragraph 1 of Article 4 of the challenged Law, which defines that: *"[...] state administration institution - means the Office of Prime Minister, Ministry, an Executive Agency, Regulatory Agency including their local branches*". In this regard, ERO emphasizes that: *"[...] it is an independent agency established on the basis of Article 142 of the Constitution of the Republic of Kosovo, and should have special treatment in the definition as another state institution, which enjoys complete functional and organizational independence".*

127. Further, ERO states that *"[...] article 5 of the challenged law, which deals with the categories of public officials, ERO staff with the fact of being included in civil employee, this constitutes an interference with the professional staff as if we refer to in the Energy Regulatory Law no. 03/L-185 of 2010 decisively in Article 7 it was defined that: "No member of the Board or staff of the Energy Regulatory Office shall have the status of a civil servant". While the method of employment at that time was regulated according to the Law on Labor, and was also implemented with long-term contracts for ERO personnel."*

128. ERO also opposes paragraph 14 of Article 39 of the challenged Law, which defines that "*The Government shall, at the proposal of the ministry responsible for public administration, through a bylaw, adopt the procedure for the recruitment procedure and evaluation of candidates according to this Article*", because the latter considers that: *"[...] complete independence must be allowed in the case of ERO, taking into account the constitutional obligations and the relevant legislation, so that the competition and evaluation procedures are regulated by the special one of ERO as an institution independent".*

129. Likewise, ERO considers that Article 46 of the challenged Law should not apply in the case of ERO on the grounds that *"[...] the relevant positions in the regulator are specific positions (key expert) and are regulated by indefinite term according to the Law on Labor in force, and such interference would be in complete contradiction with the legal norms and the rights acquired through a law which was in force at the time of the election. Likewise, Article 47 of the challenged Law in the case of ERO,*

paragraph 12 should not be applied, but to be regulated according to par. 13 where the ERO, with a special approved act, also regulates the appointment to senior management positions".

130. Regarding Article 99 of the challenged Law, ERO considers that: *"[...] this provision seriously infringes the rights of employees, since they have already acquired their rights with indefinite long-term contracts according to the Law on Labor, and through this provision, the fundamental rights and freedoms defined by the Constitution are violated, and the rights acquired by a law that was in force at the time of employment, cannot be taken by a later law, since it violates rights guaranteed by the Constitution and international norms*". The latter point out that this provision cannot be applied: *"[...] assessment in independent institutions and those established by law such as ERO, as it violates the functional and organizational independence of ERO, guaranteed by the Constitution and determined by the Law on the Energy Regulator [...]".*

(ii) Regarding the functional, organizational and financial independence of ERO according to international legislation and the requirements of the Acquis for energy

131. ERO, among other things, claims that: "*The Law on Public Officials suspiciously revokes the independent status of ERO, leaving room for misinterpretations that tend to classify ERO as a "regulatory agency", ignoring thus the constitutional category of the independent agency established by Law",* and that according to the challenged Law*, "[...] ERO is classified as an administrative organization, which is not in accordance with the nature of its statutory function according to the domestic law and European Commission*", respectively, paragraph 4 of Article 35 of Directive 2009/72/EC of 13 July 2009 on common rules for the internal electricity market and paragraph 4 of Article 39 of Directive 2009/73/EC of 13 July 2009 on common rules for the internal market of natural gas.

132. Furthermore, ERO emphasizes that: "*All laws approved by the Assembly of the Republic of Kosovo for the energy regulator, in 2004 (No. 2004/9), 2010 (No. 03/L-185) and 2016 (No. 05/L-084) which regulated the scope of ERO provided for the functional, organizational and financial independence of the Regulator through primary legislation*", as well as in accordance with the requirements of the *Acquis*, in particular the Internal Market Directive.

133. In conclusion, ERO concludes that Kosovo's energy sector laws and European Union Directives require that Kosovo maintain the financial and operational independence of ERO.

(iii) Regarding the legislative provisions about the financing of ERO - "dedicated revenues"

134. ERO claims that as an independent agency, in the sense of the Constitution, has the right to earn "*dedicated income*" from a specified source, this definition derived from paragraph 1 of Article 1 of Law No. 03/L- 048 on Public Financial Management and Accountability, amended and supplemented, which defines them as follows: *"[...] public money that is derived from a particular revenue source and that is required by a law or UNMIK regulation to be appropriated to a specific budget organization and/or for a specifically identified purpose; provided, however, that "extraordinary revenue" shall not constitute dedicated revenue".*

135. ERO considers that: "*The above legal provisions prove beyond any doubt that ERO, alone, has the authority and the right to develop its own budget, using this forecast*

of required expenses to determine the annual taxes that must be to be paid by licensed companies [...]", since*: "[...] The purpose of the law here is for ERO to be released from the salary restrictions that apply to the public sector, which works for the Government and , in doing so, to allow it to recruit and retain qualified staff".*

(iv) Regarding other laws that interfere with the ability of ERO

136. ERO alleges that: (i) Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies (hereinafter: LOFSAIA); (ii) Law No. 08/L-196 on Salaries in the Public Sector (hereinafter: Law on Salaries), which qualify the positions in ERO in accordance with the organization foreseen within the organization and operation of the state administration and independent agencies; as well as (iii) the challenged Law, which qualifies ERO staff as public officials, namely, civil servants; they do not consider the importance and weight that ERO should have and that according to European Union directives special treatment is required for energy regulators, therefore, according to it, they undermine ERO's ability to implement the tasks required by the applicable laws of energy sector.

(v) Regarding the requirements of international organizations

137. Regarding the requirements of international organizations for energy regulatory authorities, ERO cites the Directive (EU 2019/944) of the European Parliament on the Organization of the Internal Market, which requires member states to ensure that the regulatory authority is also independent, and to have "[...] *adequate human and financial resources for the performance of its obligations*". In this context, ERO emphasizes that: "*The Secretariat of the Energy Community, starting from 2014, has assessed the (non)compliance of Kosovo with this aspect [...]"* and that in order to achieve this, it is necessary that *"[...] the salaries of the staff members must be compatible with the salary levels of the regulated industry, in order to avoid "brain drain" to industry and enable ERO to attract and retain qualified and sufficient human resources to carry out its responsibility".*

138. In addition, ERO also mentions the findings of the progress reports for Kosovo, published by the Directorate of the European Commission for Enlargement of the years 2014, 2015, 2016, 2018, 2019, 2020, where the necessity for the financial independence of ERO I constantly emphasized.

139. ERO also emphasizes point 2.2. of the Directive on the Independence of National Regulatory Authorities, where the Secretariat of the Energy Community defines *"It should be the right of the board to freely decide on the employment and dismissal of staff, the number of staff necessary for the performance of regulatory tasks*" and that "*The salaries of the staff of the Regulatory Authorities should be competitive with that of the regulated industry*" and that the same should be set by the Board freely.

140. ERO finally cites the OECD/SIGMA Report, published in 2021 on competitiveness in South-Eastern Europe, where it is emphasized that: "*ERO is doing everything within its capabilities to recruit and retain qualified staff, therefore any further reduction in wages will strip it of qualified staff*".

(vi) Regarding the ability of ERO to respond to the requirements of the Energy Acquis

141. Since ERO in this part of its comments mentions the communication with the Secretariat of the Energy Community, headquartered in Vienna, Austria, respectively, it reflects the letter of this Secretariat addressed to ERO on 22 December 2022, as well

as with the Regulatory Board of the Community of Energy, with headquarters in Skopje, North Macedonia, namely, the letter of this board addressed to ERO on 21 December 2022, which letters it submitted to the Court together with comments, therefore, in the following the Court will refer to the content of the latter.

142. In the letter of 22 December 2022, the Secretariat of the Energy Community states, among other things, that it has been notified of new legal initiatives in the field of public officials and salaries in the public sector, and that according to them: "*The proposed changes will bring a uniform approach to determining remuneration based on the principle of applying special coefficients for a basic salary. The aforementioned coefficients would be determined by the Law on the Annual Budget, which in turn is drafted and proposed by the Government on an annual basis. Our calculations identify that its implementation would result in the reduction of individual salaries of ERO staff on average from 40% to 65% depending on the position".*

143. Further, in the same letter, the Secretariat of the Energy Community states that: *"[...] the proposed changes in the legislation have the potential to undermine the operational capability of ERO and its ability to support professional staff, which is key to performing its tasks".*

144. In this context, the Secretariat of the Energy Community requests that: *"[...] the proposed changes in the Law on Salaries in the Public Sector and the Law on Public Officials be adapted to the considerations that should be given to the financial independence of ERO - in no way that the compensation of the Board and its personnel is not unfairly affected. This can be achieved either by: a) by clearly differentiating that the salaries of ERO Board members and staff are determined in accordance with the effective provisions of the Law on the Energy Regulator or b) the direct exemption of ERO from the changes of proposed legislation".*

145. On the other hand, in the letter of the Regulatory Board of the Energy Community, the reduction of the salaries of ERO employees from 40% to 65% is again mentioned, as well as the requirements of the EU legislation and those derived from the Law on ERO regarding operational and financial independence of ERO. The same, in this letter, underline *"[...] the need to refrain from the negative influence on the institutional capacities of the ERO, namely, the levels of remuneration of the Board and the staff as otherwise the independence in decision-making will be endangered as well as [ERO's] ability to retain qualified personnel*".

Legal opinion of the EU Office in Kosovo on the Draft Law on Public Officials, of 14 December 2022, submitted by the Applicants in case KO216/22

146. The Court will further reflect the findings of the Legislative Review Mechanism within the European Union Office in Kosovo (hereinafter: the EU Office in Kosovo) for the Draft Law on Public Officials. As long as the relevant findings refer to a larger number of provisions of the challenged Law, only the relevant comments related to the challenged provisions thereof by the Applicants will be summarized in the following. The EU Office in its opinion emphasized that it was based on the contributions of the European Commission's Department for Neighborhood and Enlargement (hereinafter: DG NEAR, EU Office, EU Special Representative, SIGMA- s and other EU-funded experts). Also, among other things, the latter noted that: "*The draft law is still problematic from the point of view of ensuring a civil service based on merit, which is capable of attracting talented professionals and maintaining qualified personnel. The draft law adds excessive discretion to the recruitment, transfer and*

promotion of civil servants, making the civil service vulnerable to politicization and corruption."

147. Regarding Article 46 of the challenged Law, the EU Office in Kosovo, among other things, underlined that: "*No administration terminates the employment of a head of a unit with good performance just because it needs to offer an opportunity to others, potentially better candidates. The introduction of mandates will not address any of the key problems faced by the Kosovo administration, while it will create instability and uncertainty. This limits the attractiveness of management positions in the civil service for external candidates. Participating in multiple recruitment procedures will also place an additional burden on managers. Appointments of Acting officials will become the norm as recruitment can only be announced when a vacancy has opened. We strongly recommend against launching such an experiment from Kosovo".*

148. In relation to Article 99 of the challenged Law, which provides for the initiation of recruitment procedures for all middle and lower managers in the civil service after one year from the entry into force of the law, the EU Office in Kosovo, among other things, emphasized that: "*Casting doubts on the competences of all current managers and forcing them to undergo a new recruitment procedure sends a harmful signal to all civil servants. This unjustified step will create chaos in the administration, moreover this state of flux will be prolonged, since it is not possible to organize hundreds of recruitments during a period of several days or weeks (there are over two thousand positions belonging to the lower and middle management category in Kosovo). Also, the question remains, if everyone is dismissed within a year, who will participate in the admission committees if the majority of managers participate in these competitions? Ultimately, this precedent could easily pave the way for identical dismissals of officials from managerial positions when whatever future government takes power*." Also, the latter recommended not to proceed with this initiative in the first place due to the high risks in ensuring the sustainability of human resources management in the public administration.

149. Regarding Article 98 of the challenged Law, which defines the period of 18 (eighteen) months when a special procedure will be established for the recruitment, evaluation and appointment of candidates, through a sub-legal act, adopted by the Government, the EU Office in Kosovo, assessed that: "*There is an extremely high risk that throughout this period there will be no control over their implementation with standards based on merit and competition that is difficult to guarantee, there is no assurance of the quality of recruitment processes and consequently there is a high risk of politicization".*

150. In the end, the EU Office in Kosovo, among other things, recommended that: "*The only acceptable solution would be to postpone the entry into force of the relevant articles of the LPO for a limited time necessary for the preparation of legal and technical infrastructure for centralized tenders (in practice much shorter than 18 months) and the use, until then, of the provisions of the LPO that is currently in force."*

SIGMA Legal Opinion on the Draft Law on Public Officials, of August 2022, submitted by the Applicants KO216/22

151. In the following, the Court will reflect SIGMA's findings on the Draft Law on Public Officials. While the relevant findings refer to a larger number of provisions of the challenged Law, only the relevant comments related to its challenged provisions by the Applicants will be summarized below.

152. Initially, regarding the principle of separation of powers, SIGMA in its opinion stated that the Draft Law on Public Officials in twenty-two cases has determined that the competent body of the independent institution is authorized to approve a special act for further regulation of issues instead of the Government, even though, according to them, some questions remain during the implementation of Article 19 of this draft law regarding the scope of the Human Resources Management System (hereinafter: HRMS). Also, in the context of the independence of independent institutions, SIGMA emphasizes the following: *"[...] the definition of independent constitutional institution (means the institution specifically defined in chapters IV, V, VII, VIII and XII of the Constitution of the Republic of Kosovo) given in Article 4.1.4 remains unclear, as it can include or only the institutions listed by name in these chapters of the Constitution (i.e.: the Assembly, the President, the institutions of the justice system, the Constitutional Court, the Ombudsperson, the Auditor General, the Central Election Commission, the Bank of Kosovo and the Independent Media Commission ("as specifically defined institutions") or even all independent agencies established by the Assembly under Article 142 of Constitution. For this reason and to avoid misinterpretations, the nominative list of institutions in the LPO would be more appropriate here".*

153. SIGMA also in relation to the scope of the challenged Law, specifically for the five institutions which can be governed by a separate law, states that:

> *"4. [...] The scope of the special laws that can be applied to civil servants with a special status seems quite broad and although they must be in accordance with the "principles defined in this law", in practice almost all "elements of the employment relationship" can be regulated differently: special or additional conditions for recruitment; specific rights or obligations other than those provided by this law; special rules for career development, according to the rating system; professional development and training needs; transfer and systematization of employees and even discipline. (Article 6.2)*
> *5. What is more unclear, and may be due to a translation error, is the provision of Article 3.1., which says that the LPO does not apply to elected officials (understandable), members of the government and their deputies (understandable), functionaries appointed by the Assembly or the President, the Government, personalities or members, collegial governing bodies of institutions and independent agencies (understandable) but also - article 3.1.4 - public functionaries with a special status, according to paragraph 4 of Article 5 in this Law. As indicated in point 3 above, according to the LPO project, this category includes employees of many institutions, including three ministries. If the LPO is not generally applied to them (Article 3.1.4) why would they be called civil servants with a special status?"*

154. Regarding the requirement of "*eligibility*" as a requirement for specific positions in the civil service, SIGMA emphasized that such legal requirement is "*unclear*".

155. Furthermore, SIGMA, in its opinion regarding the transition from the career system to the post-system, considered that: "*The introduction of the mandate in all management positions and the organization of open competitions for candidates from outside the civil service - will make the system closer to "position-based" than "career-based". SIGMA has been in favor of opening the system, given the size of the public administration of Kosovo, however, it has recommended a comprehensive review of the opening of positions (should they all be equally open to external candidates?); giving priority to internal candidates (with transfers and horizontal promotion to external candidates [...]"* SIGMA also emphasized the will of the Government to improve the performance of civil servants through this reform, but

according to them, the four-year perspective in a position does not ensure better performance, especially in the second term, when the latter cannot be extended and that instead of better performance, ministers will take power. Furthermore, SIGMA values this competence to decide, as *"[...] somewhat arbitrarily, for the professional life of the civil servant"*.

156. Furthermore, SIGMA, in relation to articles 46, 67 and 99 of the challenged Law, which in the version of the Draft Law on Public Officials were numbered as articles 46, 66 and 98, underlined that: "*Even if the intention of the drafters was to facilitate promotion and ensure that the best candidates are given a chance to play a role in the administration, the result may be temporary and bring ill effects. In fact, the introduction of the waiting list/surplus list - article 66, can become - wittingly or unwittingly - a way of rejecting/getting rid of experienced civil servants. There are many ways to be placed on the waiting list (not winning the competition organized for one's position - article 98.6, the end of the mandate in the management position - article 46.4, article 49.7, but also 66.1 and 98.6) but there are no mechanisms that allow the institution responsible for the "systematization" of civil servants to implement it effectively. And after nine months (unclear whether you are paid or not, as this will be regulated by the Government by a sub-legal act), they are released from civil service. It is very likely that a number of good and experienced managers (who are simply not selected in a competition) will be placed on the waiting list, especially after the first wave of competitions for the lower and middle management level (organized one year after the entry into force of the LPO). Given the importance of this mechanism - both in terms of valuable resources that must be adequately used within the administration and in terms of the consequences of not being appointed within nine months (release) it is of great importance that clear accountability be established in law for waiting list and effective mechanisms for appointing these civil servants. The responsible institution (MIA?) should have the power to stop any recruitment procedure and directly appoint a person from the waiting list even without the consent of the institution where the competition was opened."*

157. SIGMA, regarding the reform in the public administration where positions with an indefinite term are converted into a fixed term, respectively, a four-year term, has taken a position against it. In this regard, SIGMA specified that: "*Mandates in office for civil servants in management positions are not common in the administrations of EU member states and in an articular way they are not seen at the lower and middle management level."* For this reform, SIGMA, among other things, stated that: "*The introduction of transition and open competition for the administration under construction (with limited rule of law, limited accountability mechanisms and limited experience in ensuring integrity and conflict management in interest can easily lead to the politicization of the public administration up to the level of unit heads. Moreover, the administration becomes more sensitive to the capture of the state by its own interests, because different groups will be tempted to place their own people within the system. A career-based system, where reaching decision-making positions takes more time, is usually less prone to this risk. Finally, with the introduction of transition, it is less likely that the civil service will operate with autonomy and impartiality after taking illegal orders is encouraged (especially if a politician is guided by party interests instead of the rule of law)"*. Likewise, SIGMA, regarding this article, considered that the provision is unclear, stressing that*: "[...] who will make all these appointments for civil servants? The responsible unit (MIA) or the head of the institution/general secretary? It is unclear and can lead to disputes of competence."*

158. In relation to the transitional provisions of the Draft Law on Public Officials, namely, Article 99 of the challenged Law, SIGMA considered that the release of middle and

lower management positions after one year of the entry into force of the law in order to organize competitions for filling the positions in question: *"[...] includes a year of uncertainty for all civil servants in management positions, it is evidence of distrust towards previous competitions (need to be reconfirmed), it will create a massive burden for the institutions responsible for the new competitions (more that will be organized at the same time. Article 98.5 provides for an interesting regulation of the gradual reduction of compensation for those current managers who will not be appointed in a new procedure and moved to a professional category. This has three comments: it should be clear whether the manager should take part in the new competition or benefit from this scheme; shouldn't there be a threshold above which the person should perform in a competition (if one gets 70% of the points they should compensated or not?) and finally, if the difference is calculated between the basic salaries or the basic salary in a management position and the full salary in the professional category. [...]"*

159. SIGMA also mentions in its opinion that 43 (forty-three) issues the Government should regulate with sub-legal acts, as well as 22 (twenty-two) issues with a special sub-legal act, dopted by the constitutional institutions. According to SIGMA, the fact that the law enters into force and does not wait at least 6 (six) months to give the opportunity to the Government and independent institutions to prepare sub-legal acts, so that when the law enters into force it can be implemented immediately, "*does not represent good legislative practice*". The latter qualifies the practice of implementing the sub-legal acs of the previous law, provided that they are not in conflict with the new law (the chalenged Law) because it is not clear what legal provisions will be applied until the adoption of the new sub-legal acts.

Responses received from the Venice Commission Forum

160. As reflected in the procedure before the Court, namely in its paragraphs 19 and 20, the latter addressed some specific questions to the Forum of the Venice Commission. The Court accepted a total of 16 (sixteen) answers, the content and summary of which will be reflected below.

(i) Contribution submitted by the Constitutional Court of Liechtenstein

161. The Constitutional Court of Liechtenstein in its response, among other things, emphasized that their legal framework for the civil service provides for the criterion of "*eligibility*" for all positions, respectively, cited the specific provision in their Law on the Employment Relationship of Civil Servants, which states that: "*The conditions of employment are: professional and personal eligibility*". The latter informed the Court that while professional eligibility can be equated primarily with education and experience, personal eligibility allows discretion on the part of the employer, and that there is no further definition of *eligibility*" in the law. Further, the Constitutional Court of Liechtenstein informed the Court that the employment relationship is usually established for an indefinite period and that this principle excludes interns as well as project-based employment. The latter pointed out that there is only one position for which the law provides for a mandate with a fixed period, with the right of re-election, and that is the Head of the Data Protection Unit. If he is not re-elected, he loses his position in the civil service. Regarding the question of the Court whether there has been a reform in the public administration where positions with an indefinite term are transformed into a fixed term, the answer of the Constitutional Court of Liechtenstein is negative.

(ii) Contribution submitted by the Constitutional Court of Bosnia and Herzegovina

162. The Constitutional Court of Bosnia and Herzegovina in its response emphasized that their Law on Civil Service defines the specific academic and professional requirements for the position to be filled and the general requirements for appointment as a civil servant (citizenship, age, university degree, etc.). According to the latter, there is no other criteria like "*eligibility*". Further, the Constitutional Court of Bosnia and Herzegovina informed the Court that according to their law on the civil service, managerial civil servants (*Rukovodeći državni službenici*) are divided into: 1) Senior Executive Director (Secretary) and Senior Executive Director with special duties (*Sekretar sa posebnim zadatkom*), and 2) Assistant Minister, Assistant Director and Chief Inspector, these positions have "*permanent mandate*", except for the position of "*senior executive manager with special duties*", which is appointed by the institution for a certain period of time, which should not exceed five (5) years and that the maximum duration of an appointment in the same position is ten (10) years. Otherwise, the civil servant has the right to a permanent mandate until the conditions for retirement are met, unless otherwise provided by law.

(iii) Contribution submitted by the Constitutional Court of North Macedonia

163. The Constitutional Court of North Macedonia in its response emphasized that their Law on Administrative Officials defines the conditions for employment in the civil service, however, such a requirement as "*eligibility*" is not required. The law in question defines the general conditions for employment such as: (i) Macedonian citizenship; (ii) active use of the Macedonian language; (iii) the age of majority; (iv) general good health; and (v) not have a prohibition to exercise a profession, business or duty by a court decision in force, as well as the special conditions for the relevant job position such as: (i) professional qualifications; (ii) work experience, (iii) general competencies defined in the Framework of general competencies; and (iv) special competencies. Further, the Constitutional Court of North Macedonia informed the Court that civil servants are employed with a permanent mandate, i.e. for an indefinite period, with the exception of "*cabinet officials*", who perform some special tasks in the cabinet of the President of the Republic, in the cabinet of the President of the Assembly, the Prime Minister and in the cabinets of the ministers. According to their law, cabinet officials are employed in these positions for the duration of the mandate of the official in whose cabinet they are engaged, however, after the end of the mandate they do not lose their jobs, but are assigned to a position corresponding to the position that they had before or can return to the institution from which they came.

164. As for the Court's question as to whether there has been a reform in the public administration where positions with an indefinite term are transformed into a fixed term, the Constitutional Court of North Macedonia emphasized that despite the fact that this country is undergoing continuous reforms, so far none of the reform measures did not affect the rights and duties of current employees in the civil service, as their rights and duties derived from work were considered "*acquired rights*". In some cases where this principle has not been respected, the Constitutional Court in question has intervened by annulling the provisions of the laws since no transition should jeopardize legal security and the already acquired rights and interests to which they are related. Such an example of its case law is the Decision U. no. 74/2014 of 29 June 2016, by which the Constitutional Court of North Macedonia repealed some provisions of the Law on Administrative Officials that provided for the obligation for administrative officials already employed to provide proof of knowledge of foreign languages and computer skills, and that in case of failure, the law provided that they would be assigned to a lower position or their salary would be reduced. The

Constitutional Court of North Macedonia in this case noted that: *"[...] the challenged provision creates a legal situation of possible loss of the right acquired from employment (acquired job position, title and salary), which calls into question the exercise of the legitimate expectations of the already employed administrative officials that they had at the time when they were employed with other terms and conditions, before the adoption of the Law on Administrative Officials*". Also, in the same decision, this Court found a violation of the principle of prohibition of the retroactive power of the relevant law, stating that: "*With the retroactive effect of the law, the employed administrative officials, regardless of their previously acquired titles and expertise in their professional work, carried out during the years of work in institutions, are placed in a situation of uncertainty for the further enjoyment of their labor rights, legally acquired, due to their involvement in the regime of the new law that provides new special conditions, which did not exist in the previous legislation. The adverse effect of the retroactive validity of the Law is seen in the possibility of losing the rights already acquired by work, as a consequence of not meeting the specific requirements of the new law. Thus, the new special conditions that the law provides as special conditions for employment in the civil service, in the sense of the regulated legislation, become conditions for maintaining the acquired position, title and salary, which threatens the legal certainty and legitimate expectations of employees in terms of their acquired rights"*. It has taken a similar position in cases where a new regime for calculating salaries in the public sector is established. Here the rule is applied that with the new way of determining and calculating wages, the rights of the already employed for salary reduction should not be violated, so the new legal regime can only be applied for the future for new employees. The Constitutional Court of North Macedonia in its response also informed the Court that although the principle of protection of legitimate expectations and acquired rights is not expressly mentioned in their Constitution, in their jurisprudence they are interpreted as elements of the principle of the rule of law, which is a fundamental value of the constitutional order of the Republic of North Macedonia.

(iv) Contribution submitted by the Constitutional Court of Slovakia

165. The Constitutional Court of Slovakia in its response emphasized that their Law on Civil Service does not provide for any selection criteria similar to the criterion of "*eligibility*", while the Law on Civil Service of Professional Soldiers as well as the Law on Civil Service of Policemen, Service Members Slovak Information, members of the Prison Service and Railway Police Officers require that candidates for the civil service be *"reliable",* which criterion is defined in detail in both laws. Furthermore, the Constitutional Court of Slovakia informed the Court that civil servants are mainly permanent employees, and that fixed-term contracts are used for civil servants in management and advisory positions or to replace civil servants who are temporarily absent.

166. Regarding the Court's question as to whether there has been a reform in the public administration where positions with an indefinite term are transformed into a fixed term, the Constitutional Court of Slovakia emphasized that before 2001, the status of public servants was regulated by the Labor Code similar to the status of private servants, while, since 2001, the Civil Service Law changed the status of public servants, who (with some exceptions) became civil servants either with long-term contracts or in a training period depending on the number of years they had served as a public servant. Both groups of newly appointed civil servants had to pass the civil service qualification examination to become permanent servants. Failure to pass that exam within a certain time frame would result in the termination of their civil service employment contracts. The provisions of the law in question regarding the

aforementioned obligation to take the civil service qualification exam were challenged before the Constitutional Court in 2003 by the then General Prosecutor, who argued, *inter alia*, that the challenged legislation contradicted the right to freely choose the profession. In this case, the Court decided that the access to some professions may be subject to the restrictions established by law, therefore it allowed the contested obligation. Also, this court emphasized that deputies enjoyed a wide margin of appreciation when regulating access to public positions, and that the civil service was created to implement public policies, so access to the civil service was regulated in accordance with the state's interest in a effective public administration. Consequently, the statutory provisions in question regarding the qualification examination were in accordance with the Constitution.

(v) Contribution submitted by the Constitutional Court of Bulgaria

167. The Constitutional Court of Bulgaria in its response emphasized that their Civil Service Law regarding the filling of specific positions in the public administration does not provide for criteria such as "*eligibility*" and/or "*additional specific criteria*", apart from the necessary qualifications such as education and work experience. Among the requirements for appointment as a civil servant is that a person must also meet the minimum requirements of educational qualifications and professional rank or experience, as well as the specific requirements defined in the regulations for the position. In principle, this law stipulates that entry into the civil service in the relevant administration must be preceded by a competitive selection process. Further, the Constitutional Court of Bulgaria informed the Court that the legislation in Bulgaria defines the career civil service system. The principle is that the civil service relationship is for an indefinite period, except cases where the law provides otherwise. Regarding the question of the Court whether there has been a reform in the public administration where positions with an indefinite term are converted into a fixed term, the answer of the Constitutional Court of Bulgaria is negative.

(vi) Contribution submitted by the Constitutional Court of Croatia

168. The Constitutional Court of Croatia in its response initially clarified that in Croatia there are four categories of positions in state administration bodies: (i) state functionaries; (ii) civil servants; (iii) other persons appointed for a certain term by decision of the minister; and (iv) government employees. Then, the latter pointed out that the Croatian legal framework in the field of state administration, respectively, the Act on the State Administration System, the Act on Civil Servants and the Decree on the Classification of Posts in the Civil Service for the civil service does not provide for criteria such as "*eligibility*" and/or "*specific additional criteria*", in addition to the necessary qualifications such as education and work experience. However, separate laws may define other additional criteria, which are determined by the nature of the work, such as a category B driving license for inspectors state managers and knowledge of foreign languages for jobs in the Ministry of Foreign and European Affairs.

169. Further, the Constitutional Court of Croatia informed the Court that the middle and lower management level of civil servants have always had a permanent term of employment in Croatia, that is, there has been no transformation of the term of permanent employment into a fixed one. Exceptions to this are persons who perform temporary tasks that are not of a long-term nature or replace a civil servant who is absent for a long period of time. Likewise, promotion in the civil service is achieved by promotion of the civil servant to a higher post within the same category or by transfer to a post of a higher category, while the relationship in the civil service ceases by force of law when the performance and the efficiency of the civil servant is assessed at the

level of "*unsatisfactory*", which is measured annually by the head of the body or other authorized official person. The latter also clarifies that the positions in the high-level management category of employees such as: the positions of the director and the chief inspector who leads the administrative organization within the ministry of the general secretary of the ministry and the state administrative organization, deputy state secretary of the state central office, deputy the chief inspector of the state, the deputy general director of the state administrative organization, the director of the Government office, the heads of the Office of the Deputy Prime Minister, the directors of offices, agencies, directorates, etc., professional services established by the Government by decree, are appointed and dismissed by the Government by proposal of the head of the body, based on the public notice for recruitment, for a period of four years.

(vii) Contribution submitted by the Constitutional Court of Austria

170. The Constitutional Court of Austria in its response specified that the Austrian Federal Civil Service Act provides that a general requirement for all positions in the civil service is personal and professional eligibility to perform the function to be met. This requirement also implies a good knowledge of German, while the exact meaning of *"professional eligibility*" has not yet been specified in the legislation. Further, the latter stressed that since the amendment of the Civil Service Law in 1994, middle and high-level public officials have a fixed term of five (5) years, after which, if they are not re-elected, they take the position of their previous civil service, provided that they already had a permanent employment in the civil service before taking the fixed-term position; otherwise they would lose employment in the civil service. Until that reform, the entire state administration was based on the career system. The transition was made in such a way that the public officials, who at that time already had a middle or senior management position, were free to choose the new system with fixed tenure (which provided for attractive salaries) or to remain in the system of career. So, the old career system was not immediately replaced by the new system, but was phased out.

(viii) Contribution submitted by the Supreme Court of Sweden

171. The Supreme Court of Sweden in its response specified that employment in the public sphere is regulated by the Swedish Public Employment Act, which stipulates that when hiring in the public sphere, only objective reasons will be taken into account, such as merit of service and competence. The competence will be considered as primary, unless there are special reasons to decide otherwise. Moreover, this court pointed out that there are no specific criteria of "*eligibility*" laid down in the said law. However, whether a candidate is suitable for a job or not can in some cases be an element in assessing whether the person is competent for the role. Further, the latter informed the Court that the middle and lower management level of public officials in Sweden, in general, have a permanent mandate, that is, they are not employed with a fixed term or politically elected. Regarding the Court's question whether there has been a reform in the public administration where positions with an indefinite term are converted into a fixed term, the answer of the Supreme Court of Sweden is negative.

(ix) Contribution submitted by the Constitutional Court of Kyrgyzstan

172. The Constitutional Court of Kyrgyzstan in its response sent the text of the article of the Law on Civil Service at the state and municipal level regarding the criteria for employment of civil servants. These criteria define: (i) Kyrgyz citizenship; (ii) the age of 21 years for state service and 18 years for municipal service; (iii) compliance with the qualification requirements defined for this position by legislation and the relevant

recruiting body, which are related to (a) length of service and work experience in specialization and professional skills; (b) the level and profile of education depending on the category and group of administrative positions; (ii) knowledge of the official language to the extent necessary to perform. Also in this law there are prohibitions that the employee cannot be employed if: (i) by a court decision he is declared incompetent or if by a court decision he is prohibited from performing activities as an employee or holding certain positions in the state civil service and in municipal service; or (ii) have a criminal record that has not been terminated according to the procedure established by law. The law in question does not define criteria of "*eligibility*".

(x) Contribution submitted by the Constitutional Court of the Czech Republic

173. The Constitutional Court of the Czech Republic clarified in its response that the legislation on the civil service, more specifically, the requirements for employment in the civil service, do not use the term "*eligibility*" in relation to the candidate. However, it emphasized that a similar concept can found perhaps in a general legal requirement for a candidate to "*respect democratic principles and perform service properly*". This special requirement is, according to the wording of the Civil Service Law, "*the main prerequisite for appointment to the service*". Further, the latter informed the Court that in accordance with the Law on Civil Service, civil service is offered for an indefinite (permanent) or fixed term; as a rule, civil servants are in service for an indefinite period of time. However, a person who has not yet passed the civil service exam is always recruited for a fixed term appointment. A person can also be recruited for a fixed term when it is necessary to replace a staff member who is temporarily absent. Other cases in which, given the special nature of the service, a person may be recruited on a fixed-term contract will be determined by the Government by regulation. Whereas, regarding the transformation of the indefinite mandate into a fixed mandate, the latter finds that the law in question foresees only the opposite situation. Therefore, if an existing service is for an indefinite period, the duration of the service cannot be changed to a fixed period.

174. The Constitutional Court of the Czech Republic also informs the Court that in one of its judgments, it reviewed, among other things, the constitutionality of the criteria for employment in the civil service, which is about "*expectations for respecting democratic principles and performing the service properly*". In this case, the Court concluded that the general requirement that a candidate "is *expected to respect the democratic principles of the constitutional order of the Czech Republic*" did not conflict with the fundamental principles of the rule of law, as it could be interpreted in a constitutionally compliant manner. The court rejected the argument that the "*expectation of respect for democratic principles*" was unclear and simply based on "*subjective, inconclusive and unlimited assumption*". The court ruled that any decision to recruit a candidate into the civil service must be properly reasoned and subject to judicial review. If the administrative authority concludes that a particular candidate cannot "*be expected to respect the democratic principles of the constitutional order of the Czech Republic and perform the service properly*", he must prove this fact and properly justify his conclusions.

(xi) Contribution submitted by the Federal Constitutional Court of Germany

175. The Federal Constitutional Court of Germany in its response clarified that the Basic Law stipulates that every German must be equal to qualify for any public office according to "*skills, qualifications and professional achievements*", and that in Germany the categories of persons working in this sector are divided into: (i) civil servants and (ii) public employees. The latter emphasized that regarding the criteria

for admission to civil service, the legislator, whether at the level of the federation or the federal states, has wide margin of appreciation in determining the eligibility criteria for a certain position and in determining the official duties by referring to which the ability of candidates for public service should be assessed. This discretion is limited to the extent that other constitutional norms apply, particularly fundamental rights. However, some minimum criteria for education and training are set by law. Further, the Federal Court of Germany emphasized that the German public service consists of a career system (civil servants) and a position system (public employees). While the former are mainly recruited with an indefinite term and their employment status is determined by statute or legal act, the latter, on the other hand, are recruited for a specific function and the scope of their employment is defined in the specific employment contract, which governed by the principles of private law, and are generally limited to a certain period of time. The difference between these two categories does not depend on the level of the position, whether it is managerial or not, but more on whether it exercises state authority on a regular basis, and that this should be entrusted to the officials, who are in a special relationship of service and loyalty defined by public law. Also, the principle of lifelong employment is subject to some limited exceptions. Certain positions such as political appointees or elected municipal officials are traditionally recognized as exceptions to the principle of lifelong employment and are excluded from the protection afforded by the Basic Law. For example, in a case involving the appointment of a civil servant with lifetime employment status to a position as university chancellor, which was considered a temporary civil service position under the ordinary civil service law in the federal state of Brandenburg, the Constitutional Federal Court found that the right to lifetime employment could not be revoked, as the position of chancellor did not fall under either of the two types of exemptions from lifetime employment. Similarly, the Federal Constitutional Court has also ruled that federal state laws that impose compulsory part-time positions on civil servants against their will also, in principle, violate traditional principles of alimony. As for the Court's question as to whether there has been a reform in the public administration where positions with an indefinite term are transformed into a fixed term, the answer of the Federal Constitutional Court of Germany is negative, however, it emphasized that there were many legal changes, especially at the level of the federal states, which have adopted their own civil service laws. An important change has been the increase of the retirement age from 65 to 67 for most positions in the career civil service. The age increase was introduced on a graduated system, such that the old retirement age applied to those born before 1 January 1947, while the retirement age was gradually increased from 65 to 67 depending on age for those born after 1 January 1947.

(xii) Contribution submitted by the State Council of the Netherlands

176. The State Council of the Netherlands in its response pointed out that in the Netherlands, additional qualifications such as eligibility only apply to certain specific positions, for example in the army. Eligibility criteria are not mentioned in the law that was passed by the parliament itself, but are mentioned in ministerial decrees based on laws and further determined by lower regulations, for example by commanders from military units. For "*normal*" office positions within the civil service there are no such additional qualifications as "*eligibility*". The latter also informed the Court that in the Netherlands the civil service is based on the position system. Middle and lower management positions can be permanent or fixed-term, depending on the position. For some short-term projects, for example, positions may be fixed-term. Also, most positions start with a fixed term and when successfully filled after a year or so become permanent positions. However, fixed-term positions do not expire due to non-reelection of the civil servant. Civil servants in the Netherlands are not elected. The same are appointed to the highest positions while they are employed in other

positions. In the Netherlands, for several years, public servants have had a normal employment contract, just like in private sector jobs. As for the Court's question whether there has been a reform in the public administration where the positions with an indefinite term are transformed into a fixed term, the answer of the State Council of the Netherlands is negative.

(xiii) Contribution submitted by the Constitutional Court of Slovenia

177. The Constitutional Court of Slovenia in its response emphasized that in Slovenia the employment of public servants is regulated through the Act on Public Servants, and that the criteria for employment in the civil service depend on the requirements for the performance of work are defined in collective agreements or general acts of the employer. In accordance with Article 122 of the Slovenian Constitution, a procedure for choosing the most suitable candidate for a position in the public administration must be guaranteed, where the professional qualifications of the candidates are taken into account as eligibility criteria, which enables the efficient and successful performance of the work. Whereas, the aforementioned law stipulates that the selection board that directs the selection procedure determines which of the candidates meet the conditions for the position and which of the candidates are suitable for the position in function of their professional qualifications. Further, the latter clarifies in detail the procedure for the recruitment of civil servants where it specifies that the selected candidate is then appointed to the civil service rank and signs a work contract for an indefinite period. Fixed-term employment is limited to situations provided for by law (replacement of a civil servant who is temporarily absent, projects with a fixed term, etc.). A probationary period is regularly used in practice, which means that officials must undergo an examination within a year of their appointment and are dismissed if they fail that examination. Likewise, for senior management positions (general secretaries and general directors in ministries, heads of agencies), there are special rules for recruitment to these positions and their termination. Civil servants in senior management positions may be dismissed within one year of their appointment or after the swearing-in of a new minister/prime minister, at the minister's/prime minister's discretion. However, they are entitled to retain their civil servant status and be transferred to another higher-ranking (although not necessarily managerial) position. Regarding the question of the Court whether there has been a reform in the public administration where the positions with an indefinite mandate are transformed into a fixed mandate, the answer of the Constitutional Court of Slovenia is negative. However, the latter mentions some cases from its jurisprudence that has decided on the rights of civil servants as follows.

178. The Constitutional Court of Slovenia informed the Court that in one of its cases it decided that the legislator did not worsen the legal position of the applicant, who was a doctor, where the obligation to keep a guardian between the ages of 50 and 55 was removed, because this was based on the interest of prevailing general. Also, from its case law it follows that the same can examine the determination, for example, of the educational conditions for performing a certain job or profession also from the point of view of consistency with the principle of trust in the law, defined in the Slovenian Constitution, which refers to the change in the legal position of individuals. In accordance with the mentioned principle, the same found that the state should not worsen the position of an individual without reasons based on an overriding public interest and that during the change of the legal regulation of employment conditions, if such a thing interferes with legal relations existing, the affected persons must be guaranteed sufficient time to adapt to the new regulation (transitional period). In this context, in one of its decisions it found that the four-year time limit for inspectors to fulfill the new requirements presented in the Law on Tax Administration was clearly too short to meet the new conditions, and in another decision it decided yes so that the

transitional period of two years was insufficient to fulfill the required conditions defined in the Tourism Development Law, which determined that the affected persons must acquire within the specified period the newly requested higher education, the knowledge of two languages foreign language at the level of secondary school knowledge, as well as, in some cases, three years of work experience. So, the Constitutional Court of Slovenia, by these decisions, determined the standard that when the legislator changes the conditions for carrying out activities even for persons who already carry out such activities at the time of changing a legal regulation, the legislator must take into account the principle of trust in the law, which is one of the principles of a state governed by the principle of the rule of law, defined in the Constitution, and that it must provide a transitional regime that fits this principle.

(xiv) Contribution submitted by the Constitutional Court of Lithuania

179. In its response, the Constitutional Court of Lithuania clarified that according to the Law on Civil Service, it is required that the person seeking to become a civil servant fulfills the special criteria, according to the position/vacancy he seeks to fill, and that these criteria are not defined in the Civil Service law itself, but they can be detailed in the sub-legal acct or in the specific job description for the position. Also, the latter specifies that the law in question requires that during the competition, the "*eligibility*" of a person for the post of career civil servant is checked, where "*his competence and ability to perform the functions indicated in the job description are evaluated*". In the Lithuanian legal framework, the term "*eligibility*" refers to the general and specific requirements that must be met in order to occupy a position in the civil service. The Constitutional Court of Lithuania in one of its decisions also developed the constitutional requirements for civil servants, where the general and special requirements are defined, where the former must be established by law, while there is no condition for the latter (special requirements) to be established by law, as they may vary according to the type of civil service. Further, the same pointed out that the Lithuanian legal system distinguishes two types of civil servants: a career civil servant, who, when accepted, occupies his/her position permanently, and a civil servant with political (personal) trust, who stays in his/her position until the person who elected him/her remains in the position. The positions of civil servants of political trust cannot be converted into career positions, i.e. with an indefinite term, because they would be contrary to the principles of admission to career civil service.

180. As for the Court's question whether there has been a reform in the public administration where positions with an indefinite term are converted into a fixed term, the answer of the Constitutional Court of Lithuania is negative, but the latter clarified in its answer that in case of a reform of such "*would respect the principle of legitimate expectations of current career civil servants*". According to the latter, civil servants (and other employees) have the right to reasonably expect that the rights acquired under valid legal acts will be preserved for the specified period of time and will be implemented in reality; the legal regulation can be changed only by following the procedure established in advance and not violating the principles and norms of the Constitution, it is necessary, among other things, to follow the principle *lex retro non agit* and it is not allowed to deny the legitimate interests and legitimate expectations of the person from changes in legal regulations. Regarding the entry into force of the new regulation, the doctrine formulated in tax law cases may be useful as follows: "*if the changes in the law impose certain duties or restrictions on persons (or change the status of person), attention must be paid to the constitutional requirement to provide for a proper vacatio legis, i.e. sufficient time should be left before the entry into force of these changes (the beginning of their application), so that the persons concerned can properly prepare for them*". The Constitutional Court of Lithuania also sent to the Court its two decisions regarding the reform of the salaries of civil servants.

(xiv) Contribution submitted by the Constitutional Tribunal of Poland

181. The Constitutional Tribunal of Poland clarified in its response that the Law on Civil Service requires that employed persons have "*a flawless reputation*". In the legal provisions there is no definition of this notion, but in the literature it is noted that "*a person enjoys a flawless reputation when - in his/her professional and private life - the person respects moral and ethical principles as well as respects common decency, approved by society"*. Also, in the case law of regular courts, it is assumed that "*a flawless reputation*" includes: "*the totality of individual qualities, events and circumstances that constitute the reputation of a person in whom the public has trust, provided that, in relation to that reputation, what is also important are the facts and events outside the sphere of professional life, which would undermine the positive evaluation of the behavior in the light of moral and ethical norms, considering the behavior as reprehensible for public opinion, as an infringement of dignity position even if it does not always result in disciplinary responsibility*". Further, the latter emphasized that the employment relationship of the civil servant begins on the basis of an employment agreement for an indefinite or definite period. In the case of persons who for the first time undertake work in the civil service, an employment contract is concluded for a period of 12 (twelve) months. An indefinite contract, among others, is possible after a positive evaluation of the work. The law in question also provides for a special group of employees – officials who are employed as a result of a special appointment procedure. The characteristics of that group include, on the one hand, the greater security of employment (limited possibilities of terminating the employment relationship by the employer), and – on the other hand – the restrictions imposed on various forms of activities: the prohibition of involvement in politics of the parties, or the prohibition of undertaking other forms of economic activity without the prior consent of the head of a relevant public institution). Likewise, persons holding higher positions in the civil service are employed on the basis of a relevant appointment procedure and may be withdrawn at any time by an appointing authority.

182. The Constitutional Tribunal of Poland notified the Court that in one of its decisions it decided on the compatibility with the Constitution of one of the provisions of the Law on Civil Service, which transformed the employment relationship of persons employed on the basis of the appointment procedure into an employment relationship with an employment contract, which enabled easier procedures for terminating the employment relationship. For this, the Tribunal stated that the requirement for the protection of acquired rights, as a result of the principle of citizens' trust in the state and its laws, does not have an absolute character and is not equal to the inviolability of those rights. State officials may not expect that the principles governing the establishment and termination of an employment relationship will remain unchanged despite changing social conditions. In the opinion of the Tribunal, the reduction of employment security did not cause the persons concerned any legal effects that they could not have foreseen beforehand. In addition, the applicability of the provision was delayed by 4.5 periods, which mitigated the potential consequences. Also, the Constitutional Tribunal of Poland mentions one of its other cases, which was referred by the Polish Ombudsperson. The case was about the highest positions in the civil service, through some legal changes, a change was made in the employment model for these employees, i.e. a shift was made from the recruitment system to the appointment system. In the case of persons who, on the day of entry into force of the law, held higher positions in the civil service, their employment relationships were terminated after the expiration of 30 days, if they were not offered new working conditions before the expiration of this period and /or payment for the subsequent period of employment or if they did not accept the new working conditions and/or

salary. In case of termination of the employment relationship, the mentioned persons had the right to the severance payment provided for the situation when the employment relationship was terminated due to the closure of the institution. After the Ombudsperson withdrew his request, then the Tribunal stopped the procedure and did not decide on the case.

(xv) Contribution filed by the Supreme Court of Mexico

183. The Supreme Court of Mexico in its response first clarified that according to the Federal Law of Public Servants, there are two types of public servants: those who hold a position of trust and public servants of high rank. In this context, public servants holding a position of trust are those who are part of the President's staff, whose appointment requires the express approval of the President, as well as other employees of the Executive Branch, as well as those who perform managerial functions such as inspection, supervision, auditing, administration of funds or securities. The same are divided into career employees and employees with a fixed mandate. Meanwhile, high-ranking public servants are those who do not enter the first category and have a permanent mandate. Furthermore, the law in question defines the specific criteria related to the assignment or appointment of employees in the service of the state, including factors such as knowledge and skills. The criterion of *"skills"* is defined by law as "*the totality of physical and mental abilities, initiative, diligence and efficiency to perform a certain activity*".

184. The Supreme Court of Mexico informs the Court that the legal framework in Mexico does not stipulate that the mandate of public servants is subject to a certain term after which, if they are not reappointed, they lose their status as public servants. On the contrary, the latter stipulates that public servants have the right to stability and permanence in service, provided that they are public servants within the career system, or that they are not displaced in their position if they are high-ranking employees. Likewise, according to a Decision of the Supreme Court of Mexico, appointed public servants do not have the right to stability and permanence in service and are not immovable; rather, they can be appointed and dismissed freely. Regarding the Court's question as to whether there has been a reform in the public administration where positions with an indefinite term are transformed into a fixed term, the answer of the Supreme Court of Mexico is negative, but it emphasizes that the Mexican system in the civil service is a hybrid and that with the approval of the Professional Career Service Law, its transitional provisions stipulated that any public servant holding a position of trust would retain his job, but would be classified as an appointed public servant until he underwent the necessary evaluations. Furthermore, this law stipulated that no public servant in a position of trust could be recognized as a career public servant until two years after the implementation of the law.

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.
[...]"

Article 4

[Form of Government and Separation of Power]

"1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.
2. The Assembly of the Republic of Kosovo exercises the legislative power.
3. The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.
4.The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian 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 16
[Supremacy of the Constitution]

"1. The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution.
2. The power to govern stems from the Constitution.
3. The Republic of Kosovo shall respect international law,
4. Every person and entity in the Republic of Kosovo is subject to the provisions of the Constitution."

Article 19
[Applicability of International Law]

"[…]
2. Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo."

Article 22
[Direct Applicability of International Agreements and Instruments]

"Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:
(1) Universal Declaration of Human Rights;
(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
[…]"

Article 24
[Equality Before the Law]

"1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled."

Article 32
[Right to Legal Remedies]

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

Article 46
[Protection of Property]

"1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.
5. Intellectual property is protected by law."

Article 49
[Right to Work and Exercise Profession]

"1. The right to work is guaranteed.
2. Every person is free to choose his/her profession and occupation."

Article 53
[Interpretimi i Dispozitave për të Drejtat e Njeriut]

"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."

Article 55
[Limitations on Fundamental Rights and Freedoms]

"1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.

2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.
[…]"

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;
[…]

Article 74
[Exercise of Function]

"Deputies of the Assembly of Kosovo shall exercise their function in best interest of the Republic of Kosovo and pursuant to the Constitution, Laws and Rules of Procedure of the Assembly."

Article 76
[Rules of Procedure]

"The Rules of Procedure of the Assembly are adopted by two thirds (2/3) vote of all its deputies and shall determine the internal organization and method of work for the Assembly."

Article 77
[Committees]

"1. The Assembly of Kosovo appoints permanent committees, operational committees and ad hoc committees reflecting the political composition of the Assembly.
2. On the request of one third (1/3) of all of the deputies, the Assembly appoints committees for specific matters, including investigative matters
3. At least one vice chair of each parliamentary committee shall be from the deputies of a Community different from the Community of the chair.
4. Competencies and procedures of the committees are defined in the Rules of Procedure of the Assembly."

Article 78
[Committee on Rights and Interests of Communities]

"1. The Committee on Rights and Interests of Communities is a permanent committee of the Assembly. This committee is composed of one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for the Serbian Community, one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or

guaranteed for other communities that are not in the majority and one third (1/3) of members from the majority community represented in the Assembly.
2. At the request of any member of the Presidency of the Assembly, any proposed law shall be submitted to the Committee on Rights and Interests of Communities. The Committee, by a majority vote of its members, shall decide whether to make recommendations regarding the proposed law within two weeks.
3. To ensure that community rights and interests are adequately addressed, the Committee may submit recommendations to another relevant committee or to the Assembly.
4. The Committee may, on its own initiative, propose laws and such other measures within the responsibilities of the Assembly as it deems appropriate to address the concerns of Communities. Members may issue individual opinions.
5. A matter may be referred to the Committee for an advisory opinion by the Presidency of the Assembly, another committee or a group composed of at least ten (10) deputies of the Assembly."

Article 79
[Legislative Initiative]

"*The initiative to propose laws may be taken by the President of the Republic of Kosovo from his/her scope of authority, the Government, deputies of the Assembly or at least ten thousand citizens as provided by law.*"

Article 101
[Civil Service]

"1. The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality.
2. An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo."

Neni 142
[Independent Agencies]

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

LAW NO. 06/L-048 ON INDEPENDENT OVERSIGHT BOARD FOR CIVIL SERVICE OF KOSOVO

Article 4
(Independent Oversight Board of the Civil Service of Kosovo)

1. The Board is an autonomous constitutional body that ensures the compliance with the rules and principles governing the civil service.

2. The Board reports to the Assembly of Kosovo Republic for its work at least once a year and whenever requested by the Assembly.

Article 6
(Functions of the Board)

"1. For the supervision of the implementation of rules and principles of the Civil Service legislation, the Board shall have the following functions:
1.1. reviews and determines appeals filed by civil servants and candidates for admission to the civil service;
1.2. supervises the selection procedure and determines whether the appointments of civil servants of high executive and management level have been conducted in accordance with the rules and principles of civil service legislation;
1.3. monitors public administration institutions employing civil servants regarding the implementation of the rules and principles of civil service legislation."

Article 7
(Powers of the Board)

1. For the purpose of exercising its functions, the Board has the right to: 1.1. visit any institution where civil servants are employed;
1.2. obtain access and examine files and any document regarding the implementation of the rules and principles of the civil service legislation;
1.3. interview any civil servant who may possess information of direct relevance to the carrying out of the Board's functions;
1.4. requires and obtains from institutions any information necessary for the performance of its duties;
1.5. organizes professional sessions, and
1.6. issues decisions, guidelines, opinions and recommendations.
2. The Board shall in advance, notify the main administrative officer of the relevant employing body of any visit or request for information regarding the implementation of the civil service legislation.

Article 19
(Oversight procedure for the selection of senior management and management level Civil Servants)

"*1. Board monitors all the procedures for selection of senior management and management level Civil Servants.*
2. Public administration institution that initiates the procedure for election of Civil Servants pursuant to paragraph 1. of this Article, is obliged to inform the Board accordingly within five (5) days from the moment of publication of the vacancies.
[…]"

Article 20
(Monitoring of public administration institutions regarding the implementation of rules and principles of the legislation for Civil Service)

1. With the aim of evaluating implementation of rules and principles of the legislation for Civil Service, the Board has the right to monitor public administration institutions with Civil Servants employed every year.

2. The Board exercises its monitoring function through regular monitoring made based on the annual plan for monitoring, and through extraordinary monitoring carried out in special cases related to serious breaches of the Civil Service legislation.
3. A Board member is obliged to present the report with findings at the Board meeting and to provide clarifications for all the issues raised by the Board.
4. After reviewing the report, the Board issues a decision, which is then sent to the relevant institution together with the report.
5. Relevant institution of the public administration is obliged to implement the recommendations of the Board, within the deadline set with the Board decision.

Article 25
Cooperation with public administration institutions

"1. The Board cooperates with public administration institutions in order to conduct its functions in accordance with the law.
2. Public administration institutions with Civil Servants employed, as well as all other public officials or Civil Servants, that have competencies in administration of the civil service, or are informed about this field, are obliged to cooperate with the Board
3. In cases when the employing authority or the responsible person does not cooperate, the Board reports to the Assembly about this non-cooperation, which shall then forward this notice to the Prime Minister or the immediate supervisor of the responsible person."

Article 28
Annual report of the Board

1. The Board shall present the annual report to the Kosovo Assembly for the previous year, not later than 31 March of the upcoming year.
2. Board sends one copy of the annual report to the Prime Minister.
3. Kosovo Assembly reviews the annual report of the Board at the plenary session. If the Assembly considers it necessary, the Chairperson of the Board may be invited to report at the plenary session.
4. After the adoption by the Assembly, annual report of the Board is published in the Official Gazette of the Republic of Kosovo.
5. Annual report includes data on execution of constitutional and legal functions of the Board, as an independent constitutional institution for overseeing the observance of the rules and principles of the legislation on Civil Service, and recommendations for public administration institutions.
6. Public administration institutions are obliged to implement the recommendations of the Board adopted by the Kosovo Assembly.

RULES OF PROCEDURE OF THE ASSEMBLY, adopted on 28 July 2022

CHAPTER VIII
ASSEMBLY COMMITTEES

Article 41
Responsible-Rapporteur Committee

"*1. The Speaker of the Assembly, according to the scope, appoints one of the committees, as the responsible committee, to report on the draft law and other documents submitted to the Assembly.*

2. The Responsible-Reporting Committee shall review the draft law or motion, shall draft and recommend amendments and shall inform the assembly if amendments are in conflict with one another.
3. Only the Responsible-Rapporteur Committee shall report on the draft law to the Assembly.
4. The report shall contain the proposals of the Responsible-Rapporteur Committee, the opposing reasons and opinions, as well as the comments of other committees, for which the Assembly shall decide in a plenary session
5. The Chairperson or Rapporteur of the Responsible-Rapporteur Committee shall submit to the Assembly a report on the review of the draft law and the evaluation of the committee."

Article 42
Standing committees and functional committees

"1. The Assembly shall establish Standing and Functional Committees.
2. The Assembly, shall approve the establishment of committees, as per paragraph 1 of this article, and shall define their scope.
3. Standing committees are committees that cover relevant areas such as: budget and finances, legislation, European integration and the rights and interests of communities.
4. Standing committees shall consider all draft laws and other acts, from their scope, which are submitted to the Assembly and assigned to them with a decision of the Assembly. 5. Functional committees shall consider draft laws and other acts, only from their scope."

CHAPTER XI
READING PHASES OF A DRAFT LAW

Article 76
Review of draft laws in committees

"1. Upon adoption in a first reading, the draft law shall be reviewed by the responsible-reporting Committee.
2. In the event that a draft law regulates matters in the scope of two (2) functional committees, the Assembly shall task one of the committees to be the responsible-reporting committee.
3. An amendment to a draft law may be proposed by an MP, parliamentary committee and the Government. Such amendment shall be addressed to the responsible-reporting Committee, through the Table Office within fifteen (15) days from the date of adoption in principle.
4. A proposal for amendment shall comprise: reference to provisions of the draft law, precise wording of the amendment, and reasoning of such proposed amendment.
5. A proposed amendment shall be submitted to the Table Office.
6. Should the amendment fail to meet the requirements as per paragraphs 3 and 4 of the present Article, the Table Office shall return such amendment to the proposer for necessary supplementation.
7. The responsible-reporting Committee shall read the draft law article by article, including proposed amendments. A report with recommendations shall be sent to the permanent committees.
8. The permanent Committee shall read the draft law with the amendments proposed by the responsible-reporting Committee, and amendments proposed by authorized parties as per paragraph 3 of the present Article. The permanent Committee shall, within fifteen (15) days from the date of receipt of report,

submit a report on the draft law and amendments of the responsible-reporting Committee, and upon expiry of such deadline, the report of the responsible-reporting Committee shall be proceeded for approval at the plenary session.
9. Upon concluding its reading, the responsible-reporting Committee shall present the Assembly a report of recommendations. Such report shall include opinions of permanent committees, and statements on amendments proposed by the Member of Assembly, the committee and the Government. The report shall also contain opinions of members voting against."

Article 78
Second reading of a draft law

"1. Second reading of Draft-Laws shall commence upon the presentation of the report of the responsible-reporting committee. Upon presentation of such report, the order of speeches shall be given to representatives of permanent committees, representative of a parliamentary group, representative of the Government, proposer of amendments and the MP.
2. In the second reading in the plenary session, no new amendments can be proposed, except when there is a need to avoid the collision of the provisions of the Draft Law. With the proposal of the chairperson of the responsible-reporting Committee, the Assembly decides to stop the review of amendments and takes the case for consideration only to the responsible-reporting Committee, which presents the supplementary report during the ongoing session or for the next session.
3. The second reading of a draft law shall proceed with the voting on amendments proposed by the responsible-reporting Committee and amendments proposed by other committees, the Government and MPs. Before voting an amendment, a debate may be held.
4. The order of amendments, reflected in the comparative table with two columns (the text of the draft law and the amendments), for review and voting in the plenary session is done according to Article 73 of this Rules of Procedure.
5. Upon voting on the amendments, the text of the draft law with the approved amendments is voted on.
6. Upon the request of the responsible-reporting Committee, the voting of the draft law with the approved amendments can be postponed until the next session.
7. The text of the draft law with the adopted amendments is prepared by the relevant organizational unit of the Assembly's administration and sent to the responsible-reporting Committee. During the preparation of the text of the draft law with the adopted amendments the unit is limited only to the possible elimination of terminological and legal inconsistencies in the text or conflicts between the norms of the draft law and other norms of the legal system.
8. The responsible-reporting committee, during the review of the draft law with the adopted amendments, does not review the adopted content of the draft law, but is limited only according to paragraph 7 of this Article.
9. The responsible-reporting committee, according to paragraph 8 of this Article, proceeds the text of the draft law for adoption in the Assembly, within five (5) working days, from the day of decision according to paragraph 6 of this Article.
10. During the first plenary session after the submission of the draft law with eventual amendments, proposed in accordance with paragraph 7 of this Article, the final voting on the draft law will be held."

Article 85
Accelerated procedure for reading of draft laws

"1. *The first reading of the draft law with an accelerated procedure cannot be done earlier than 48 hours from the distribution of the material, while the second review cannot be done earlier than 72 hours from the day of its adoption in principle, with the exception of a state of emergency or declaring a State of Emergency.*
2. On the request of the Government or 1/4 of the total number of MPs, the Assembly reviews with an accelerated procedure the draft laws related to:
2.1. National security;
2.2. Public health; and
2.3. Budgetary and financial issues.
3. The request from paragraph 2 of this Article is addressed to the President of the Assembly, who calls the plenary session."

Article 86
Urgent procedure for reading of a draft law

"*1. The Assembly, at the request of the Government or 1/4 of all the MPs of the Assembly, can review the draft law with an urgent procedure, which is related to taking measures for the Extraordinary Situation, according to Article 131 of the Constitution or for the State of Emergency.*
2. The review of the draft law, according to paragraph 1 of this Article, is special and is reviewed only by the functional Committee, except when required according to Article 78, paragraph 2 of the Constitution of the Republic of Kosovo.
3. The first reading of the draft law with an urgent procedure takes place within 48 hours from the distribution of the material, while the second review takes place within 72 hours from the day of adoption in principle, except in cases when the Assembly decides otherwise."

CHAPTER XX
TRANSPARENCY OF THE ASSEMBLY

Article 123
Avoidance of the Rules of Procedure

"1. Upon the proposal of at least six (6) MPs, the Assembly decides with 2/3 of the present MPs to avoid the procedural deadlines of the Rules of Procedure.
2. Avoidance can be done when it is not in conflict with the provisions of the Constitution of the Republic of Kosovo."

Admissibility of Referrals

185. The Court must first assess whether the Referrasl requests submitted to the Court have met the admissibility criteria established in the Constitution and further specified in the Law and the Rules of Procedure.

186. In this respect, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which provides: "*The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*"

187. The Court notes that the Applicants have filed their referrals based on paragraph 5 of Article 113 of the Constitution, which defines:

> *"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."*

188. Therefore, based on the above, a referral submitted to the Court according to paragraph 5 of Article 113 of the Constitution, must (i) be submitted by at least 10 (ten) deputies of the Assembly; (ii) challenging the constitutionality of a law or decision approved by the Assembly, for the content and/or for the procedure followed; and (iii) the referral must be submitted within a period of 8 (eight) days from the day of approval of the challenged act.

189. The Court in assessing the fulfillment of the first criterion, namely the number of deputies of the Assembly required to submit the relevant referrals, notes that Referral KI216/22 was submitted by 11 (eleven) deputies, while Referral KI220/22 was submitted by 10 (ten) deputies, therefore the Applicants' Referrals meet the criteria defined through the first sentence of paragraph 5 of Article 113 of the Constitution to set the Court in motion.

190. The Court, also in assessing the fulfillment of the second criterion, notes that the Applicants challenge Law No. 08/L-197 on Public Officials, approved in the Assembly. As for the third criterion, namely the time limit within which the relevant referral must be submitted to the Court, the latter notes that both referrals were submitted to the Court on 30 December 2022, while the challenged contested Law was approved by the Assembly on 22 December 2022, which means that the referrals were submitted to the Court within the deadline established in paragraph 5 of Article 113 of the Constitution.

191. Therefore, the Court assesses that the Applicants are legitimized as authorized parties within the meaning of paragraph 5 of Article 113 of the Constitution to challenge the constitutionality of the challenged act before the Court, both in terms of content and the procedure followed, since in in the present case, the Applicants, all of whom are deputies of the VIII legislature of the Assembly, are therefore considered authorized parties and, consequently, have the right to challenge the constitutionality of the challenged Law approved by the Assembly.

192. In addition to the aforementioned constitutional criteria, the Court also takes into account Article 42 (Accuracy of the Referral) of the Law, which specifies the filing of the referral based on paragraph 5 of Article 113 of the Constitution, which stipulates as follows:

Article 42
(Accuracy of the Referral)

> *"1. In a referral made pursuant to Article 113, Paragraph 5 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."*

193. The Court 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 foresees:

> 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, 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.*
> *(2) 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."*

194. In the context of the two aforementioned provisions, the Court notes that the Applicants (i) noted their names and signatures in their respective referrals; (ii) specified the challenged Law of the Assembly of 22 December 2022; (iii) they referred to specific articles of the Constitution, whereby they claim that the provisions of the challenged Law are not compatible; and (iv) submitted evidence and testimony to support their allegations.

195. Therefore, taking into account the fulfillment of the constitutional and legal criteria regarding the admissibility of the respective referrals, the Court declares the Applicants' Referrals admissible and will further examine their merits.

Merits

196. The Court recalls that the constitutional issue that the Referral in question includes is the constitutional review of (i) the procedure followed for the adoption of the challenged Law; and (ii) certain provisions of the challenged Law, namely Articles: 9 (General requirements for admission of public officials), 12 (Government of the Republic of Kosovo), 46 (Appointment and mandate of lower and middle management positions) and 99 (Transitional provisions).

197. More precisely, the subject of the constitutional review of the challenged Law, according Applicants' Referral, is (i) whether the procedure followed for its adoption is in accordance with the articles 77 [Committees] and 78 [Committee on Rights and Interests of Communities] of the Constitution; and (ii) if articles 9, 12, 46 and 99 of the challenged Law are in compliance with articles: 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], 7 [Values], 16 [Supremacy of the Constitution], 19 [Applicability of International Law], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 46 [Protection of Property, 49 [Right to Work and Exercise Profession], 53 [Interpretation of Human Rights Provisions], 55 [[Limitations on Fundamental Rights and Freedoms], and 101 [Civil Service] of the Constitution.

198. The Court recalls that (i) regarding the procedure followed of the challenged Law, the Applicants allege, among other things, that it did not meet the requirements of the parliamentary review in the standing parliamentary committees of the Assembly because it was adopted without being examined at all in the Standing Committee on Budget, Labor and Transfers and the Committee on Rights and Interests of Communities and Return, as well as there are inconsistencies in the official documentation of the plenary session for the review of this law; while (ii) as regards the content of the challenged Law, the Applicants, among other things and according to the elaboration in the part related to the Applicants' allegations, claim that Articles 9, 12, 46 and 99 of the challenged Law are unconstitutional, among others, for the following reasons: (a) "*eligibility*" as an additional criterion for employment, defined in Article 9 of the challenged Law, contradicts the principle of legal certainty and predictability, guaranteed by Article 7 [Values] and Article 101 [Civil Service] of the Constitution, as well as this criterion should be specific, defined by law and not by a sub-legal act of the Government; (b) Article 12 of the challenged Law, which provides that the Government adopts and coordinates the general state policies for the employment of public officials, as well as supervises their implementation, and that allows the Government's direct interference with the employment of the Assembly, in the judiciary and other independent institutions, contradicts Article 4 [Separation of Power] of the Constitution; (c) Article 46 of the challenged Law, which defines the four-year mandate for civil servants at the middle and lower management level, contradicts, among other things, the principle of the rule of law guaranteed by Article 7 of the Constitution, the hierarchy of norms based on articles 16 and 19 of the Constitution and in this context Article 120 of the SAA, as an agreement ratified in the Assembly, as well as contradicting the Principles of Public Administration of OECD/SIGMA; and (d) Article 99 of the challenged Law, which stipulates that for all positions of middle and lower management level within 1 (one) year the recruitment procedure will be announced, contradicts the principle of "*the acquired right*" and violates the "l*egitimate expectations*" of the civil servants in question, who have signed an appointment act with an indefinite term, and therefore, among other things, affects their right to property, and their right to work, guaranteed by Article 46, respectively Article 49 of the Constitution. The Applicants' allegations, (i) in principle, are also supported by the Ombudsperson and are further supplemented according to the claims of the ERO, in principle, in the context of Article 142 of the Constitution, while (ii) they are opposed by the Prime Minister and the parliamentary group of LVV.

199. The Court (i) has limited the o constitutional review of the challenged Law to the scope of the provisions challenged by the Applicants and those related to them; and (ii) during this assessment, among other things, it has elaborated and applied the general principles established by the Court, with emphasis on the Judgment in case KO203/19, regarding the assessment of Law no. 06/L-114 on Public Officials (hereinafter: Law in force on Public Officials), the case law of the European Court of Human Rights (hereinafter: ECtHR), Opinions and relevant Reports of the Venice Commission, including the contribution of constitutional courts and/or relevant equivalents member of the Forum of the Venice Commission, as well as the basic principles of OECD/SIGMA for public administration.

200. In the following, the Court will first examine the merits of (i) the procedure followed for the adoption of the challenged Law, and then proceed with the examination (ii) of its content to the extent it has been challenged by the Applicants.

I. REGARDING THE PROCEDURE FOLLOWED FOR THE ADOPTION OF THE CHALLENGED LAW

201. The Court recalls that regarding the procedure followed, the Applicants claim that:

(i) The challenged Law from a procedural point of view did not meet the requirements of the parliamentary review in the standing parliamentary committees of the Assembly because being treated in an accelerated procedure - avoidance of the procedural deadlines, it was approved without being reviewed at all in the Standing Committee on Budget, Labor and Transfers and the Committee on Rights and Interests of Communities and Return, contrary to articles 77 [Committees] and 78 [Committee on Rights and Interests of Communities] of the Constitution in conjunction with Article 76 (Review of draft laws in committees) of the Rules of Procedure of the Assembly; and

(ii) (There are two reports with different texts/contents of the amendments (amendment 10) in the official documentation of the plenary session of the Assembly regarding the voting of the challenged Law, which were presented by the functional Committee and bear different dates, one report on 20 December 2022, while the other on 21 December 2022.

202. The Court emphasizes that it can only analyze the procedure for the adoption of the challenged Law on the basis of the relevant constitutional provisions and principles and that on the basis of this principle, it will further examine the Applicants' allegations regarding the violation of articles 77 and 78 of the Constitution.

(i) Regarding allegation of violation of articles 77 and 78 of the Constitution

203. Regarding the Applicants' allegations that the challenged Law was not reviewed by two standing parliamentary committees, respectively, the Committee on Budget, Labor and Transfers and the Committee on Rights and Interests of Communities and Return, in violation of Articles 77 and 78 of the Constitution, the Court highlights the constitutional provisions which the Applicants consider to have been violated, respectively, (i) Article 76 of the Constitution, which stipulates that: *"The Rules of Procedure of the Assembly are adopted by two thirds (2/3) vote of all its deputies and shall determine the internal organization and method of work for the Assembly.*"; and (ii)Article 77 of the Constitution, which stipulates that: "*1. The Assembly of Kosovo appoints permanent committees, operational committees and ad hoc committees [...] 4. Competencies and procedures of the committees are defined in the Rules of Procedure of the Assembly*", as well as (iii) Article 78 of the Constitution, which stipulates that: "*1. The Committee on Rights and Interests of Communities is a permanent committee of the Assembly [...] 2. At the request of any member of the Presidency of the Assembly, any proposed law shall be submitted to the Committee on Rights and Interests of Communities. The Committee, by a majority vote of its members, shall decide whether to make recommendations regarding the proposed law within two weeks.*"

204. However, and beyond the challenged provisions in the circumstances of the present case, the Court initially highlights the fact that the exercise of legislative power is the most essential function of the Assembly of the Republic of Kosovo as established in articles 4 [Form of Government and Separation of Power], 63 [General Principles] and 65 [Competencies of the Assembly] of the Constitution. This same function, and as far as it is relevant to the circumstances of the present case, is exercised according to the manner defined in Article 79 [Legislative Initiative] and Article 80 [Adoption of Laws]

of the Constitution, while deputies exercise their function in the best interest of the Republic of Kosovo and in accordance with the Constitution, the laws and the Rules of Procedure of the Assembly, as specified in Article 74 [Exercise of Function] of the Constitution. Moreover, the Constitution defines a special role for the Assembly Committees, with emphasis, in the law-making process. More precisely and in this context, the latter in its Article 77 [Committees], defines the categories of committees, classifying them into permanent, operational and *ad hoc*, emphasizing the importance of their composition, including the role of non-majority communities and delegating the relevant role and procedures at the level of the Rules of the Assembly. The Constitution establishes a special role for the Committeeon Rights and Interests of Communities in its Article 78, stipulating, among other things, and as far as it is relevant for the circumstances of the present case, the possibility that: (i) at the request of any member of the Presidency of the Assembly, that any proposed law will be submitted to the Committeeon Rights and Interests of Communities; and (ii) the available time of two weeks for the Committeeto make recommendations regarding the proposed law if it chooses.

205. In addition, and beyond the aforementioned constitutional provisions, the Constitution in its Article 76 [Rules of Procedure] also stipulates that the Rules of Procedure of the Assembly are adopted by 2/3 (two thirds) of the votes of all its deputies and determines the internal organization and method of work of the Assembly. In this context, the Rules of Procedure of the Assembly defines: (i) Assembly Committees in Chapter VIII; (ii) Legislative Procedure in Chapter X; and (iii) Reading Phases of a Draft Law in Chapter XI.

206. The Rules of Procedure, adopted by the deputies of the Assembly, in articles 85 (Accelerated procedure for reading of draft laws) and 86 (Urgent procedure for reading of a draft law), establishes "*the accelerated procedure*" and "*urgent procedure"* for the review of the draft law, respectively. The initiation of these two procedures is conditional on a request from the Government or 1/4 (one fourth) of all deputies, respectively 30 (thirty) deputies, and is conditional in the first case, respectively on "*the accelerated procedure*" in the matters related to : (i) national security; (ii) public health; and (iii) budgetary and financial issues, while in the case, namely in "*urgent procedure*" in the review of draft laws related to taking measures for the state of emergency according to Article 131 [State of Emergency] of the Constitution. Even in these two circumstances, the first reading of the draft law cannot be done earlier than 48 (forty-eight) hours from the distribution of the material, while the second reading cannot be done earlier than 72 (seventy-two) hours from the day of approval in principle, with the exception of a state of emergency or the declaration of a state of emergency or cases where the Assembly decides otherwise only in the case of an "*urgent procedure"* related to the declaration of a state of emergency.

207. On the other hand, the same Rules in Article 123 (Avoidance of the Rules of Procedure) determines that with the proposal of at least 6 (six) deputies, the Assembly decides with 2/3 (two-thirds) of the deputies present for avoidance of the procedural deadlines of the Regulation, when such decision-making does not conflict with the provisions of the Constitution of the Republic of Kosovo. It is this procedure through which the challenged Law was approved.

208. More precisely, the Court recalls that (i) the Government approved the challenged draft law on 23 November 2022; (ii) the latter was distributed to the deputies of the Assembly the next day on 24 November 2022; (iii) The Assembly adopted the challenged Law in the first reading on 9 December 2022; (iv) before the second reading procedure, namely on 15 December 2022, the Assembly, based on Article 123 of the Rules of Procedure, had decided to avoid the procedural deadlines of the Rules

of Procedure; (v) the report of the Functional Committee, including the 17 (seventeen) proposed amendments, was distributed to all deputies of the Assembly on 21 December 2022, while the Committee on Rights and Interests of Communities and Return gave its opinion on 22 December 2022, at 9:00hrs; while (vi) on the same day, at 10:00hrs, the plenary session of the Assembly was held, in which the challenged Law was adopted in the second reading procedure.

209. The Court notes that for avoiding the procedural deadlines of the Assembly's Rules of Procedure, the proposal of only 6 (six) deputies of the Assembly and the vote of 2/3 (two thirds) of the deputies of the Assembly who are present and voting are necessary. In this context, the Court recalls that based on Article 76 of the Constitution, the Rules of Procedure of the Assembly must be approved by 2/3 (two-thirds) of all the deputies of the Assembly, while according to the same Rules of Procedure, the avoidance of any procedural deadline is only possible for the majority of 2/3 (two thirds) of the deputies present and voting. Moreover, the Court highlights the fact that the deputies of the Assembly themselves, through the approval of the Rules of Procedure, have determined procedural deadlines in the context of the law-making process in the Assembly and in the context of circumstances related to national security or/also the declaration of a state of emergency in the Republic of Kosovo. The challenged Law, which is related to a deep reform in the entire state administration, was rendered in avoidance of all procedural deadlines in the Assembly. Moreover, the challenged Law, as already clarified, was also adopted without the opinion of the Committee on Budget and Finance.

210. The Court recalls the fact that based on the Constitution of the Republic of Kosovo, namely its articles 4, 63 and 65, the law-making is one of the most essential functions of the Assembly of the Republic of Kosovo and among the most essential functions of the people's representatives, namely the deputies of Assembly. Article 123 of the Rules of the Assembly, whereby the Assembly itself has determined that it can avoid all procedural work deadlines, cannot affect the exercise of the primary function of the Assembly of the Republic, because even according to the Rules of the Assembly, which was adopted by the representatives of the people themselves, the procedure for adopting laws, including draft laws related to national security and the declaration of a state of emergency, is subject to procedural deadlines.

211. Having said that, the Rules of Procedure of the Assembly, namely its Article 123, and the Decision [No. 08-V-449] of 15 December 2022, whereby the Assembly voted to avoid the procedural deadlines stipulated by the Rules of Procedure of the Assembly, were not challenged before the Court regarding the challenged Law, but the procedure of adoption of the challenged Law in the context of Articles 76, 77 and 78 of the Constitution. The former, namely, Article 76 [Rules of Procedure] of the Constitution, stipulates that the Rules of Procedure of the Assembly are adopted by 2/3 (two-thirds) of the votes of all its deputies and determine the internal organization and method of work for the Assembly. The second, namely, Article 77 [Committees] of the Constitution, as explained above, establishes the categories of committees in the Assembly, the principles of their composition and specifies that the powers and the procedures of the committees are defined by the Rules of Procedure of the Assembly. Whereas, the third, namely Article 78 Committee on Rights and Interests of Communities] of the Constitution, as explained above, defines the role of the Committeeon Rights and Interests of Communities and, among other things, the fact that (i) at the request of any member of the Presidency of the Assembly, any proposed law will be submitted to the Committeeon Rights and Interests of Communities; and (ii) the Committee, by majority vote of its members, will decide whether to make recommendations regarding the proposed law within 2 (two) weeks.

212. The Court notes that in the circumstances of the present case, (i) by Decision [No. 08-V-449] of 15 December 2022, the Assembly, based on Article 123 of its Rules of Procedure, avoided the procedural deadlines for reviewing the challenged Law, but had given the possibility of review to the relevant committees, namely the functional committee and the permanent committees; (ii) based on the case file, apart from the Committee on Budget, Finance and Transfers, the relevant functional Committee and other permanent committees submitted their reports with recommendations in accordance with the procedural deadlines established in the aforementioned Decision of the Assembly; while (iii) the Committee on Rights and Interests of Communities and Return submitted its recommendations before the session for the review of the challenged Law and moreover, the Applicants did not present evidence or arguments that there was a specific request regarding the challengedLaw by one of the members of the Presidency of the Assembly that the challenged Law be reviewed by this Committee in accordance with the procedures defined in paragraph 2 of Article 78 of the Constitution, namely the two (2) week deadline.

213. In such circumstances, and taking into account the content of the challenged articles of the Constitution, including the arguments presented by the Applicants, regarding the procedure followed in the Assembly for the adoption of the challenged Law, the Court must conclude that the procedure regarding the issuance of the challenged Law, has not been argued that it is in contradiction with the above-mentioned articles, namely articles 76, 77 and 78 of the Constitution. The Court, in the context of the allegations and relevant circumstances of the case, recalls that even the Resolutions on Inadmissibility in its cases KO118/16, Applicants *Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo*, regarding the constitutional review of Law no. 05/L-120 on Trepça and KO120/16,Applicants *Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo*, regarding the constitutional review of Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo, among other things, found that the Applicant's allegations of violation of the procedural provisions of Article 78 of the Constitution were ungrounded on constitutional basis, namely, the non-review of Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo and Law no. 05/L-120 on Trepça by the permanent Committee on Rights and Interests of Communities and Return (see Court cases, KO118/16, case cited above, paragraphs 62-65 and KO120/16, case cited above, paragraphs 89-91).

214. Having said this, the Court again emphasizes the fact that the exercise of legislative power, whose primary function is the legislative process, cannot be constantly reduced to the provisions of Article 123 of the Rules of Procedure of the Assembly whereby 2/3 (two thirds) of deputies present and voting may decide to skip all the procedural deadlines of the same Rules of Procedure, including the review of draft laws, as is the case in the circumstances of the present case and which determine the essential principles of the state administration of the Republic of Kosovo and that are not even related to those circumstances in which the Assembly itself, by its Rules of Procedure, has exceptionally defined "*accelerated procedure*" and/or "*urgent procedure*" of lawmaking in cases where the relevant draft laws are exclusively related to issues of national security, public health or state of emergency. In this context, the Court recalls Article 74 of the Constitution, according to which the deputies of the Assembly of Kosovo exercise their function in the best interest of the Republic of Kosovo and in accordance with this Constitution, the laws and the Rules of Procedure of the Assembly.

(ii) Regarding the allegation of inconsistency in the official documentation regarding the challenged law, presented in the plenary session of the Assembly

215. The Court recalls that the Applicants claim that there are two reports with different texts/contents of the amendments (amendment 10) in the official documentation of the plenary session of the Assembly regarding the voting of the challenged Law, which were presented by the functional Committee and are bear different dates, one report the date 20 December 2022, while the other 21 December 2022. In this regard, the Applicants state as follows: *"We are dealing with misleading the deputies of the Assembly of the Republic of Kosovo regarding the authenticity of the amendments and the procedure followed in relation to them. These amendments were voted in plenary sessions and became part of the law".*

216. The Court points out that the Applicants only claim that there are inconsistencies in the official documentation regarding the proposed amendments in the challenged law, however, they have not specified the constitutional provisions which they claim to have been violated, nor do they provide any relevant reasoning regarding their violation.

217. The Court, in this context, emphasizes that, based on sub-paragraphs 2 and 3 of paragraph 1 of Article 42 of the Law, the parties have an obligation to clarify: (i) the provisions of the Constitution or any act or law that has to do with this referral; and (ii) presenting the evidence on which the dispute is based. In this regard, and related to this allegation, the Court reiterates that the Applicants claim a violation of the procedure followed for the adoption of the challenged Law, but they have not specified the provisions of the Constitution that were violated. Therefore, the Applicants' allegations of inconsistency in the official documentation regarding the proposed amendments to the challenged Law cannot be subject to the assessment of the Courton merits.

(iii) Conclusion regarding the procedure followed for the adoption of the challenged Law

218. Based on the abovementioned explanations, the Court concludes that the procedure followed for the adoption of the challenged Law has not been argued to be contrary to Articles 77 and 78 of the Constitution, among other things, because: (i) the Assembly based on Article 123 of the Rules of Procedure of the Assembly, had voted to avoid the procedural deadlines defined in the Constitution, moreover, (ii) the Applicants have not argued that based on Article 78 of the Constitution, the Committee on Rights and Interests of Communities, requested the time of 2 (two) weeks, which is specifically allowed by the Constitution, to make recommendations regarding the proposed law, but the latter had submitted the relevant opinion before the holding of the plenary session when the challenged Law was reviewed in the second reading.

II. AS REGARDS THE CONTENT OF THE CHALLENGED LAW

219. The Court initially recalls that 21 (twenty one) deputies of the Assembly of the Republic of Kosovo, by two (2) separate referrals, based on paragraph 5 of Article 113 of the Constitution, request the constitutional review of Articles 9 (General requirements for admission of public officials), 12 (Government of the Republic of Kosovo), 46 (Appointment and mandate of lower and middle management positions) and 99 (Transitional provisions) of the challenged Law, which articles are allegedly not in compliance with articles: 3 [Equality Before the Law] 4 [Form of Government and Separation of Power], 7 [Values], 16 [Supremacy of the Constitution], 19

[Applicability of International Law], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 46 [Protection of Property]], 49 [Right to Work and Exercise Profession], 53 [Interpretation of Human Rights Provisions], 55 [Limitations on Fundamental Rights and Freedoms], and 101 [Civil Service] of the Constitution.

220. The Court notes that the Applicants claim that articles 9, 12, 46 and 99 of the challenged Law are unconstitutional, among others, for the following reasons:

(i) *"eligibility"* as an additional criterion for employment, established in Article 9 of the challenged Law, contradicts the principle of legal certainty and predictability, guaranteed by Article 7 [Values] and Article 101 [Civil Service] of the Constitution;

(ii) Article 12 of the challenged Law, which stipulates that the Government adopts and coordinates general state policies for the employment of public officials, as well as oversees their implementation, enables the Government's direct interference with employment in the Assembly, in the judiciary system and other independent institutions, therefore it contradicts Article 4 [Separation of Power] of the Constitution;

(iii) Article 46 of the challenged Law, which defines the four-year mandate with the possibility of extension, for civil servants of middle and lower management level, unlike the current Law on Public Officials, which provides for an indefinite mandate, is in contradiction , among other things, with the principle of the rule of law guaranteed by Article 7 of the Constitution, the hierarchy of legal acts according to Articles 16 and 19 of the Constitution, since the latter is contrary to Article 120 of the SAA and the Principles of Public Administration of SIGMA; and

(iv) Article 99 of the challenged Law, which stipulates that for all positions of middle and lower management level within 1 (one) year, the recruitment procedure will be announced, is in contradiction with the "*acquired rights*" and violates the "l*egitimate expectations*" of the civil servants in question, who have signed an appointment act with an indefinite term, and consequently, among other things, affects their right to property, and their right to work, guaranteed by Article 46, respectively Article 49 of the Constitution.

221. These allegations, in essence and according to the clarifications given in the part related to the claims and responses of the interested parties before the Court, in principle, are also supported by the Ombudsperson, while they are counter-argued by the Prime Minister of the Republic of Kosovo and the parliamentary group of LVV.

222. The Court recalls that the referrals in question were submitted based on the jurisdiction of the Court established in paragraph 5 of Article 113 of the Constitution, which provision authorizes the Court that, in addition to the procedure followed for the adoption of laws, also check the constitutionality of its content.

223. Therefore, the Court will limit itself to assessing the constitutionality of the content of the challenged Law in the scope of the provisions challenged by the Applicants, respectively, of Articles 9, 12, 46 and 99, but taking into account that the latter based on the jurisdiction of preventive control of laws, defined in paragraph 5 of Article 113 of the Constitution, will assess other provisions of the challenged Law related to its provisions.

224. In order to assess the constitutionality of the challenged Law, the Court, regarding each challenged article, will first present: (a) the allegations and counter-arguments of the parties; (b) general principles established by the case law of the Court and/or ECtHR; and thereafter, the Court will proceed with: (c) the application of those principles to the challenged articles of the challenged Law. During the assessment, the Court will also, insofar as it is relevant, take into account (d) the principles of the Venice Commission and those of the OECD/SIGMA for public administration, insofar as they are relevant; as well as (e) the responses of the Forum of the Venice Commission regarding the disputed issues of the challenged Law.

A. Regarding the allegations of inconsistency of paragraph 2 of Article 9 of the challenged Law with articles 7 and 101 of the Constitution, respectively related to the criterion of "*eligibility*" for appointment to specific positions of the public official

(a) Allegations and counter-arguments of the parties

225. The Court notes that regarding the criterion of "*eligibility*" for appointment to specific positions of the public official, defined by paragraph 2 of Article 9 of the challenged Law, the Applicants, among other things, claim that: *"The use of the term "eligibility" as an additional criterion for employment goes against the principle of legal certainty and predictability, the elements of the rule of law according to the Checklist for the Rule of Law of the Venice Commission",* which principle is implemented according to Article 7 of the Constitution. Likewise, the Applicants consider that this provision "*paves the way for abuse and arbitrariness*" during recruitment procedures because *"[...] will be a tool in the hands of admissions committees to decide for or against a candidate and not in respect of the principle of merit"*. Moreover, the latter claim that this criterion should be defined by law and not by a sub-legal act of the Government, and that this also contradicts paragraph 1 of Article 101 [Civil Service] of the Constitution, because, according to them, *"[...] civil service constitutes a professional, neutral to politics, civil and meritorious, permanent mechanism"*. These claims are essentially supported by the Ombudsperson, who considers that the challenged Law has not defined which positions are considered specific positions, for which the eligibility and additional specific criteria should be required, therefore, according to him: *"[...] the norm as defined in Article 9, paragraph 2, is unclear and can produce legal uncertainty [...] makes it impossible to predict the norm, these are elements of the rule of law"*. In this context, the Court also recalls the findings of the SIGMA Legal Opinion regarding the Draft Law on Public Officials submitted to the Court by the Applicants, and according to which, the provision that defines the criterion of*"eligibility"*nin the challenged Law is *"unclear"*.

226. On the other hand, the Prime Minister, through the comments of 30 January 2023, considers that paragraph 2 of Article 9 of the challenged Law does not violate legal certainty because this principle does not have an absolute character and in particular must be balanced with the general public interest, which he emphasizes that*"[...] eligibility criteria are aimed at filling positions in the public sector with suitable individuals in terms of integrity in relation to the relevant position, duties and responsibilities for specific positions"*. In this context, the Prime Minister mentions the jurisprudence of the Constitutional Court of the Republic of Albania, which, according to the citation of the relevant comments, determines that: "*[...] the principle of legal certainty does not guarantee any kind of expectation of non-change of a favorable legal situation [...]."* (see decisions no.26, dated 02.11.2015; and no. 37, dated 13.06.2012 of the Constitutional Court of Albania). The Court also underlines that the Prime Minister regarding the Applicants' allegations that the specifics of *"eligibility criteria"* must be provided by law and not by sub-legal act, refers to "*the US*

practice", namely, the Code of Federal Regulations, in section 731.202 (b) (*Criteria for making suitability determinations, specific factors*), where, according to the submitted comments, the determination of the eligibility criteria is done through the sub-legal act and not the law. The Court notes that, in essence, the same arguments as the Prime Minister's are repeated by the LVV parliamentary group in its comments of 30 January 2023.

(b) General principles for the principle of the rule of law and legal certainty, established by the Court, the ECtHR and/or the Venice Commission

227. Regarding these allegations and in relation to the principle of *"prescribed by law"* and "*foreseeability"* of a norm, the Court reiterates the general principles stemming from the case law of the ECtHR, its case law and the Venice Commission's Rule of Law Checklist, according to which the principle of legal certainty, which is embodied in the concept of the rule of law, guaranteed by Articles 3 and 7 of the Constitution, and in all articles of the ECHR, requires that rights and obligations are "*prescribed by law*" (see, in this context, the ECHR cases, *Beyeler v. Italy*, no. 33202/96, Judgment of 5 January 2000, paragraph 109; *Hentrich v. France*, no. 1361/88, Judgment of22 September 1994, paragraph 42; and *Lithgow and others v. the United Kingdom*, no. 9006/80; 9262/81; 9263/81;9265/81; 9266/81; 9313/81; 9405/81,Judgment of8 July 1986, paragraph 110; and among other, the case of the Court KO100/22 and KO101/22, Applicants: *Abelard Tahiri and ten (10) other deputies, and Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo* regarding constitutional review of Law no. 08/L-136 on Amending and Supplementing Law no. 06/L-056 on Kosovo Prosecutorial Council, Judgment of 24 March 2023 (paragraph 347). In this regard, "*prescribed by law*" requires that, in addition to the measure taken having a legal basis in state legislation, it also requires that the relevant provisions of the law be"*clear, accessible and predictable*". "*Foreseeability*", based on the aforementioned principles, requires that the law must be formulated with appropriate precision and clarity to enable legal entities to regulate their behavior(see, *inter alia*, Checklist of the Rule of Law of the Venice Commission , CDL-Ad(2016)007, Strasburg, 118 March 2016, paragraphs 58 and 59; and *inter alia* , case of the Court KO100/22 and KO101/22cited above, paragraph 347).

228. The Court also highlights principle 3 of the OECD/SIGMA Principles of Public Administration, regarding the recruitment of public servants, which, among other things, stipulate that the recruitment of public servants must be based on merit and equal treatment in all its phases, as well as the criteria for demotion and termination of employment of public servants must be clear. In their point 2, these Principles also specify that: *"The general eligibility criteria for applying for public service positions and general provisions ensuring the quality of the recruitment are established in the primary legislation. The detailed procedures, including specific requirements for entering each category/class, job descriptions, competency profiles, selection methods, scoring systems and composition of selection committees, are mainly covered by secondary legislation"* but, as mentioned above, always, based on the principle of *"merit" and "equal treatment"* (see OECD/SIGMA, Principles of Public Administration, edition of 2017,prepared with the financial assistance of the EU, p. 51)

229. *I*n this regard, and in the context of the practice of other countries, the Court also recalls that of the 16 (sixteen) member states of the Venice Forum that have responded regarding the criterion of *"eligibility",* 13 (thirteen) of them in their answers emphasized that they do not define criteria such as that of "*eligibility*" regarding public servants in the sense of the subjective criterion or integrity (see, the responses of the Constitutional Court of Bosnia and Herzegovina; the Constitutional Court of North Macedonia; the Constitutional Court of Slovakia, which defines the criterion of

"*reliability*" only for the army, information service and police sector; the Constitutional Court of Bulgaria; the Constitutional Court of Croatia, which can also define specific criteria in other sectoral laws such as category B of the license for the position of inspector; the Supreme Court of Sweden; The Federal Court of Germany, the Constitutional Court of the Czech Republic, the Constitutional Court of Lithuania; Constitutional Court of Kyrgyzstan; the Constitutional Court of Slovenia; of the State Council of the Netherlands, which defines such criteria for some positions, such as for the military, but not for "*office*" positions; and the Supreme Court of Mexico). On the other hand, 3 (three) other states underlined that they contain similar criteria in their legal provisions, however each based on the relevant specifics, namely (i) Austria, which defines personal suitability, which according to the relevant answer means knowledge of the German language and "*professional eligibility*"; (ii) Poland,which establishes , "*flawless reputation*", but which has been further specified through the case law; and (iii) Liechtenstein.

230. Having said that and taking into account that the above principles related to "*foreseeability*" of law and the importance of this concept for the principle of legal certainty, including the relevant opinions of the Venice Commission, in principle, "*right and obligations*" must be "*prescribed by law*", which provisions must be *"clear, accessible and predictable",* to enable the executive power to exercise discretion only in areas where such competence has been delegated, not simply because the law is uncertain or unclear, but also to enable legal entities to appropriately regulate the behavior and related expectations.

(c) Assessment of the Court

231. In applying these principles, the Court first refers once again to Article9 (General requirements for admission of public officials) of the challenged Law, which establishes that:

> *"1. General requirements for admission of public officials are:*
> *1.1. to be citizens of Republic of Kosovo;*
> *1.2. to have full capacity to act; according to the applicable laws;*
> *1.3.to be fluent in one of the official languages, in accordance with the Law on Languages;*
> *1.4. to be fit in the health aspect to carry out the respective duty;*
> *1.5. have no record of conviction with final judgment for deliberate commission of a criminal offence;*
> *1.6. should not have in force any disciplinary measure for serious violation.*
> *1.7. have the required education level and work experience for the relevant position, category, class or group; and*
> *1.8. should successfully pass admission procedures in accordance with this Law.*
> *2. Exceptionally, for specific public official positions, suitability for appointment to the position and/or specific additional criteria may be required. The procedure and criteria for fulfilling the eligibility and/or specific additional criteria, will be defined by a sub-legal act approved by the Government, upon the proposal of the ministry responsible for public administration.*
> *[…]*
> *5. Eligibility for appointment to a position and/or specific additional criteria according to paragraph 3 of the present Article, for employees in the independent constitutional institutions is regulated by this law and by a special act approved by the competent bodies of these institutions.*
> *6. The criteria defined in this Article are not mandatory criteria to reach the employment terms of the cabinet employee."*

232. The Court notes that this article, among other things, in its first paragraph defines the general principles that a candidate must meet to be admitted as a public official. The latter, beyond the objective criteria, such as citizenship, ability to act, knowledge of the official languages of the Republic of Kosovo and lack of conviction for certain criminal offenses and serious disciplinary measures, also defines more general criteria, including "*to be fit to carry out the respective duty*" and "*have the required education level and work experience for the relevant position, category, class or group*". "*To be fit to carry out the respective duty"* is a criterion which is assessed by public authorities in recruitment procedures, according to the procedures stipulated in the challenged Law and the relevant recruitment procedures of state institutions defined by special acts. On the other hand, in its paragraph 2, Article 9, the challenged Law defines the additional criterion of "*eligibility*", specifying that it may be required for "*specific positions*". Specification of "*specific positions*" or the criteria for their determination and the definition of the criterion of "*eligibility*" was not made by the challenged Law. Such an issue, according to the latter, is delegated at the level of the sub-legal act and which in (i) the case of the Government, is adopted by the proposal of the ministry responsible for public administration, while in (ii) the case of independent constitutional institutions, it is determined by a special act approved by the latter. The Court also notes that the same article, in its paragraph 6, excludes the application of these criteria for the establishment of the employment relationship of the cabinet official, leaving full discretion to the public officials in the selection of the members of the respective cabinets even beyond the criteria defined in the first paragraph of Article 9 of the challenged Law.

233. In this context, the Court emphasizes that the legislator in paragraph 2 of Article 9 of the challenged Law has defined, as a criterion for a person who must fulfill the recruitment procedure to be admitted accepted as a public official, the criterion *"for appointment to the position and/or specific additional criteria may be required*", which criterion is left to be determined by sub-legal act. However, the Court points out that while *"specific additional criteria"* may mean objective criteria, including the necessary qualifications that must be related to the job position and that are specified in point 1.7 of paragraph 1 of Article 9 of the challenged Law, the latter, in paragraph 2 of Article 9 thereof, contains the criterion of *"eligibility"* as a subjective criterion and related to which it does not determine (i) any definition; and furthermore (ii) refers to "*specific positions*" and which are not defined in this Law and which definition, based on the content of paragraph 2 of Article 9, is not delegated even in the specification by the sub-legal act, allowing public authorities full discretion in this context.

234. The Court recalls that based on the responses of the member states of the Venice Forum, as explained above, the "*eligibility*" criterion is not provided for in the relevant legislation for the civil service, with rare exceptions and as explained above, as well as in the event that such criteria are foreseen, the same in principle, are defined in primary legislation.

235. Moreover, based on the aforementioned principles of the OECD/SIGMA, the Venice Commission, but also from the case law of the ECtHR and the Court, regarding the standard that "*general eligibility criteria for applying for public service positions are established in the primary legislation"* and that in this case, the relevant provisions of the law should be "*clear, accessible and predictable*", the Court assesses that through the wording of paragraph 2 of Article 9 of the challenged Law, an "*additional criterion*" affecting the status of a candidate applying for "*specific positions*" as a public official, respectively, affects the rights and obligations of the latter, and regardless of being "*prescribed by law", i*n the absence of further definition of the subjective criterion *of "eligibility"*, it results that such a criterion does not meet the requirements of being "*clear and predictable"*, which (i) allows the executive power

and other institutions wide and unlimited discretion to define and/or apply through the approval of the sub-legal act the criterion of *"eligibility",* which in itself is a subjective criterion and is not related to the professional skills of a candidate. Furthermore, the application of such a criterion directly affects also the "*clarity*" and *"unpredictability"* on the part of candidates to be employed in the state administration in favor of the full discretion of the public authority, also affecting the right to appeal, namely the right to an effective legal remedy related to employment in the state administration based on the criterion of "*eligibility*", contrary to the principles of a state administration and which based on paragraph 1 of Article 7 (Public Officials Admission Principles) of the challenged Law itself, stipulates that: *"1. Admission to office of civil servant, Public Service employees and administrative-technical and support staff is based on principles of equal opportunities, merit, and integrity, nondiscrimination and fair and proportional representation of genders and communities through an open and competitive procedure".*

236. As explained above, paragraph 1 of Article 9 of the challenged Law, precisely defines (i) the possibility of relevant public authorities to assess the candidate's ability to perform the relevant task in recruitment procedures as specified in its point 1.4; and (ii) the possibility of defining the criteria and consequently the assessment related to their fulfillment in relation to "*education level and work experience for the relevant position, category, class or group"*, as specified in point 1.7 thereof. Taking into account these two criteria and the discretion that allows each public authority during the recruitment procedures of public officials, the determination of an additional criterion of "*eligibility*" only for a certain category of positions/individuals/candidates, at the complete discretion of state institutions and without a clear definition at the law level, does not seem to follow a clear legitimate aim in support of achieving the goal of independent, impartial and professional and merit-based state administration, including in the recruitment phase.

237. The criterion of "*eligibility*" as such and as explained above, (i) on the one hand increases the full decision-making discretion of public authorities in recruitment procedures beyond the criteria clearly established in paragraph 1 of Article 9 of the challenged Law; while (ii) on the other hand, violates *"clarity"* and *"predictability"* necessary in the context of application/recruitment in the state administration, including the effectiveness of the use of the legal remedy. Consequently, (i) beyond the fact that in relation to the content of paragraph 1 of Article 9 of the challenged Law, in the absence of a definition in the law, it does not seem to pursue a legitimate goal, (ii) the latter is not even proportional, because by the definition of such a criterion of such importance through sub-legal acts, the criteria defined precisely at the level of the law can be violated, as is the case with the criteria defined in paragraph 1 of Article 9 of the challenged Law and which can be ignored on the basis of the "*eligibility"* criterion. Such a wording of one of the essential articles of the challenged Law and which defines the general criteria for the admission of the public official, which may grant full discretion in decision-making in recruitment procedures to the public authority, while it does not guarantee any predictability and clarity for the individual, namely the candidate for public official is not "*clear"* nor "*predictable*" and consequently, violates the principle of legal certainty which is embodied in the concept of the rule of law through paragraphs 1 of articles 3 and 7 of the Constitution, respectively and consequently, violates the principle of legal certainty which is embodied in the concept of the rule of law by paragraphs 1 of articles 3 and 7 of the Constitution, respectively.

B. Regarding the allegation of incompatibility of Article 12 of the challenged Law with Article 4 of the Constitution

(a) allegations and counter-arguments of the parties

238. The Court initially first notes that the Applicants allege that Article 12 (Government of the Republic of Kosovo) of the challenged Law, which establishes that "*In accordance with provisions of this law, Government of the Republic of Kosovo: 1.1.dopts and coordinates general state policies for employment of public officials, as well supervises their implementation,"* is incompatible with Article 4 [Form of Government and Separation of Power] of the Constitution because, according to them, "*[...] allows the government's direct interference with employment in the Assembly, in the judiciary and other independent institutions, which independence is guaranteed by the Constitution of the Republic of Kosovo and also elaborated by the judgment of the Constitutional Court (CC), dated 9 July 2020, AGJ: 1582/20, case no. KO203/19, respectively with paragraphs 205, 206, 207 of this judgment."*This allegation is also supported by the Ombudsperson who considers that the latter does not define the limitation of the Government's competence towards the personnel of independent constitutional institutions, which results in the violation of the principle of the separation of power as well as the violation of the organizational independence of these institutions. Moreover, the Ombudsperson considers that: *"[...] In this case, the Assembly of the Republic of Kosovo has failed to implement the request of the Constitutional Court, defined in paragraph 115, as well as the findings established in paragraphs 134 and 135 of Judgment. KO 203/19"*. The Court also recalls the comments of the ERO of 19 January 2023, related to this allegation, which considers that*"[...] it is an independent agency established on the basis of Article 142 of the Constitution of the Republic of Kosovo, and should have special treatment in the definition as another state institution, which enjoys full functional and organizational independence",* and that their staff should not be included in Article 6 of the challenged Law because Law no. 03/L-185 on the Energy Regulator decisively provides that no member of the Board or employee of ERO has civil servant status.

239. On the other hand, in relation to this allegation of the Applicants, the Prime Minister in his comments, among other things, emphasized that the Applicants do not offer any argument as to why this article is contrary to the Constitution and that according to the practice of the Court, raising the claim in itself is not sufficient to establish a violation of the constitutional articles. In this context, the Prime Minister, among other things, has emphasized that the challenged Law does not violate Article 4 of the Constitution and to support this claim, he cites the articles of the challenged Law that contain specific authorizations for independent constitutional institutions, which have the prerogative to issue of special acts arising from this law. The Court recalls that basically the same arguments as the Prime Minister's are repeated by the parliamentary group of the LVV in its comments of 30 January 2023.

(b) general principles on the principle of separation of power and the independence of independent constitutional institutions, established by the case law of the Court;

240. The Court initially recalls the relevant constitutional provisions related to the principle of separation of power, namely Article 4 [Form of Government and Separation of Power] of the Constitution, while regarding the independence of independent constitutional institutions, the Court refers to the constitutional provisions for the independent institutions expressly listed in Chapter XII [Independent Institutions], namely, in articles 132-135 [[Role and Competencies of the Ombudsperson], 136-138 [Auditor-General of Kosovo], 139 [Central Election Commission], 140 [Central Bank

of Kosovo] and 141 [Independent Media Commission], as well as in relation to the Court as established in Chapter VIII [Constitutional Court] of the Constitution.

241. The Court in its case law, recently also in its Judgment in case KO100/22 and KO101/22, more specifically clarified that: *"[...] Article 4 of the Constitution, which determines the form of government and separation of power, among others, specifies that 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, principles according to which, (i) the Assembly exercises legislative power; (ii) the President is the legitimate representative of the country internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution and representing the unity of the people according to the latter; (iii) The Government is responsible for implementation of laws and state policies and is subject to parliamentarian control; (iv) the judicial power is unique, independent and is exercised by courts; and (v) the Constitutional Court is an independent organ for the protection of constitutionality and makes the final interpretation of the Constitution[...].*" (see case of the Court, KO100/22 and KO101/22,cited above, paragraph 154)

242. Whereas, regarding the basic principles of the separation and balancing of powers and the guarantees for independent constitutional institutions, the Court, since its establishment, has elaborated in its judgments, based, among other things, on good international practices, the relevant opinions of the Venice Commission as well as the case law of the ECtHR and the Court of Justice of the European Union (hereinafter: ECJ), as far as it has been necessary and applicable. More precisely, the Court has consolidated its case law on the principles regarding the separation and balancing of powers and the independence of independent constitutional institutions, by judgments that include but are not limited to (i) The Court's Judgment in case KO73/16, with Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo (hereinafter: Judgment in case KO73/16); (ii) Judgment of the Court in case KO171/18, with Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Law no.06/L-048 on the Independent Oversight Board for Civil Service of Kosovo (hereinafter: Judgment in caseKO171/18); (iii) The Court's Judgment in case KO203/19, with Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Law no. 06/L-114 on Public Officials (hereinafter: Judgment in caseKO203/19); (iv) Judgment in case KO219/19, with Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Law no. 06/L-111 on Salaries in Public Sector (hereinafter: Judgment in caseKO219/19); and (v) Judgment in case KO127/21, with Applicant *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*, regarding the constitutional review of Decision no. 08-V-29 of the Assembly of the Republic of Kosovo of 30 June 2021, for the dismissal of five (5) members of the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: Judgment in caseKO127/21) and (vi) The Court's Judgment in case KO100/22 and KO101/22,with Applicant*KO100/22, Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo; and of Referral KO101/22, Arben Gashi and 10 other deputies of the Assembly of the Republic of Kosovo*, regarding constitutional review of Law No.08/L-136 on Amending and Supplementing Law no.06/L-056 on Prosecutorial Council of Kosovo (hereinafter: Judgment in case KO100/22 and KO101/22).

243. From the aforementioned judgments it results that : (i)) among the basic values embodied in the Constitution, on which the constitutional order of the Republic of Kosovo is based, is also "*separation of powers*"; (ii) the functioning of the democratic

state of the Republic of Kosovo is based on the constitutional principle of the separation of powers and checks and balances among them; (iii) the three independent powers defined by the Constitution constitute the classic triangle of separation of powers and that the relationship between them is based on the principle of separation of powers and control checks and balances among them; (iv) each of the powers, including the independent institutions, are regulated in separate constitutional chapters and each of these chapters establishes the general principles as well as the duties and responsibilities of each power, including the check and balance mechanisms between them, which constitute the essence of how these powers should check and balance each other, without creating any unconstitutional "*interference*", "*dependence*" or "*subordination*" between them, which could potentially affect the independence of one or the other power; (v) in addition to the three classical powers, the Constitutional Court has a special place in the system of separation of powers, as an institution responsible for the final guarantee of constitutionality at the country level, the President, as a representative of the unity of the people and guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as well as the independent institutions referred to in Chapter XII of the Constitution; and finally, (vi) the separation of powers as a fundamental principle of the highest constitutional level, is embodied in the spirit of the country's Constitution and, as such, is non-negotiable (see case of the Court, KO100/22 and KO101/22,cited above, paragraph 158).

244. Moreover, in addition to the independent constitutional institutions defined in Article XII of the Constitution, the Court in its case law, namely in the Judgment in case KO127/21 where it reviewed the constitutionality of the dismissal of five members of the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: the Independent Oversight Board), has emphasized that this is an institution established by the Constitution, which in paragraph 2 of its Article 101 has attributed to the latter (i) the designation of "independent" institution related to me (ii) the exercise of its constitutional function, respectively, *"ensuring the respect of the rules and principles governing the civil service"*. The Judgment in case KO127/21 also underlines that the purpose of the relevant constitutional provision reflects the institutional independence of the Independent Oversight Board in order to exercise its function for "*ensuring the respect of the rules and principles governing the civil service*" (see case of the Court, KO127/21, cited above, paragraph 83).

245. Furthermore, in its Judgment in case KO203/19, the Court reviewed the Law on Public Officials, where, among other things, the basic principles related to the independence of independent constitutional institutions were addressed. By the Judgment in case KO203/19, the Court found that the Law in force on Public Officials is incompatible, among other things, with Article 4 of the Constitution because, among other things, in the exceptions of paragraphs 3 and 4 of Article 4 [Civil servants with special status] of the aforementioned Law, civil servants of independent constitutional institutions, including the Constitutional Court, the institutions defined in Chapter VII [Justice System] and those defined in Chapter XII [Independent Institutions] of the Constitutionwere not included. The Court, by the aforementioned Judgment, emphasized, among other things, that the latter, based on the constitutional guarantees, *"[...] are authorized to decide on their internal organization, including the regulation of certain specifics related to their personnel, in order to ensure their functional and organizational independence* KO203/19, cited above, paragraph206).

246. In this respect, in the aforementioned Judgment, the Court also assessed that*"[...]the Assembly, authorizing the Government through the challenged Law to* issue sub-leg*al acts which regulate the issue of employment, including the classification of positions, criteria for recruitment and other issues in the Independent Constitutional*

Institutions, without taking into account their independence – violates the essence of the independence of the Independent Constitutional Institutions guaranteed by Article 115 of Chapter VIII of the Constitution and Articles 132, 136, 139, 140, 141 of Chapter XII of the Constitution, as State public authorities separated from the Legislature, the Executive authority, and the regular Judiciary. Therefore, the Court finds that the above-mentioned violations make the disputed Law inconsistent with the Constitution in relation to the Judiciary and Independent Institutions and that it cannot be applied to them as long as it does not respect their institutional and organizational independence." (see case of the Court KO203/19, cited above, paragraph 208).

247. In case KO203/19, the Court also summarized the main principles as regards the status of the personnel of the independent constitutional institutions, as it derives from the Constitution and the special laws, emphasizing that according to these principles, among others, it results that:

a) the provisions of relevant legislation, including civil service legislation which was in force before the adoption of the challenged Law which was reviewed before the Court in the aforementioned case, do not specifically refer to the staff of independent constitutional institutions as civil servants, but foresee the application of the civil service legislation (see case of the Court KO203/19, cited above, paragraph 150 (a));

b) civil service legislation, including the challenged Law, applies to the staff of these independent constitutional institutions only to the extent that they do not violate their independence(see case of the Court KO203/19, cited above, paragraph150(b));

c) the Constitution and the special laws authorize and oblige the independent institutions, in particular the Applicant and the Court, to issue regulations, orders and other legal acts to regulate the specifics related to the employment relationship of their staff, which differ from the general norms set by other laws, including the challenged Law, in such a way as to ensure their functional and organizational independence, but only to the extent necessary to ensure their independence as provided for by the Constitution and special laws(see case of the Court KO203/19, cited above, paragraph 150 (c)).

d) the regulations and other legal acts of the independent constitutional institutions that regulate the specifics related to the employment relationships of the staff of independent institutions deriving from the Constitution and the special laws must be respected by all institutions including the executive and other institutions (see case of the Court KO203/19, cited above, paragraph 150 (d)).

248. Therefore, the Court will further assess whether these principles are reflected in the challenged Law.

(c) Assessment of the Court

249. The Court initially recalls the content of Article 12 (Government of the Republic of Kosovo) of the challenged Law and which: (i) in the first paragraph establishes that in accordance with the provisions of this law, the Government of the Republic of Kosovo adopts and coordinates general policies state for the employment of the public official, as well as supervises their implementation and adopts sub-legal acts authorized for the implementation of this law; (ii) in the second paragraph it is established that the

Government of the Republic of Kosovo reports to the Assembly of the Republic of Kosovo on the state of public officials by 31 March for each calendar year, for the previous year; and (iii) in its third paragraph, specifies that in the negotiations and consultations on the general working conditions of public officials, with the trade unions and with the representatives of public officials, the Government of the Republic of Kosovo is represented by the ministry responsible for public administration together with the Ministry responsible for Finance. Contested in this provision according to the Applicants is the "*supervisory*" competence of the Government, namely the competence of the latter to supervise the implementation of general state policies for the employment of public officials and which policies according to this article are adopted and coordinated by the Government. According to the Applicants, including the Ombudsperson, and as explained above, such a supervisory competence violates the independence of independent constitutional institutions and is therefore contrary to the principle of separation of powers established in Article 4 of the Constitution.

250. The Court initially emphasizes that the competence of the Government for the adoption, coordination and supervision of the implementation of general state policies for the employment of public officials, based on Article 12 of the challenged Law, is further specified in Article 13 (Ministry responsible for public administration) thereof. The latter, in its first paragraph, defines the competencies of the Ministry responsible for public administration, including: (i) drafting, proposing, coordinating and supervising the implementation of policies for the public official; (ii) supervision and implementation of legislation for public officials in the state administration institutions; (iii) proposing and monitoring the implementation of salary policies for public officials and public functionaries; (iv) supporting and advising institutions in the implementation of the challenged Law; (v) preparation of the declaration of compliance with the challenged Law, for each draft act proposed by other institutions, which has to do with the employment relationship of the public official; (vi) organization according to planning of admission procedures for state administration institutions in accordance with this law; (vii) planning, placing and carrying out the systematization of civil servants, who have completed their mandate, in accordance with this law; (viii) adopting and monitoring the implementation of training programs for civil servants; (ix) searching for and receiving from the institutions of the Republic of Kosovo any necessary information in the field of employment; (x) administration and maintenance of the Human Resources Management Information System; (xi) the drafting and approval of general instructions and manuals to guarantee the unified implementation of legislation for public officials; (xii) drafting policies for the engagement of interns in the public administration; (xiii) drafting the general personnel plan; and (xiv) preparing and publishing the annual report on human resources management. Whereas, in its paragraphs 3, 4 and 5, among other things, it is determined that: (i) responsibilities for the drafting, proposal, coordination and supervision of the implementation of policies for the public official, as well as the search and receipt by the institutions of the Republic of Kosovo of any necessary information in the field of employment relationships, as far as they relate to the employee in the public service, are carried out in cooperation with the ministry responsible for state policies for the relevant public service; (ii) any institution that employs public officials, as well as any public functionaries and public officials, who have managerial decision-making competencies, or who have information in this field, cooperates with the ministry responsible for public administration; and (iii) the ministry responsible for public administration is the only state administration institution that has the competence to provide explanations regarding the provisions of this law.

251. In this context, the Court first emphasizes the fact that it is not disputed that based on Article 93 [Competencies of the Government] of the Constitution, among other things, the Government (i) guides and oversees the work of the administration bodies; and (ii) exercises other executive functions, which are not assigned to other central or local bodies. Furthermore, based on Article 94 [Competencies of the Prime Minister] of the Constitution, the Prime Minister, among others: (i) ensures that all Ministries act in accordance with government policies; and (ii) ensures the implementation of laws and policies determined by the Government. Having said that, exactly in Chapter VI regarding the Government of the Republic of Kosovo and precisely regarding the civil service, the competence of a separate and independent constitutional institution is defined, namely the Independent Oversight Board for Civil Service of Kosovo (hereinafter: the Independent Oversight Board) and which, based on paragraph 2 of Article 101 of the Constitution, is charged with the competence of oversight of ensuring compliance with the rules and principles governing the civil service. Based on this constitutional provision, the Assembly adopted Law No. 03/L-192 on the Independent Oversight Board for the Civil Service of Kosovo since 2010 and then Law 06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: Law on IOBCSK), in 2018, determining the composition and method of election of its members, including the relevant functions and powers in the supervision of the rules applicable to the civil service and their implementation, related to "*[...] all public administration institutions employing civil servants*", independently from the Government and the obligation that for his work, he does not report to the Government, but to the Assembly of the Republic of Kosovo.

252. The Court further emphasizes that the competence of supervising the observance of the rules and principles governing the civil service is the competence of the Independent Oversight Board, defined by paragraph 2 of Article 101 of the Constitution. The case law of the Constitutional Court is highly consolidated in the context of the independence of the Independent Oversight Board and its functions, including but not limited to the Judgments in the aforementioned Court cases: KO171/18 and KO127/21. This constitutional competence of the Board cannot be violated by another institution in the Republic of Kosovo, including the Government, through acts with a lower hierarchy of norms, namely laws approved in the Assembly, as has already been specified by the abovementioned case law of the Court.

253. The Court recalls that based on Article 101 of the Constitution and the Law on the IOBCSK, the latter is defined as an independent constitutional institution that ensures compliance with the rules and principles governing the civil service. This function, based on the same law, is exercised by 7 (seven) members appointed by the Assembly of the Republic of Kosovo. This Board, based on Article 6 (Functions of the Board) of the Law on the IOBCSK, among others, is responsible for: (i) supervising the implementation of the rules and principles of the civil service legislation; (ii) examining and making decisions on complaints of civil servants and candidates for admission to the civil service; (iii) supervision and the selection procedure and deciding whether the appointments of civil servants at the senior management level and at the management level have been carried out in accordance with the rules and principles of the civil service legislation; and (iv) monitoring of public administration institutions that employ civil servants, related to the implementation of the rules and principles of civil service legislation. Moreover, based on Article 7 (Powers of the Board) of the Law on the IOBCSK, the Board , among other things, has the right, (i) to visit any institution that employs civil servants; (ii) to access and control the files and any document related to the implementation of the rules and principles of the civil service legislation; (iii) to interview any civil servant who may have information of direct importance to the exercise of the functions of the Board; (iv) to request and receive from the institutions any information necessary for the performance of his

duties; and (v) issue decisions, guidelines, opinion and recommendations. Also, based on Article20 (Monitoring of public administration institutions regarding the implementation of rules and principles of the legislation for Civil Service) of the Law on the IOBCSK, the Board has the competence to monitor the public administration institutions that employ civil servants every year, in order to evaluate the implementation of the rules and principles of the civil service legislation. Moreover, based on Article 25 (Cooperation with public administration institutions) and Article 28 (Annual report of the Board)of the Law on the IOBCSK, among others, is regulated (i) cooperation with public administration institutions, including the obligation that any public functionary or civil servant, who has powers in the administration of the civil service, or has information in this field, are obliged to cooperate with the Board; and (ii) annual reporting until 31 March of the following year, related to the performance of the constitutional and legal functions of the Board, as an independent constitutional institution for the supervision of compliance with the rules and principles of civil service legislation, and recommendations for the institutions of the public administration, the Assembly of the Republic of Kosovo, delivering a copy to the Prime Minister.

254. In the context of the above, the Court emphasizes the fact that (i) the defined competence of the Government of the Republic of Kosovo based on sub-paragraph 1.1 of Article 12 of the challenged Law, regarding *"supervision"* and *"implementation"* which is related to the observance of the rules and principles that regulate the civil service, which derive as a result of the approval of the relevant policies, is the competence of the Independent Oversight Board, defined in paragraph 2 of Article 101 of the Constitution; and (ii) the defined competence of the Government to report to the Assembly of the Republic of Kosovo about "*situation of public officials* " is also the competence of the Independent Oversight Board, based on paragraph 2 of Article 4 (Independent Oversight Board for the Civil Service of Kosovo) and paragraph 1 of Article 28 (Annual Report of the Board) of the Law on IOBCSK.

255. Furthermore, the Court also emphasizes the fact that the competencies defined by the Ministry responsible for public administration, namely the Ministry of Internal Affairs based on Article 13 of the challenged Law, are the powers of the Independent Oversight Board defined in Article 101 of the Constitution and the Law on IOBCSK. More precisely, the competence of the Ministry responsible for public administration regarding (i) the supervision of the implementation of policies for the public official defined in sub-paragraphs 1.1 and 1.2 of Article 13 of the challenged Law is the competence of the Independent Oversight Board according to paragraph 2 of Article 101 of the Constitution and Article 6 (Powers of the Board), including Article 19 (Oversight procedure for the selection of senior management and management level Civil Servants) of the Law on IOBCSK; (ii) requesting and obtaining any necessary information in the field of labor relations from the institutions of the Republic of Kosovo defined in sub-paragraph 1.9 of Article 13 of the challenged Law is the competence of the Independent Oversight Board according to sub-paragraph 1.4 of paragraph 1 of Article 7 (Powers of the Board) of the Law on IOBCSK. Moreover, the obligation of cooperation of all public authorities in the context of state administration/civil service employees is defined in the context of the Board based on Article 25 (Cooperation with public administration institutions) of the Law on IOBCSK, while by paragraph 4 of Article 13 of the challenged Law, this obligation is defined in relation to the Ministry responsible for Public Administration. The Court also notes that, based on paragraph 5 of Article 13 of the challenged Law, the Ministry responsible for public administration *"[...]is the only institution that has competence in providing clarifications on provisions and definitions of this law*". Such exclusive competence of the relevant Ministry also contradicts the function of the Independent Oversight Board as defined in Article 7 of the Law on the IOBCSK.

256. Based on the above clarifications, it is not disputed that the Government, by the challenged Law, cannot appropriate and/or infringe upon the competence of the Independent Oversight Board, to exercise the function of supervision and ensuring compliance with the rules and principles governing the civil service. The competencies defined for the Government, according to the clarifications above, in some of the paragraphs of Articles 12 and 13 of the challenged Law, are already the competencies defined for the Independent Oversight Board based on Article 101 of the Constitution and the Law on the IOBCSK.

257. Furthermore, and in the aforementioned context, the Court places added emphasis on paragraph 2 of Article 104 of the challenged Law, according to which, upon the entry into force of the challenged Law "a*ny other provision contrary to this law shall be repealed*". This provision allows the repeal of the supervisory competencies of the Independent Oversight Board and which, by articles 12 and 13 of the challenged Law, are assigned to the Government, despite the fact that in article 15 (Independent Oversight Board for the Civil Service of Kosovo) of the challenged Law, refers to the competence of the Independent Oversight Board.

258. Therefore, the definition of parallel competences for the Government and the Independent Oversight Board through two different laws, bypassing the constitutional competence of the Board and moreover, the definition that any provision contrary to the challenged Law, is repealed upon entry into force of the latter, not only violates the competence of the Board defined by Article 101 of the Constitution, but also violates the principle of separation and balancing of power defined according to paragraph 1 of Article 4 of the Constitution but also the principle of legal certainty embodied in paragraphs 1 of articles 3 and 4 of the Constitution, respectively.

259. Furthermore, through sub-paragraph 1.5 of Article 13 of the challenged Law, the supervisory competence of the Ministry responsible for Public Administration, namely the Ministry of Internal Affairs, is determined over draft acts from other institutions that have to do with the employment relationship of public officials, through the determination that the same prepares a statement of compliance with this law in relation to any draft act of other institutions. In this regard, the Court emphasizes that such supervisory competence of the relevant Ministry conflicts with the independence of institutions, such as the Presidency of the Republic of Kosovo, the Constitutional Court, the Justice System, the Assembly, and the independent constitutional institutions, to which the Constitution , as interpreted by the Court, among others in the judgments of the Court's cases KO73/16 and KO203/19, but as also established in paragraph 3 of Article 2 of the challenged Law, protects their independence, especially in relation to the executive.

260. Similarly, and in connection with the competence to obtain necessary information in the field of the employment relationship, as stated above, this is also the competence of the Independent Oversight Board, and based on the above clarifications, the competence to request and receive any necessary information in the field of the employment relationship from the institutions of the Republic of Kosovo defined in sub-paragraph 1.9 of Article 13 of the challenged Law, as well as it is established in the case law of this Court, which has been reflected to the general principles, is also not compatible with the independence of independent constitutional institutions, mentioned above.

261. Therefore, based on the above explanations, the Court finds that the wording "*as well as supervises their implementation*" in sub-paragraph 1.1 of paragraph 1 and paragraph 2 of Article 12, sub-paragraphs 1.1, 1.2, 1.5 and 1.9 of paragraph 1 and

paragraphs 3, 4 and 5 of article 13 of the challenged Law, are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 2 of Article 101 [Civil Service] of the Constitution of the Republic of Kosovo. In this context, the Court clarifies that paragraph 3 of Article 13 of the challenged Law is not in compliance with the Constitution as a consequence that it refers to sub-paragraphs 1.1 and 1.9, which were declared not to be in compliance with the Constitution.

262. However, beyond the aforementioned findings that the respective provisions of the challenged Law are not compatible with the Constitution in relation to the independent constitutional institutions, namely the Independent Oversight Board, in the context of the Applicants' allegation that Article 12 of the challenged Law also violates the principle of separation and balancing of powers contrary to Article 4 of the Constitution, the Court will, in the following, assess separately, if the challenged Law infringes the independence of independent constitutional institutions.

263. In this context, the Court first notes that based on Article 1 (Purpose) of the challenged Law, the purpose of the latter is to regulate the employment relationship of the public official in the institutions of the Republic of Kosovo, namely the definition of rules and principles that regulate the acceptance, classification of positions, modification, termination of the employment terms, rights and obligations in relation to the employment terms as well other issues related to the employment terms of the public official in the institutions of Republic of Kosovo.

264. The Court also notes that Article 2 (Scope of application), Article 3 (Exemptions from the scope of the Law) and Article 6 (Civil servant with special status) of the contested Law, determine the relevant exemptions from the scope of the challenged Law. Accordingly, Article 3 of the challenged Law defines the exemption of its applicability for: (i) judges and prosecutors; (ii) commanding and military personnel of the Kosovo Security Force or another successive organization; (ii) employees of the Kosovo Intelligence Agency, Kosovo Police, Kosovo Customs, Financial Intelligence Unit; (iv) the director or members of collegial managing body of regulatory agencies; and (v) the personnel of public enterprises, owned by the Government or a municipality. More precisely, Article 3 of the challenged Law defines the exclusion of its applicability, also for (i) elected officials; (ii) members of the Government and their deputies; (iii) political appointees at the central and local level, except for the positions defined in paragraph 6 of Article 5 of this law; while in sub-paragraph 1.3 of its paragraph 1, it is specified that the challenged Law does not apply to "*functionaries appointed by the Assembly or the President of the Republic of Kosovo, President of the Republic of Kosovo, Government of the Republic of Kosovo, dignitaries or members of collegial managing bodies of independent institutions and agencies, exceptionally positions defined in the paragraph 2 of Article 5 of the present Law*".

265. In addition and beyond the exceptions defined in its article 3, the challenged Law in its Article 6 defines the employees with "*special status*" including (i) employees of the correctional and probation service of Kosovo; (ii) mission staff members in the foreign service; (iii) officials of the Civil Aviation Agency and Air Navigation Services Agency, who perform operational services in the field of air control and navigation; (iv) members of the Commission on the Investigation of Aeronautical Accidents and Incidents; (v) personnel of the Ministry of Defense and its agencies; (vi) Personnel of the Ministry of Internal Affairs and its agencies, exceptionally the Police of Kosovo and the Police Inspectorate of Kosovo; (vii) employees in the Tax Administration of Kosovo; and(viii) Personnel of the State Bureau for Verification and Confiscation of Unjustified Assets, allowing these categories that by "*special law*" to regulate otherwise elements of employment relationship, including (i) special or additional

conditions for recruitment; (ii) specific rights or obligations; (iii) special rules for career development, according to the grading system; (iv) professional development and training; (v) transfer and systematization of employees; (vi) determination of violations and additional disciplinary measures; and (vii) discipline and evaluation. Paragraph 3 of this article specifies that in case of regulation by special law, for the civil servant with a special status and who, as explained above, are expressly listed in paragraph 1 of this article and exclude independent constitutional institutions, provisions prevailing are the provisions of "*special law*".

266. The Court further notes that based on Article 2 and 6 of the challenged Law, the list of state institutions with regard to which the application of the challenged Law is excluded or limited, including the Ministry of Internal Affairs itself, in the capacity of the Ministry responsible for public administration, does not exactly reflect the legitimate purpose pursued in defining such exceptions or limitations. Having said that, the Court, based on the Applicants' allegations, will analyze the scope of the challenged Law only in the context of the independence of independent institutions.

267. The Court, in this context, first emphasizes that the administration employees of independent constitutional institutions are categorized in the category of civil service employees according to sub-paragraph 1.2 of paragraph 1 and paragraph 2 of Article 5 of the challenged Law. While the independent constitutional institutions are also referred to in paragraph 4 of Article 6 of the challenged Law, they are not listed in the specific list of institutions specified in paragraph 1 of Article 6 of the challenged Law and in relation to which, the challenged Law , determines the possibility of regulating the employment relationship differently from the provisions of the challenged Law by "*special law*" and which, based on paragraph 3 of this article, prevails over the provisions of the challenged Law. However, referring to independent constitutional institutions in its paragraph 4, Article 6 stipulates that their respective officials are also "*servant with special status*", which are regulated by a "*special act*".

268. In this regard and further, the Court refers to Article 2 of the challenged Law, which establishes the scope of application of the challenged Law. The latter, in its paragraph 1, specifies that the law applies to public official in public institutions of the Republic of Kosovo. In its paragraph 2, it specifies that the employment relationship of the public official can be regulated differently only when it is provided "*expressly provided by this law*", while in its paragraph 3, it determines that for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo and the independent constitutional institutions, "*the present law applies to the extent that it does not infringe on their functional and organizational independence guaranteed with the Constitution*". Moreover, by including this category of employees in the category of employees "*with special status*" according to Article 6 of the challenged Law, the latter enables independent constitutional institutions to regulate the employment relationship by special laws and acts, and which according to paragraph 3 of the aforementioned article, the provisions of the special law prevail. While the exceptions established in Article 6 of the challenged Law are limited only to the circumstances defined by the aforementioned Article, in the case of independent constitutional institutions, they also operate under the protection of paragraph 3 of Article 2 of the challenged Law regarding its applicability in the context of independent constitutional institutions, only "*to the extent that it does not infringe on their functional and organizational independence guaranteed with the Constitution*".

269. The Court also notes that, paragraphs 4 and 7 of Article 19 (Human Resources Management Information System), paragraph 7 of Article 37 (Employment relationship in the Civil Service), paragraph 7 of Article 38 (Classification of positions

in civil service), paragraph 15 of Article 39 (Civil Service admission procedure), paragraph 7 of article 40 (Admission commission for professional category positions), paragraph 3 of Article 41 (Appointment to a professional category position), paragraph 7 of Article 42 (Admission commission for the specialist category), paragraph 3 of article 43 (Appointment to the position of specialist category), paragraph 12 of article 44 (Admission to the position of the lower and middle management category), paragraph 7 of Article 45 (Admission committee for the lower and middle management category), paragraph 13 of Article 46 (Appointment and mandate of lower and middle management positions), paragraph 13 of Article 47 (Admission to a position of the senior management category), paragraph 9 of Article 48 (Admission committee for the senior management category), paragraph 15 of article 49 (Appointment and mandate of senior management position), paragraph 19 of article 52 (Performance appraisal) , paragraph 7 of Article 53 (Performance appraisal for civil servants of senior managerial category), paragraph 12 of Article 60 (Establishment and composition of disciplinary committee), paragraph 8 of Article 63 (Temporary transfer), paragraph 8 of article 65 (Permanent transfer for the interest of the institution), paragraph 8 of Article 66 (Transfer in case of closure or restructuring) and paragraph 4 of Article 69 (Ex-officio suspension) of the challenged Law refer to special regulations for the system of Justice, the Constitutional Court, the Presidency, the Assembly of the Republic of Kosovo, as well as the independent constitutional institutions, respectively, enabling them to issue special acts by the competent bodies of these institutions themselves.

270. Based on the above clarifications, the Court notes that the challenged Law (i) has determined that the latter applies to the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo and independent constitutional institutions, "*to the extent that it does not infringe on their functional and organizational independence guaranteed with the Constitution*"; (ii) for employees with special status insofar as there are special laws, the provisions of the challenged Law shall prevail; and (iii) that in certain of its provisions, and as specified above, it determines the competence of independent institutions to regulate the employment relationship of their employees with special acts.

271. Having said that, while paragraph 3 of Article 2 of the challenged Law establishes that for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo and the independent constitutional institutions, "*[...] the present law applies to the extent that it does not infringe on their functional and organizational independence guaranteed with the Constitution*", the implementation of this principle in compliance with the constitutional guarantees for independent constitutional institutions, must also be analyzed in the light of the mechanisms that the challenged Law has defined in this context, with emphasis on (i) paragraph 2 of Article 5; (ii) paragraph 1, 2, 3 and 4 of Article 6; and Article 104 of the challenged Law.

272. The Court notes that based on paragraph 2 of Article 5 of the challenged Law, among other things, employees in the administration of the President of the Republic of Kosovo, in the administration of the Assembly of the Republic of Kosovo, independent constitutional institutions, in independent agencies and regulatory, are defined as "*civil service employee*". On the other hand, through paragraph 4 of Article 6 of the challenged Law, employees in the administration of the justice system, the Constitutional Court, the Assembly of the Republic of Kosovo as well as independent constitutional institutions, are defined as "*civil servant with special status*" and whose regulation is made by a separate act, namely a separate law and which, based on paragraph 3 of Article 6 of the challenged Law, prevails over its provisions. Moreover,

based on paragraph 5 of Article 6 of the challenged Law, the same institutions are also exempted from the obligation to request from the Ministry responsible for public administration the determination of the category of public official for that function, position or title based on of equivalence, in the event of the creation of new functions and positions.

273. In the context of the aforementioned observations, the Court recalls its Judgment, in the assessment of the Law in force on Public Officials, namely the Judgment in its case KO203/19. The Court, in this context, recalls that (i) the Law in force on Public Officials had been declared in certain of its articles to be contrary to the Constitution, among other things, precisely because the latter had included employees of the administration of independent constitutional institutions in the scope of the challenged Law and did not include, among others and/or at least, the exception specified in Law no. 03/L-149 on the Civil Service of the Republic of Kosovo, which in its Article 1 (Purpose and Scope) determined that *"[...] . The institutions of the public administration that regulated by special law shall be subject to the provisions of this law [Law on Civil Service], except in cases where the special law contains provisions that are different*" and Article 3 (The Civil Service of the Republic of Kosovo) of this law established that "*[...] during the implementation of this law, the constitutional autonomy of the institutions independent from the executive shall be respected*" (see Judgment in the case of the Court, KO203/19, cited above, paragraphs 119-127); (ii) had emphasized that the challenged Law does not provide for the possibility that, during its implementation, the special laws of independent institutions and their internal rules should be taken into consideration to ensure their independence, since, among other things, in Article 85 it repealed any provision that is contrary to this Law, including the special laws that regulate these institutions (see Judgment in the case of the Court, KO203/19, cited above, paragraphs 128-130); and (iii) finally, among other things, it emphasized the fact that in the context of independent constitutional institutions, special norms, including laws and sub-legal acts, "*[...] must be respected by all institutions including the Government and the institutions that oversee the implementation of these provisions*" (see Judgment in the case of the Court, KO203/19, cited above, paragraph 160).

274. The Court, as well as in the previous Judgment regarding the Law on Public Officials, emphasizes the fact that independent institutions cannot act in a vacuum in relation to the legal framework of the Republic of Kosovo and that they are also subject to certain limitations and control, including the Auditor General of the Republic of Kosovo, but their constitutional independence, including in terms of internal organization, guaranteed by constitutional provisions and as clarified throughout the consolidated case law of the Court already in this context, cannot be violated by legal provisions (see, among others, Judgment in case of the Court, KO203/19, cited above, paragraph 151-152). In this context, the Court notes that the challenged Law, unlike the previous one, enables independent institutions to exclude certain provisions of the challenged Law, insofar as the latter may infringe upon their independence established in the Constitution and the regulation of functioning of the administration and their internal organization through special laws and acts.

275. Having said this, the Court also recalls that beyond the independent constitutional institutions defined by Chapter VII [Justice System] regarding the Justice System, Chapter VIII [Constitutional Court] regarding the Constitutional Court and Chapter XII [Independent Institutions] regarding Independent Institutions, the Constitution also defines the independence of Independent Agencies in its Article 142. In the context of the latter, through its case law, the Court, among other things, in Judgment KO203/19, has taken the position that: *"[...] that the Independent Agencies established under Article 142 of the Constitution do not have the same status with*

that of the Independent Constitutional Institutions explicitly mentioned in Chapter XII of the Constitution. This is because unlike other institutions referred to in Chapter XII of the Constitution, "Independent Agencies" provided by Article 142 of the Constitution "are institutions established by the Assembly, based on the 52 respective laws, which regulate their establishment, operation and competencies", and consequently cannot enjoy the same status as the independent institutions expressly defined by the Constitution (see Court case KO203/19, cited above, paragraph 209).

276. The Court reiterates this position, however, it also emphasizes the fact that Article 142 of the Constitution establishes that: (i) Independent agencies of the Republic of Kosovo are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies. Independent agencies exercise their functions independently from any other body or authority in the Republic of Kosovo; (ii) Independent agencies have their own budget that is administered independently in accordance with the law; and (iii) every organ, institution or other entity exercising legal authority in the Republic of Kosovo is bound to cooperate with and respond to the requests of the independent agencies during the exercise of their legal competencies in a manner provided by law. As such, the latter cannot be subject to the control of the executive power as determined by the provisions of the challenged Law.

277. More accurately, the Court notes that the challenged Law (i) includes Independent Agencies in the definition of "*other state institution*"; while (ii) the executive and regulatory ones are included in the definition of a "*state administration institution*", while classifying both categories in the civil service employee category according to sub-paragraph 1.2 of paragraph 1 and paragraph 2 of article 5 of the challenged law. However, the challenged Law, despite the fact that the Independent Agencies within meaning of Article 142 of the Constitution are established by the Assembly according to the definitions set out in the relevant laws and therefore are not an integral part of the executive power, does not define any provision that would exclude and/or limited the supervision of the Government in the context of the Agencies established by the Assembly. Moreover, the Court recalls the exceptions specified in paragraph 1 of Article 6 of the Constitution and which also include institutions within the executive power, including the Ministry responsible for public administration and the exclusion of independent agencies defined by Article 142 of the Constitution, from the possibility to regulate certain aspects of their organization through special laws adopted by the Assembly based on the above-mentioned article, does not appear to have pursued any legitimate and proportional goal.

278. Furthermore, the Court also recalls that paragraph 2 of Article 104 of the challenged Law, upon its entry into force, apart from the repeal of Law No. 03/L-149 on Civil Service of the Republic of Kosovo, Law No. 06/L-114 on Public Officials and Law No. 08/L-128 on Amending and Supplementing Law No. 06/L-114 on Public Officials, also repeals any "*other provisions contrary to this law*". The Court in the context of the latter, based on the principles related to legal certainty embodied, among others, in Articles 3 and 7 of the Constitution and explained above, including those defined in the case law of the Court, of the ECtHR but and the principles of the Venice Commission, emphasizes that such a provision of a very generalized and unclear character, including in the context of the laws of the Assembly that have been issued: (i) related to the independent constitutional institutions and to which the challenged Law allows to act based on special laws and acts; and (ii) based on Article 142 of the Constitution regarding the Independent Agencies, violates the constitutional independence of the latter, and moreover, results in "*unpredictability*" and consequently, violation of the principle of legal certainty in the context of the

provisions applicable to the relevant officials of the institutions of the Republic of Kosovo. The same wording in the Law in force on Public Officials, namely its Article 85, by the Judgment in the case KO203/19, the Court had also declared contrary to the Constitution (see Court case, KO203 /19, cited above, paragraph 196).

279. Therefore, the Court must find that paragraph 2 of Article 104 of the challenged Law, in conjunction with Article 6 of the challenged Law, including the fact that the latter has excluded Independent Agencies from the status of civil servants with a special status, is not in accordance with the principle of separation and balancing of powers, the principle of legal certainty and the rule of law defined by paragraphs 1 of articles 3, 4 and 7 of the Constitution.

280. As established in the enacting clause of this Judgment, and in order to have clarity and predictability, and consequently, legal certainty regarding the provisions of the challenged Law, the Assembly is obliged to supplement and amend Article 6 of the challengedLaw in relation to the Independent Agencies established according to Article 142 of the Constitution, including their personnel in the category of employees with a special status in Article 6 of Law No. 08/L-197 on Public Officials, so as to guarantee independence of these agencies based on Article 142 of the Constitution as well as the relevant laws on their establishment, and which prevail over the challenged Law, according to the conditions stipulated in Article 6 of the challenged Law.

C. Regarding the allegations of incompatibility of Article 46 of the challenged Law with Articles 3, 7, 16, 19, 21, 22, 24, 46, 49, 53, 55 and 101 of the Constitution

(a) Allegations and counter-arguments of the parties

281. The Court underlines that in relation to Article 46 of the challenged Law, which defines the mandate with a duration of 4 (four) years with the right of extension without competition only for another mandate of the same duration, for lower and middle management level positions, the Applicants claim that this provision violates the principles of the rule of law guaranteed by Articles 3 and 7 of the Constitution, as well as the hierarchy of norms established in Articles 16 and 19 of the Constitution, which includes the observance of international agreements by Kosovo. This is because, according to them, Article 46 of the challenged Law, which limits the mandate for certain positions in the civil service, is contrary to Article 120 of the SAA, through which Kosovo has made a commitment to the European Union to reform the public administration in accordance with the principles of SIGMA. In this regard, they emphasize that such positions with a fixed term *"[...] are not applicable in any member country of the European Union and contradicts the Principles of Public Administration of SIGMA that apply to candidate and potential candidate countries for membership in the European Union, such as Kosovo"*. The latter also consider that through this legal provision in violation of Article 101 of the Constitution *"[...] the career system in the civil service of the Republic of Kosovo is destroyed and in its place a system based on temporary positions with a mandate for all middle and lower level management positions is established, thus essentially affecting the civil service as a professional, impartial and independent body from direct political influence"* and by that *"it risks being highly politicized due to the possibility of mandated changes of key positions in the service"*. Also, the latter mention that this provision contradicts Articles 21, 22, 24, 46, 49, 53 and 55 of the Constitution. The Court also underlines the comments of the Ombudsperson, who considers that "*the transition from a career system to a position system for middle and lower managers*", not only does it violate the stability of the civil service, but also the legitimate expectation, because the establishment of the employment relationship was

carried out through the rules (legislation) which guaranteed the duration of the employment relationship without a deadline.

282. On the other hand, the Prime Minister in his comments, among other things, considers the claims of the Applicants regarding the violation of Article 120 of the SAA to be manifestly ill-founded because the Court's jurisdiction *"[...] the constitutional control of the law with international agreements is not included"*, and according to the latter, neither the latter are subject to constitutionality control. In addition, the Prime Minister emphasized that Article 46 of the challenged Law is in accordance with the aforementioned provision of the SAA because this rule enables any employee to advance in position through open and public competitions and that the career in civil service cannot be expressly developed only through one system, but it can be a career system, a dual system or a position system. The Court notes that essentially the same arguments as the Prime Minister's are repeated by the parliamentary group of the LVV in its comments of 30 January 2023.

283. The Court reiterates the position of SIGMA in its legal opinion submitted to the Court by the Applicants, where it emphasized that the latter is against this system because the mandates assigned to civil servants in management positions are not common in the administrations of the EU member states and articulately they are not seen at the lower and middle management level, and also considers that this can easily lead to the politicization of the public administration up to the level of unit heads. Although SIGMA underlines that it has been in favor of opening the system, given the size of the public administration of Kosovo, however, it has recommended a comprehensive review of the opening of positions, giving priority to internal candidates, with transfers and horizontal promotion towards external candidates. SIGMA also emphasized the will of the Government to improve the performance of civil servants through this reform, but according to them, a four-year perspective in a position does not ensure better performance, especially in the second term, when the latter cannot be extended and that instead of better performance, ministers will take power. Furthermore, SIGMA appreciates this competence to decide, how *"[...] somewhat arbitrarily, for the professional life of the civil servant"*.

284. Therefore, the Court notes that the Applicants, in essence, claim that the transition from positions with unlimited mandate of lower and middle management level to positions with a fixed term is in violation of Article 120 of the SAA, as an agreement ratified in the Assembly, therefore, this results in a violation of the hierarchy of norms contrary to the rule of law principle contrary to articles 3, 7, 16, 19, 21, 22, 24, 46, 49, 53, 55 and 101 of the Constitution.

285. In the context of the aforementioned allegations and counter-arguments, the Court will initially elaborate the general principles of the rule of law, the principle of legal certainty and the hierarchy of norms and then apply the latter to the circumstances of the chllenged provision.

(b) General principles related to the rule of law, legal certainty and the hierarchy of norms

286. The Court first emphasizes that the Constitution has mentioned the notion of the rule of law in paragraph 1 of Article 3 [Equality Before the Law] and paragraph 1 of Article 7 [Values], as one of the values on which the constitutional order is based, while the separation of powers has foreseen in its Article 4.

287. More specifically, Article 3 of the Constitution determines that: *"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"; whereas paragraph 1 of Article 4, establishes that *"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."*

288. Furthermore, paragraph 1 of Article 7 of the Constitution establishes that: *"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."*

289. Furthermore, and in connection with the principle of the hierarchy of acts, the Court emphasizes that this issue is regulated by the Constitution. In this regard, the Court initially refers to Article 16 [Supremacy of the Constitution] of the Constitution, namely its paragraph 1, which stipulates that*: "The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution".*

290. The Court also refers to Article 17 [International Agreements] of the Constitution which states in paragraph 1 that: *"The Republic of Kosovo concludes international agreements and becomes a member of international organizations."* Furthermore, Article 19 [Applicability of International Law] in its paragraph 1 states that: *"International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law."* Whereas, paragraph 2 of this article determines that *"Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo."*

291. Based on the aforementioned constitutional provisions, among others, and as far as it is relevant to the circumstances of the present case, it results that:

(i) The Constitution is the highest act and all other laws and acts must be in compliance with it;
(ii) International agreements ratified by the Republic of Kosovo become part of the internal legal system; and
(iii) Ratified international agreements have superiority over the laws.

292. In this regard, the Rule of Law Checklist, approved by the Venice Commission in 2016, develops the various aspects of the Rule of Law, among others: (a) legality; (b) legal certainty; (c) prevention of abuse of power; (d) equality before the law and non-discrimination, (e) access to justice; and (f) prohibition of arbitrariness; and (g) the protection of human rights (see, Venice Commission's Rule of Law Checklist, CDL-AD (2016)007-e, cited above, paragraph 18). Furthermore, this document also defines the elements of each of the aforementioned categories, where the principle of legality defines that the same includes the principle of the supremacy of the law. According to this principle, the actions of the state must be in accordance with and authorized by law. While, according to the Rule of Law Checklist, the term "*law*" for this purpose means not only the Constitution, but also international law, statutes, and regulations, but in certain cases, it may also include case law (see, Checklist of the Rule of Law of the Venice Commission, cited above, paragraph 46).

293. Based on the aforementioned principles, it follows that the principle of the rule of law included in Articles 3 and 7 of the Constitution, among other things, includes the

principle of the supremacy of the law and respect for the hierarchy of laws and the principle of legal certainty. Based on these principles and among others, if a lower act is not compatible with a higher act, the principle of the supremacy of law and the hierarchy of norms as an essential part and principle of the rule of law is violated.

294. In this regard, the Court further clarifies that, based on its case law, the fact remains that according to the Constitution and the Court's case law, the latter has no jurisdiction to assess the constitutionality of the content of an international agreement, but only the law through which that international agreement was ratified (see, among others, the findings of the Court in the case KO45/18, Applicant *Glauk Konjufca and 11 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Law No. 06/L-060 on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro, Judgment of 30 April 2018, paragraphs 107-111). However, in the present case, we are not dealing with the assessment whether an international agreement is in accordance with the Constitution, but whether a law adopted by the Assembly is in accordance with the Constitution, where the principle of supremacy and hierarchy of norms occupies a central place, including as is defined in paragraph 1 of Article 16 of the Constitution and paragraphs 1 and 2 of Article 19 of the Constitution. These constitutional principles determine that a law must not only be in harmony with the Constitution but also with binding international agreements. More precisely, based on the aforementioned provisions of the Constitution, (i) the Constitution is the highest legal act of the Republic of Kosovo; (ii) International agreements ratified by the Republic of Kosovo become part of the internal legal system after they are published in the Official Gazette of the Republic of Kosovo and they are directly implemented, except for cases where they are not self-executing and their implementation requires the issuance of a law; (iii) Ratified international agreements and legally binding norms of international law have precedence over the laws of the Republic of Kosovo; and (iv) laws and other legal acts must be in accordance with this Constitution.

295. Further, and in the context of the Applicants' allegations, the Court also refers to Article 101 [Civil Service] of the Constitution that regulates the issue of civil service, which in its paragraph 1 defines that: "*1. The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality.*" Whereas paragraph 2 of this Article establishes that: *"An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo"*. However, the Court notes that Article 101 of the Constitution, beyond the criterion that the civil service (i) will reflect the diversity of the people; (ii) will take into consideration the principle of gender equality; and (iii) the determination that the Independent Oversight Board should be formed, which ensures the implementation of civil service norms, does not further determine the issue of the mandate of civil servants. Having said that, the issue of mandate is always subject to the assessment of the principle of legal certainty.

296. Consequently, based on the above, the Court finds that the Constitution does not contain any obligation regarding the definition of career civil service, where all civil service positions, except those at senior management level, have an indefinite term as defined by the current law in force and the previous one.

297. However, given the constitutional principles of the rule of law, the supremacy of law and the hierarchy of norms, as explained above, as well as the clear constitutional norm defined in paragraph 2 of Article 19 of the Constitution that international agreements have supremacy over the laws of the Republic of Kosovo, the Court will further assess whether the determination through the challenged Law that lower and

middle management positions are defined with a fixed mandate is in compliance with Article 120 of the SAA, respectively paragraph 2 of Article 19 of Constitution.

c) Assessment of the Court

298. The Court, first of all, recalls that Article 46 (Appointment and mandate of lower and middle management positions) of the challenged Law, determines the transition from a public service system with an indefinite mandate to one with a term of four (4) year with the possibility of extension for a second term for all lower and middle management positions. This article stipulates that every civil/public servant has the right to apply for these positions, including the servant who held the position during the first term, if the mandate of the latter has not been extended for the following four (4) years. The extension of public service duties in lower and middle-level management positions, after the end of the first and/or second term, is initially conditioned by the fact that the respective officials were part of the civil service before taking the position lower or middle management level. If this was not the case, the relevant official, after the end of the mandate, is released from the civil service. Whereas, regarding the category that has been part of the civil service before taking over the mandate for the position of lower or middle management level, according to Article 46 of the challenged Law, two alternatives are possible, namely they either (i) will be systematized in a vacant position of the professional category, provided that they meet the conditions for appointment to the relevant position and that the refusal related to this appointment results in the termination of the employment relationship; or (ii) will be placed on the waiting list and will enjoy the rights defined under Article 67 of the challenged Law. The latter, among other things, determines that (i) the rights and obligations of waiting civil servants, including their salaries and training, are determined by the Government with a sub-legal act after the proposal of the ministry responsible for public administration in consultation with the Ministry responsible for Finance; and (ii) if the civil servant is not reassigned to any vacant civil service position within a period of nine (9) months, and/or refuses reassignment may constitute grounds for dismissal from civil service.

299. Furthermore, based on Article 99 (Transitional provisions) of the challenged Law, at the latest within one (1) year after the entry into force of the challenged Law, the open recruitment procedure will be announced for all positions of lower and middle management level and which until the entry into force of this law were positions with indefinite mandates. Employees have the right to apply for the positions they held in the open recruitment procedure. If the relevant employee has not obtained the position for which he/she has applied, there will be two alternatives, namely either (i) he/she will be placed in a professional position provided that he/she meets the conditions for appointment to the position in question and the refusal in respect of which constitutes a cause for release from civil service, and for a period of 4 (four) years he is guaranteed a transitional salary according to the provisions of paragraph 5 of Article 99 of the challenged Law; or (ii) will be placed on the waiting list and enjoy the rights under Article 67 of the challenged Law, according to which and among others, if within the period of nine (9) months, the relevant employee is not reassigned to any vacant position of civil service, may be released from civil service.

300. Based on the clarification above, the Court clarifies that it will first assess the constitutionality of Article 46 of the challenged Law and which, the current civil service system in relation to lower and middle management positions with indefinite term mandates according to the system established based initially on (i) UNMIK regulations, namely Regulation No. 2001/36 on Civil Service, amended and supplemented by UNMIK regulations: No. 2006/20 and No. 2008/12; and then (ii) the laws regarding civil service, namely Law No. 03/L-149 on the Civil Service of

Kosovo and the Law in force on Public Officials, transforms it into a fixed-term position system.

301. According to these applicable laws, with the exception of high-level management positions, all positions in the civil service since 2000 have been subject to indefinite contracts and mandates and the conditions for losing the position and/or employment relationship, are precisely defined, through mechanisms related to performance evaluation as defined in Article 43 and/or disciplinary procedures as defined in articles 45-51 of the Law in force on Public Officials.

302. In contrast, and as explained above, Article 46 of the challenged Law defines the transition from lower and middle management positions with an indefinite term to one with a fixed term. More precisely, the Court refers to paragraphs 1, 6, 7, 10 and 11 of Article 46 (Appointment and mandate of lower and middle management positions) of the challenged Law, which stipulates as follows:

> *"1. The candidate applying for the position of a lower or middle management level, evaluated by the admission committee with the highest points and above the minimum threshold of 70% of the overall evaluation points, shall be considered the winning candidate and appointed to the corresponding position, for a mandate with a duration of four (4) years. [...]*
> *6. The extension of the term under this Article shall be done if, at the end of the first term, the average performance of the civil servant's tern us evaluated at least by "meets expectations".*
> *7. Upon the termination of the second term, or in case the term is not extended in accordance with this Article, a civil servant shall have the right to compete for the same position he or she held. [...]*
> *10. Until the appointment to a professional category position, a civil servant shall be placed on the waiting list and shall enjoy the rights as defined in Article 66 of this Law.*
> *11. Declining the appointment to a position of the professional category, assigned by the responsible unit, shall comprise a cause for the servant's dismissal from civil service [...]".*

303. In the context of the aforementioned provision, firstly, the Court notes that Article 46 of the challenged Law is regulated within sub-chapter 2 (Appointment to management category positions) of Chapter II (Admission and Career in the Civil Service) of this law and consequently, the Court emphasizes that the challenged provision in this case refers to the appointment to lower and middle management positions in the civil service and does not apply to other categories of public officials.

304. Secondly, the Court notes that paragraphs 1 and 6 of Article 46 of the challenged Law establish that the candidate who has been evaluated by the admission committee with the highest points and above the minimum threshold of 70% (seventy percent) of the total points of evaluation, is considered the winning candidate with a specific mandate, namely, with a duration of 4 (four) years, and that the latter has the right to extension without competition only for another mandate with the same duration provided that at the end of in the first term, the average performance of the civil servant's mandate was evaluated at least with the rating "*meets expectations*". The Court emphasizes that paragraph 7 of Article 46 of the challenged Law determines that after the end of the second mandate or in case of non-extension of the mandate due to failure to meet the aforementioned requirement, the civil servant has the right to apply for the same position that he had.

305. Thirdly, the Court points out that paragraphs 10 and 11 of the challenged Law stipulate that the civil servant of the management category of lower and middle level, until the appointment to a position of the professional category, is placed on the waiting list and enjoys the rights as defined in Article 67 of the challenged Law, and that the refusal to be appointed to the professional category constitutes a reason for release from civil service.

306. Consequently, the Court notes that according to Article 46 of the challenged Law, the candidate for appointment in the category of civil servant of middle and lower management level who earns the highest points and exceeds the threshold of 70% (seventy percent) of points wins the position in question for a term of 4 (four) years, with the right to extension without competition for another term of the same duration, provided that his average performance has been assessed at the level of "*meets expectations*", and in in case of non-extension, or after the end of the second mandate, the latter is placed on the waiting list until the reassignment to a vacant civil service position by the responsible unit, and eventually according to Article 67 of the challenged Law which defines the issues that are related with the Waiting List, can be released from the civil service, including in case of rejection of the position of the professional category.

307. The Court initially recalls the fact that, based on the documents submitted to the Court by the Applicants, it results that the EU Office in Kosovo and the Legal Opinion of SIGMA raised concerns regarding the transition from indefinite term mandates to deadline and had not recommended such a solution. More precisely, the SIGMA Opinion, in this context, among other things, states that: (i) fixed-term mandates are not common in the administrations of the EU member states and, in an in an articular manner, they are not foreseen at the level of lower and middle management; (ii) a four-year perspective in a middle or lower management position does not ensure better performance, especially in the second term, when that term cannot be extended without announcing the competition; and (iii) this reform can easily lead to the politicization of public administration up to the level of unit heads (lower management level).

308. Furthermore, the Court recalls that based on the answers received by the Forum of the Venice Commission, it results that while some of the relevant systems of state administrations also have defined positions with a fixed mandate, none of the states that submitted the answers before Courts, have not undertaken a reform of public administration, based on which, they have transformed the career system into the position system, defining the exercise of certain duties from those with an indefinite term to a fixed term. This is with the exception of Austria.

309. More precisely, according to the clarification given by the Austrian Constitutional Court, the circumstances of the reform of the relevant administration coincide with the circumstances of the present case. The aforementioned court clarifies that as a result of the amendment of the Law on Civil Service in 1994, middle and high-level public officials have a fixed term of 5 (five) years, after which, if they are not re-elected, they assume the position of their previous experience in the civil service, provided that they already had a permanent employment in the civil service before taking over the fixed-term position; otherwise they would lose employment in the civil service. Furthermore, the Austrian Court clarifies that until that reform, the entire state administration was based on the career system. However, it is worth noting that the transition from a career system to a position system for middle and high management positions was made in such a way that public officials who at that time already had a middle or high management position, were free to choose the new fixed-term system (which provided for attractive salaries) or to remain in the career system,

thus resulting in the gradual elimination of the career system for these positions and without retroactively affecting the rights of the relevant officials.

310. The Court also emphasizes the fact that according to the respective responses of member states of the Venice Commission Forum, performance in the civil service, in principle, is ensured through performance evaluation and/or disciplinary systems that may also result in the termination of the employment relationship. Moreover, the Court also emphasizes the fact that some of the Constitutional Courts and their equivalents emphasized, including through their case law, the importance of acquired rights and legitimate expectations and the possible infringement of these rights as a result of retroactive application of the law.

311. Having said that, in assessing the constitutionality of Article 46 of the challenged Law, the Court should focus on the assessment of the constitutional provisions. In this context, the Court also emphasizes the main constitutional authority of the Assembly for legislation at the country level. The Assembly, as a legislative power, *"[...] in addition to the Constitution and the obligation to exercise legislative power in accordance with the Constitution, [...] is not subject to any other authority"* (see Judgment of the Court KO72/20, Applicant *Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo,* Constitutional review of Decree No. 24/2020 of the President of the Republic of Kosovo, of 30 April 2020, Judgment of 1 June 2020, paragraph 352, see case KO219/19, cited above, paragraph 259). The latter has full authorization to choose the best and most suitable modality that it considers to be suitable for the system of the Republic of Kosovo in terms of public policies. The only limitation that the Assembly has in legislation is to respect the law-making procedures and vote laws that are in compliance with the Constitution and the values and principles proclaimed therein..

312. Therefore, the Court highlights the fact that in all cases where a law of the Assembly is challenged before the Constitutional Court by the authorized parties, the focus of the assessment is always the respect of constitutional norms and human rights and freedoms - and never the assessment of the selection of the public policy that led to the approval of a certain Law. The Court has already emphasized in its case law that when considering the constitutionality of a Law, it never assesses whether it is a law based on good public policies or not (see Court cases: Judgment KO73/16, Applicant *the Ombudsperson*, Constitutional review of Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo, Judgment of 8 December 2016, paragraph 52; Judgment KO72/20, cited above, paragraph 357; KO12/18, Applicant *Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 11 June 2018, paragraph 117; and KO219/19, cited above paragraph 259), but only if the latter may have violated the provisions of the Constitution of the Republic of Kosovo.

313. In the context of the latter, the Court recalls that the main allegation of the Applicants is that Article 46 of the challenged Law is in conflict with Article 120 of the SAA, which according to the clarifications given in the general principles above, means the Court's assessment of whether the relevant provision is in accordance with the hierarchy of norms, namely as far as it is relevant in the circumstances of the present case with paragraph 2 of Article 19 of the Constitution.

314. In this context, the Court first recalls that by Law No. 05/L -069, the Assembly had ratified the Stabilization Association Agreement between the Republic of Kosovo, on the one hand, and the European Union and the European Atomic Energy Community, on the other. The same was promulgated in the Official Gazette of the Republic of Kosovo on 1 December 2015 and entered into force on the same day, based on Article

3 (Entry into force) of this law. As such, the above-mentioned international agreement, based on Article 19 of the Constitution, (i) is part of the internal legal system and is directly applied, insofar as the implementation does not require the issuance of a law; and (ii) has precedence over the laws of the Republic of Kosovo.

315. Further, the Court recalls that Article 120 (Public Administration) of the SAA contains two paragraphs that determine that:

> *"Cooperation and dialogue shall aim at ensuring the further development of a professional, efficient and accountable public administration in Kosovo, building on the reform efforts undertaken to date in this area, including those related to the decentralisation process and to the establishment of new municipalities. Cooperation shall notably aim to support the implementation of the rule of law, the proper functioning of the institutions for the benefit of the population of Kosovo as a whole, and the smooth development of relations between the EU and Kosovo.*
>
> *Cooperation in this area shall mainly focus on institution building, including the development and implementation of merit-based, transparent and impartial recruitment procedures at both central and local level, human resources management, and career development for the public service, continued training and the promotion of ethics within the public administration. Cooperation shall also include the improvement of efficiency and the capacity of independent bodies that are instrumental for the functioning of public administration and for an effective system of checks and balances."*

316. Related to this and in the context of public administration, Article 120 of the SAA obliges Kosovo to: (i) cooperation and dialogue that aim at ensuring the further development of a *"professional, efficient and accountable*" public administration in Kosovo; and that (ii) cooperation in this area is mainly focused on:

a. institution building, including the development and implementation of "*merit-based, transparent and impartial"* recruitment procedures;
b. human resources management, and *"career development for the public service"*, and
c. continued training and the promotion of ethics within the public administration.

317. In this context, the Court notes that Article 120 of the SAA establishes the obligation for (i) cooperation regarding the development of public, professional, efficient, and accountable administration; (ii) implementing recruitment procedures based on merit, transparency and impartiality; and (iii) career development. However, this provision does not establish an obligation for the public administration necessarily and for all positions to be based on a career system with an indefinite mandate.

318. The Court further notes that OECD/SIGMA has developed principles of public administration for candidate countries and potential candidates for membership in the European Union in six areas such as: (i) strategic framework of public administration reform; (ii) policy development and coordination; (iii) public service and human resources management; (iv) accountability; (v) provision of services; and (vi) public finance management (see OECD/SIGMA, Public Administration Principles, cited above).

319. The relevant principles of public administration in terms of the circumstances of the present case establish as follows:

"Human resources management
[...]
Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.
1.The recruitment and selection process in the public service, whether external or internal and regardless of the category/class of public servants, is clearly based on merit and equal opportunity.
2. The general eligibility criteria for applying for public service positions and general provisions ensuring the quality of the recruitment are established in the primary legislation. The detailed procedures, including specific requirements for entering each category/class, job descriptions, competency profiles, selection methods, scoring systems and composition of selection committees, are mainly covered by secondary legislation.
3. The recruitment and selection committees include persons with expertise and experience in assessing different sets of skills and competences of candidates for public service positions, and there is no political interference.
4. Candidates who are not appointed have the right to appeal against unfair recruitment decisions.
5. Protection against discrimination of persons applying to the public service and those employed is ensured by all administrative bodies, in accordance with the principle of equal treatment. In the cases explicitly established in the law, comprehensive equitable representation is taken into account in the recruitment process.
6. The objective criteria for demotion of public servants and termination of the public service relationship are explicitly established in law.
7. Public servants have the right to appeal against unfair demotion and dismissal."

320. Consequently, based on the content of Article 120 of the SAA and the fact that it does not contain specific obligations in the context of the categorization and/or mandates of public officials in the state administration, the Court finds that Article 46 of the challenged Law is not in contradiction with Article 120 of the SAA and, therefore, paragraph 2 of Article 19 of the Constitution.

321. Furthermore, the Court recalls the content of Article 101 of the Constitution, and which in the first paragraph, determines that the composition of the civil service will reflect the diversity of the people of Kosovo, taking into consideration the principles of gender equality, recognized internationally, while in the second paragraph, it determines the establishment of an Independent Oversight Board for the civil service which ensures compliance with the rules and principles that regulate the civil service and which reflects the diversity of the people of the Republic of Kosovo. Based on the content of the aforementioned article, the Court notes that the constitutional provisions regarding the civil service in the Republic of Kosovo do not define its system and/or the duration of the relevant mandates. The Court recalls that the determination of public policies are within the competence of the executive and legislative powers, respectively, and that it is not the role of the Court to assess the suitability of public policies to be specified through laws approved by the Assembly, as long as they do not violate constitutional provisions.

322. Consequently and considering that: (i) Article 101 of the Constitution and Article 120 of the Stabilization and Association Agreement, do not contain specific obligations in the context of the categorization and/or mandates of public officials in the state administration; and (ii) through Article 46 of the challenged Law, the public officials

are affected who are appointed/selected to lower and middle management positions after its entry into force, the Court finds that Article 46 of the challenged Law is not in contradiction with (i) paragraph 2 of Article 19 of the Constitution; and (iii) Article 101 of the Constitution.

323. The Court emphasizes that by Article 46, public officials who are appointed/selected to lower and middle management positions after the entry into force of the challenged Law are affected. In such a circumstance, Article 46 of the challenged Law does not affect the acquired rights of public officials who currently hold lower and middle management positions in the public administration. Any lower and middle management position that is obtained after the challenged Law enters into force, will be done through the provisions of the new Law, namely the challenged Law, and the relevant civil servants will have clear relevant rights and obligations in advance. The Court clarifies that the rights and obligations of public/civil employees acquired based on the law applicable to civil service and/or public officials, will be treated separately in this Judgment in the context of assessing the constitutionality of Article 99 of the challenged Law.

324. However and further, the Court also emphasizes the interrelation of articles 46 and 67 of the challenged Law. Specifically, the Court notes that Article 46 of the challenged Law in its paragraphs 8 and 9, foresees that after the end of the mandate defined in this article, those appointed in the middle or lower management category, who have been in the civil service before the appointment in the middle or lower management category, are arranged by the responsible unit in a vacant position of the professional category, provided that they meet the criteria for appointment in the said position, while others who have not been in the civil service, are released from the civil service . In accordance with paragraph 10 of this article, "*Until the appointment to a professional category position, a civil servant shall be placed on the waiting list and shall enjoy the rights as defined in Article 66 of this Law".*

325. The Court recalls the content of Article 67 (Waiting List) of the challenged Law which defines as follows:

> *"1. Civil servants who, after the closure or restructuring of the institution, have not been redeployed in accordance with Article 66 or other cases provided by the law cannot be systematized, shall be placed on the waiting list.*
> *2. The Ministry responsible for public administration shall take care of the systematization of waiting civil servants in the same civil service category, as well as the training for the relevant position where they are systematized.*
> *3. Refusal to undergo training, according to point 2 of this Article, shall constitute grounds for removal from civil service.*
> *4. If within nine (9) months, a civil servant is not reassigned to any vacant position in the civil service, this shall constitute grounds for removal from the civil service.*
> *5. The rights and obligations under this Article shall apply as long as the civil servant on the surplus list does not have another employment relationship.*
> *6. The rights and obligations of waiting civil servants, including their salaries and training, shall be determined by the Government by a bylaw at the proposal of the ministry responsible for public administration and the ministry responsible for finance."*

326. The Court notes that based on Article 67 in conjunction with Article 46 of the challenged Law, civil servants of middle and lower management level, after the end of their mandate until they are appointed to a professional category position, are placed on a waiting list, where if they are not reassigned to any vacant position, within a

period of nine (9) months and/or refuse to do so, then they may be released from civil service and that within this period of time they have rights and obligations, including salaries and which, in paragraph 6 of this article, are left to be determined by the Government with a sub-legal act after the proposal of the ministry responsible for public administration in consultation with the Ministry responsible for Finance.

327. In this context, the Court recalls the aforementioned principles of the Venice Commission but also from the case law of the ECtHR and the Court, defined in paragraphs 227-230 of this Judgment in relation to the rule of law, namely the principle of legal certainty as its element, which, among other things, determine that the relevant provisions of the law must be "*clear, accessible and predictable*".

328. The Court notes that paragraphs 1 to 5 of Article 67 of the challenged Law stipulate the obligations towards civil servants who are placed on the waiting list and that: (i) cases when a civil servant is placed on the waiting list, which include the termination or restructuring of the institution; (ii) the question of the obligation to be trained during the period when they are on the waiting list and the consequences of refusing the training, resulting in grounds for release from civil service; (iii) release from civil service in case of not being systemized in another position within the term of nine (9) months; as well as determines (iv) that the rights and obligations during the waiting period are valid as long as the latter does not have another employment relationship.

329. The Court in the aforementioned context notes that paragraph 6 of Article 67 of the challenged Law defines the rights and obligations of civil servants on the waiting list. The Court however also notes that while this provision, among other things, determines the obligation of officials on the waiting list not to have any other employment relationship during the time they are placed on the waiting list because otherwise they lose all rights and obligations stemming from the waiting list, the same article does not determine the right to salary, namely its level during the same period, referring the same to regulation through the by sub-legal act that can be approved after the proposal of the ministry responsible for public administration in consultation with the Ministry responsible for Finance.

330. Therefore, the Court notes that while Article 67 of the challenged Law, as regards the obligations of civil servants on the waiting list, is specific, including the obligation not to have another employment relationship for a period of up to nine (9) months during which there is no clarity regarding the right to salary, the latter does not specify the civil servant's rights within the waiting period, which are left to be determined by a sub-legal act. Such an approach followed through the challenged Law, does not respect the principle of proportionality in relation to the issues regulated by law and by sub-legal act, namely the proportionality between the rights and obligations of civil servants on the waiting list.

331. Furthermore, based on the aforementioned principles regarding the principle of the rule of law and legal certainty as its element, the Court considers that the complete ambiguity at the law level regarding the rights and obligations, including the salaries of civil servants in question, does not meet the conditions to be sufficiently "*clear and predictable*". This, among other things, since (i) it allows the executive power wide and unlimited discretion to determine through the adoption of the sub-legal act: (a) the rights of civil servants on the waiting list; as well as (b) the amount of salary/compensation that the latter can benefit. Also, this makes it impossible for the civil servant on the waiting list to regulate the relevant behavior in accordance with the Law and depends entirely on the rights and obligations that will be determined by sub-legal act.

332. Therefore, based on the general principles that stem from the case law of the Court, the ECtHR and the principles elaborated by the Venice Commission, and elaborated as above, the Court finds that the non-definition of rights, including the salary of those placed on the waiting list in the law and the delegation of such a determination by a sub-legal act by the ministry responsible for public administration, while the obligations of civil servants are defined in the challenged Law, make paragraph 6 of Article 67 of the challenged Law, disproportionate but also "*unclear and unpredictable* and in violation of the principle of legal certainty. Consequently, the Court finds that paragraph 6 of Article 67 of the challenged Law is contrary to the principle of legal certainty and the rule of law as established in paragraphs 1 of Articles 3 and 7 of the Constitution.

333. As defined in the enacting clause of this Judgment, and in order to have clarity and predictability, and consequently, legal certainty regarding the provisions of the challenged Law, the Assembly is obliged to supplement and amend Article 67 (Waiting list) of Law No. 08/L-197 on Public Officials, in accordance with the Constitution and this Judgment, also defining the rights of civil servants on the waiting list, including the amount of salary/compensation.

D. Regarding the allegations about the incompatibility of Article 99 of the challenged Law with Articles 7, 22, 46 and 49 of the Constitution

(a) allegations and counter-arguments of the parties

334. The Court recalls that the Applicants allege that Article 99 of the challenged Law violates Articles 7, 22, 46 and 49 of the Constitution because all persons holding middle and lower management positions will lose their jobs, since public competitions will be announced for their positions and if they are not selected in their current positions, they will be placed on the waiting list and if they are not reassigned to any other civil service position and/or if they refuse it, then eventually they can even be released from office. In this regard, the Applicants raise the argument of the violation of the acquired legal right and violation of legitimate expectations contrary to the principle of the rule of law, embodied in Article 7 of the Constitution and elaborated in the Rule of Law Checklist of Venice Commission. This is because they have carried out their recruitment procedure a long time ago on the basis of the previous civil service law, which provides them with a mandate without time limit, that is, a permanent appointment act.

335. In this context, the Court underlines that the Applicants also claim the violation of Article 46 of the Constitution, respectively, the right to property, on the grounds that these civil servants have an acquired right that is related to the salary level of and planning based on salary, which is considered a property right acquired during the drafting of legislation related to salaries in the public sector, either through a general law or through some special laws or even the amendment of existing laws , and in this case they are invoked in a provision of the Constitution of Slovenia, which prohibits the retroactive effect of legal acts, especially when it concerns the violation of acquired rights. The Applicants further emphasize that because the civil servants have established an employment relationship, which is endangered, this also constitutes a violation of the right to work, guaranteed by paragraph 1 of Article 49 of the Constitution. The Court also underlines the comments of the Ombudsperson, who clarifies that the concept of legitimate and reasonable expectation in the protection of subjective rights is a comprehensive concept of interpretation in international case law and that "*legitimate expectation*" must be of a concrete nature and must be based on legal provisions and legal acts. The latter emphasizes that in the present case, the legitimate expectation of civil servants of lower and middle management level, for the

realization of the rights derived from the employment relationship, is based on the right acquired from the provisions of the preliminary Law on Civil Service, during the period that this law was in force.

336. On the other hand, the Court reiterates the counter-arguments of the Prime Minister, who, in relation to the claims of the Applicants for the loss of work by civil servants of middle and lower management level, among other things, emphasizes that the current civil servants the employment relationship will not be terminated indefinitely, according to the appointment act because the employment relationship as defined in each appointment act stems from the status of being a civil servant and not from the corresponding position in the public administration and that the latter cannot be considered an acquired right. In this regard, the Prime Minister refers to the case law of the ECtHR and the Court, where, according to him, the "*acquired right*" is affirmed to guarantee the benefit of benefits from the work performed in the future and that legitimate expectations are dealt with in cases of possession, assets and existing property, where the position in the civil service is in no case related to these concepts. The court notes that the Prime Minister also emphasizes that articles 99 and 67 of the challenged Law respect the acquired right, predictability and legitimate expectations as elements of legal certainty, due to the fact that even in cases where the employee is not a successful candidate for the given management position, the public servant, for a certain period of time (4 years), is guaranteed the right to salary in accordance with the position he enjoyed according to the previous law.

337. The Court notes that essentially the same arguments as the Prime Minister's are repeated by the parliamentary group of the LVV in its comments of 30 January 2023, which adds that the announcement of these positions is a reflection of the legislator's intention that the lower and middle management positions to be fixed-term positions, therefore, this should be understood not as a limitation but as an expansion of opportunities.

338. The Court also recalls the Legal Opinion of the EU Office, submitted to the Court by the Applicants, in which it is emphasized that no administration terminates the employment of a head of a unit with good performance just because an opportunity must be provided to other, potentially better candidates, and the introduction of mandates will not address any of the key problems facing the Kosovo administration, while creating instability and uncertainty. In the same line, the Court notes that SIGMA in its legal opinion refers to the organization of competitions to fill the positions in question as a period of uncertainty for all civil servants in management positions, which is evidence of distrust towards previous competitions (the need to be reconfirmed), and that this will create a massive burden for the institutions responsible for the new competitions (more to be organized at the same time. Also, SIGMA emphasized that it is very likely that the number of good management officers and experienced (who are simply not selected in a competition) will be placed on a waiting list, especially after the first wave of competitions for the level of the lower and middle management category (organized one year after the entry into force of the challenged Law) and in this context, recommended that in terms of the consequences of not being appointed within nine months (release) it is of great importance that the law establishes clear accountability for the waiting list and effective mechanisms for the appointment of these civil servants.

339. Regarding the aforementioned claims of the Applicants, the Court will first deal with them in the context of human rights and their possible limitation within the right to property guaranteed by Article 46 of the Constitution, respectively, Article 1 of Protocol No. 1 of the ECHR. In this regard, the Court will first elaborate (i) the principles related to the limitation of human rights defined by the Constitution, the

general principles related to the right to property and the concept of "*legitimate expectations*" according to the Venice Commission and the case law of the ECtHR, and then will assess (ii) whether the right to property is applied to the category of civil servants included in Article 99 of the challenged Law; and if this is the case, the conditions that must be met to justify such a restriction.

(b) Limitation of fundamental rights and freedoms and fundamental principles for the right to property and the concept of "legitimate expectations" according to the Venice Commission and the case law of the ECtHR

340. The Court first places emphasis on Article 3 of the Constitution, according to which, (i) 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.; and (ii) 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. Furthermore, the Court also emphasizes, in Article 7 of the Constitution, according to which, among other things, 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.

341. In the context of the aforementioned provisions, also referring to the Rule of Law Checklist of the Venice Commission, the Court emphasizes the principle of legal certainty and its essential importance for the rule of law. This principle, as far as it is relevant to the circumstances of the present case, also includes (i) the principle of legitimate expectations; and (ii) non-retroactivity. Regarding the first, the Venice Commission, among other things, expresses the idea that public authorities should not only abide by the law but also by their promises and raised expectations. According to the legitimate expectation doctrine, those who act in good faith on the basis of law as it is, should not be frustrated in their legitimate expectations. However, new situations may justify legislative changes going frustrating legitimate expectations in exceptional cases. This doctrine applies not only to legislation but also to individual decisions by public authorities. As for the second, according to the Venice Commission, people must be informed in advance of the consequences of their behaviour. This implies predictability and non-retroactivity especially of criminal legislation. In civil and administrative law, retroactivity may negatively affect rights and legal interests. However, outside the criminal field, a retroactive limitation of the rights of individuals or imposition of new duties may be permissible, but only if in the public interest and in conformity with the principle of proportionality (including temporally) (see, Venice Commission's Rule of Law Checklist, CDL-AD (2016)007-e, cited above, paras 61-62).

342. In addition, the Court also emphasizes articles 21, 22 and 53 of the Constitution, based on which and among others, (i) human n rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo and that the latter protects and guarantees human rights and fundamental freedoms as provided by this Constitution; (ii) human rights and freedoms guaranteed by international agreements and instruments, including the ECHR, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions; and (iii) the human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.

343. The Court also refers to two constitutional rights, namely those defined in articles 32 and 54 of the Constitution, respectively, related to the right to legal remedy and judicial protection of rights, and which, among other things, determine that (i) every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law; and (ii) everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated. In this regard, the Court also recalls principle 3 within the OECD/SIGMA General Principles for Public Administration, where in its paragraph 7, it specifies that: "*Public servants have the right to appeal against unfair demotion and dismissal.*"

344. The Court also refers to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, which stipulates that:

> *"1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*
> *2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.*
> *3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*
> *4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.*
> *5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right."*

345. Based on the above, the Court emphasizes that the test of Article 55 of the Constitution determines that the limitation of a right or freedom: (i) can only be done by "*law*"; (ii) there must be a "*legitimate purpose*"; (iii) it must be *"necessary and proportionate*"; and (iv) it must be "*necessary in a democratic society*". For interpretative purposes of these notions and concepts, the Court refers to the fact that the ECtHR also uses such tests to decide whether in a specific case there was a restriction and violation of human rights and freedoms guaranteed by the ECHR (see the case KO54/20, Applicant, *The President of the Republic of Kosovo*, Judgment of 31 March 2020, paragraph 198; See, *mutatis mutandis*, also the case of the Court KO93/21 Applicant, *Blerta Deliu-Kodra and 12 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 28 December 2021, paragraphs 287-299). All these criteria must be met cumulatively in order for a restriction to be justified.

346. The Court further emphasizes that the concept of "*legitimate expectations*" is also embedded in acquired rights, including the right to property. The latter, based on the case law of the ECtHR in the interpretation of Article 1 of Protocol no. 1 of the ECHR, defines the concept of "*property*" and "*legitimate expectations*". The first in principle includes "*existing assets*" as well as claimed assets, in relation to which an applicant can argue that he or she has at least a "*legitimate expectations*". While the second, in principle, applies in certain circumstances, a "*legitimate expectations*" of obtaining a property may also enjoy the protection of Article 1 of Protocol No. 1 of the ECHR (see ECHR cases: *Pressos Compania Naviera S.A. and others v. Belgium*, no. 17849/91, Judgment of 20 November 1995, paragraph 31; *Gratzinger and Gratzingerova v.*

Czech Republic [GC], no. 39794/98, Decision on admissibility of 10 July 2002, paragraph 73). For an "*expectation*" to be "*legitimate*", it must be of a more concrete nature than a simple expectation and be based on a legal provision or a legal act such as a court decision, which relates to the property interest in question (*Kopecký v. Slovakia [GC],* no. 44912/98, Judgment of 28 September 2004, paragraphs 49-50; *Centro Europa 7 S.R.L. and di Stefano v. Italy [GC]*, no. 38433/09, Judgment of 7 June 2012, paragraph 173; *Saghinadze and others v. Georgia*, 18768/05, Judgment of 13 January 2015, paragraph 103; *Ceni v. Italy*, 25376/06, Judgment of 16 December 2014, paragraph 39; *Béláné Nagy v. Hungary [GC]*, no. 53080/13, Judgment of 13 December 2016, paragraph 75).

347. Moreover, based on the case law of the ECtHR, "*future income*" and "*pension and social benefits*" also enjoy the protection of Article 1 of Protocol no. 1 of the ECHR, in the conditions and principles determined by the case law of the ECtHR. Based on the same case law, these rights are not absolute, however their limitation must meet certain conditions. The test determined through the case law of the ECtHR in the interpretation of Article 1 of Protocol no. 1 of the ECHR is compatible with Article 55 of the Constitution and which also establishes the relevant criteria based on which the fundamental rights and freedoms guaranteed by the Constitution, including the right to property guaranteed by Article 46 of the Constitution, may be limited, respectively in the circumstances in which the interference/restriction of the respective rights is (i) "*prescribed by law*"; (ii) pursue a "*legitimate aim*"; and (iii) is "*proportionate*" in relation to the legitimate aim pursued.

(c) Assessment of the Court

348. In addressing this allegation, it first refers to paragraphs 2, 4, 5 and 6 of Article 99 [Transitional provisions] of the challenged Law, which stipulates that:

> *"1. A civil servant employed in civil service pursuant to Law No. 06/L-114 on Public Officials and who holds a position equivalent to positions of civil servants regarding their functions and responsibilities shall be considered a civil servant according to Article 2 paragraph 3 of this Law, as of the date of entry into force of this Law.*
> *2. One (1) year after the entry into force of this Law, the recruitment procedure shall be announced for all low and middle-level management positions through an open and public competition, except for positions that have been vacant and were completed during the transitional phase of the recruitment according to Article 98 of this Law.*
> *3. In the recruitment procedure announced according to paragraph 2 of this Article, a public official who has been appointed to a position by the time of the announcement of the recruitment procedure for such position shall enjoy the right to compete.*
> *4. If a public official, as in paragraph 3 of this Article, after the end of the recruitment procedure, is not announced the winner for appointment to the relevant position, he or she shall be systematized in the professional category, provided that he or she meets the criteria for appointment to the position concerned.*
> *5. A public official, as in paragraph 4 of this Article, shall benefit from compensation which shall be equal to the difference between the basic salary of the managerial position he or she exercised and the salary of the professional category in which he or she is systematized:*
> *5.1. 100% of the salary difference, during the first year after the systematization in the professional category;*

5.2. 75% of the salary difference, during the second year after the systematization in the professional category;
5.3. 50% of the salary difference, during the third year after the systematization in the professional category;
5.4. 25% of the salary difference, during the fourth year after the systematization in the professional category.
6. Until the appointment to a professional category position, according to paragraph 5 of this Article, a civil servant shall be placed on thewaiting list and shall enjoy the rights defined under Article 67 of this Law. The refusal to be appointed to the position of the professional category shall constitute a ground for the dismissal of the employee from the service.
7. The rights under paragraphs 2, 3, 4, 5 and 6 of this Article shall apply once, for the period and circumstances determined according to such paragraph.
[...]"

349. The Court also recalls Article 67 (Waiting List) of the challenged Law which stipulates as follows:

"1. Civil servants who, after the closure or restructuring of the institution, have not been redeployed in accordance with Article 66 or other cases provided by the law cannot be systematized, shall be placed on the waiting list.
2. The Ministry responsible for public administration shall take care of the systematization of waiting civil servants in the same civil service category, as well as the training for the relevant position where they are systematized.
3. Refusal to undergo training, according to point 2 of this Article, shall constitute grounds for removal from civil service.
4. If within nine (9) months, a civil servant is not reassigned to any vacant position in the civil service, this shall constitute grounds for removal from the civil service.
5. The rights and obligations under this Article shall apply as long as the civil servant on the surplus list does not have another employment relationship.
6. The rights and obligations of waiting civil servants, including their salaries and training, shall be determined by the Government by a bylaw at the proposal of the ministry responsible for public administration and the ministry responsible for finance."

350. The Court recalls that, based on paragraph 2 of Article 99 of the challenged Law, all current civil servants in middle and lower management positions will be announced the recruitment procedures for their positions in the order planned through open and public competition, except for positions that have been vacant. While according to paragraph 3 of this article, all those public officials from this category who do not regain their positions or do not compete at all, the latter are systematized in the professional category insofar as they meet the conditions for appointment, and until this happens to the latter are placed on the waiting list and enjoy the rights in accordance with Article 67 of the challenged Law, including the possibility of release from civil service, if within nine (9) months they are not reassigned to professional positions or refuse reassignment to the latter. The Court also underlines that the legislator has decided to provide compensation equal to the difference in the basic salary of the management position to this category, namely to those it appoints to professional positions after completion/non-selection in the respective lower or middle management position that he has exercised and the salary of the professional category where he is organized, with such a formula that during (i) the first year he benefits from 100% (one hundred percent) of the difference in salary; (ii) the second year benefits 75% (seventy five percent); (iii) the third year benefits 50% (fifty percent); and (iv) the fourth year benefits 25% (twenty-five percent) thereof. Having

said this, the Court recalls that for the category of employees who are not organized in professional positions but are placed on the waiting list defined according to Article 67 of the challenged Law, the latter has not defined any rights at the level of the law, delegating the definition of rights, including the salary level, in sub-legal acts, except for the possibility to refuse the systematization in the professional category, but which results in the release from the civil service, without the right to a legal remedy.

351. In this context, the Court recalls that the Applicants claim that the current civil servants of the middle and lower management level, who have permanent appointments based on the current or previous legislation for public officials, respectively, the civil service, have an acquired right that is related to "*future income*" and "*pension and social benefits*", including the level of their salary and related plans based on the respective acquired rights, and which, the case law of the ECtHR - qualify as property rights. In this regard, the Applicants raise the issue of the "*acquired rights*" principle, where they refer to the practice of the ILO Administrative Tribunal, which states that *"[...] changing a rule to the detriment of an official and without his consent constitutes a violation of an acquired right where the structure of the appointment contract has been changed or there is damage to any fundamental term of the appointment in consideration of which the official accepted the appointment*", and claim that the aforementioned civil servants have "*legitimate expectations*", which they have built in a reasonable and fair manner, based on the "*promise*" that the state has given them with the laws that were in force at the time of the creation of those legal rights.

352. To address the Applicants' allegations of violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR, the Court will first assess whether the "*acquired right"*, including (i) the "*difference in salary"* for civil servants who are classified in the professional category; or (ii) "*salary*" for civil servants who are not classified in any position and/or released from civil service, constitute "*property*" within the meaning of these provisions.

353. The Court once again recalls the practice of the ECtHR regarding the concept of "*property*" which is part of the first part of Article 1 of Protocol no. 1 of the ECHR and which is an autonomous concept, encompassing both "*existing assets*" and claimed assets, in relation to which an Applicant can argue that he or she has at least a "*legitimate expectation*". "*Property*" under this concept includes "*in rem*" and "*in personam*" rights, such as real estate, movable property and other property interests (see, *inter alia*, the case of the Court KI189/19, with Applicant *Alban Miftaraj*, cited above, paragraph 81). The ECtHR also emphasizes that the principles that are generally applied in cases according to Article 1 of Protocol no. 1 of the ECHR are equally important when it comes to salaries and social benefits (see, *mutatis mutandis,* the case of the ECtHR, *Savickas dand others v. Lithuania*, no. 66365/09, Decision regarding admissibility of 15 October 2013, paragraph 91, and *Stummer v. Austria*, no. 37452/02, Judgment of 7 July 2011, paragraph 82).

354. In this context, the Court reiterates that compared to the current law, the change brought by the challenged Law, (i) has the consequence of losing an acquired right, namely the exercise of a public function for an indefinite period of time or even the loss of the employment relationship as a whole, as a result of the change in the law; and (ii) has the consequence of reducing the salary for civil servants at the middle and lower management level, who currently have appointment acts with an indefinite term, but after 1 (one) year from the entry into force of the challenged Law when public competitions are announced for these positions, the latter may not be re-elected to their positions or may even be released from the civil service if they cannot be systematized in professional positions.

355. The Court emphasizes that the acquired rights of civil servants at the middle and lower management level derive from the relevant contracts with the state administration, namely the act-appointments with an indefinite term based on the Law in force on Public Officials. In this regard, the Court recalls that "*legitimate expectations can result in assets*" and that in the present case, the civil servants of the above-mentioned category have legitimate expectations for the exercise of the rights acquired according to the position they have acquired with indefinite-term contracts based on the legislation in force. Moreover, based on the law on which they were appointed to the respective positions, the conditions on the basis of which the acquired rights may be limited, are clearly defined, namely in articles: 59 (Termination of employment relationship in civil service), 60 (Termination in cases defined by the Law), 61 (Dismissal from Civil Service), 62 (Resignation), and 63 (Early Retirement) of Law No. 06/L-114 on Public Officials. The challenged Law already establishes a new circumstance by its article 99, and through which the above-mentioned employees can lose the rights acquired based on the previous law.

356. Based on the clarifications given and the case law of the ECtHR, the Court considers that the acquired rights, including "*future income*" but also "*social benefits/pensions*" of civil servants in lower and middle management positions with act-appointments with an indefinite term, in cases where the latter are re-appointed or completely dismissed from the civil service, constitute "*assets*" and contain in themselves "*legitimate expectations*" within the meaning of Article 1 of Protocol No. 1 of the ECHR and Article 46 of the Constitution.

357. To examine the Applicants' allegations regarding the violation of Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR, taking into account the aforementioned finding of the Court that "*future income*", including the difference in salary or even the loss of the latter, under conditions that were not determined at the time of acquiring these rights nor are they specified in their contracts/appointments, constitute "*assets*" in the meaning of these articles, the latter must apply the test established in the general principles, which consists of four (4) steps and, respectively, must determine: (1) whether there has been interference/restriction with the peaceful enjoyment of property and if this is the case, further determine (2) whether the relevant interference/restriction with the peaceful enjoyment of property is "*prescribed by law*"; (3) whether the interference/restriction in the peaceful enjoyment of property had a "*legitimate purpose*"; and (4) whether the interference/restriction with the peaceful enjoyment of property is "*proportionate*".

(1) if there has been interference/restriction with the peaceful enjoyment of the property;

358. As stated above, the Court notes that the current civil servants of the middle and lower management level have their permanent appointments in accordance with the legislation in force on public officials, on the basis of which they have acquired these rights. The Court recalls that the circumstances on the basis of which the acquired rights could have been limited are clearly defined in the current Law on Public Officials. Article 99 of the challenged Law is a new and unforeseeable circumstance, on the basis of which, the relevant officials may lose the rights acquired based on the Law in force on Public Officials.

359. Moreover and further, the Court assesses that it is not disputed that Article 99 of the challenged Law may result in (i) the loss of the acquired rights of the respective civil servants; (ii) reducing the salary for civil servants of the middle and lower management level to the salary level of the professional category, which civil servants

currently have act of appointment with an indefinite term but after the reform, they may not be re-elected to their previous positions; or (iii) they may lose the status of civil servant if they are not organized in positions of the professional category according to the clarifications in Article 67 of the challenged Law. As a result, the Court finds that Article 99 of the challenged Law "*interferes*" with the peaceful enjoyment of property rights, namely the acquired rights of current civil servants of the middle and lower management level based on a previous law, respectively Law in force on Public Officials.

360. The Court, in this context, recalls the ECtHR case, *Koufaki and Adedy v. Greece*, where in 2010 Greece reduced pensions and public sector salaries with retroactive effect by percentages ranging from 12% (twelve percent) to 30% (thirty percent), reducing them further later that year by an additional 8% (eight percent), and reduced holiday and Christmas allowances for public sector employees that had higher incomes. In this case, the ECtHR, among other things, assessed that *"[...] the restrictions introduced by the impugned legislation should not be considered as a "deprivation of possessions" as the applicants claim, but rather as interference with the right to the peaceful enjoyment of possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1.* (see, the ECtHR, *Koufaki and Adedy v. Greece*, no. 57665/12 and no. 57657/12, Decision on admissibility of 7 May 2013, paragraph 34).

361. Given that the Court considers that Article 99 of the challenged Law constitutes "*interference/restriction*" in the peaceful enjoyment of property, namely the acquired rights of the aforementioned category of civil servants, following and based on its case law and that of the ECtHR, it must assess whether such "*interference/restriction*" is (i) "*prescribed by law*"; (ii) pursues a "*legitimate aim*"; and (iii) is "*proportionate*"

(2) if the interference/restriction with the peaceful enjoyment of property is "prescribed by law";

362. The Court recalls that Article 99 of the challenged Law, among other things, provides that: "*One (1) year after the entry into force of this Law, the recruitment procedure shall be announced for all low and middle-level management positions through an open and public competition, [...]",* which civil servants are elected for a term of 4 (four) years with the possibility of extension for 1 (one) term of the same duration in accordance with Article 46 of the contested Law. The Court also refers to paragraph 4 of article 99 of the challenged Law, which determines that civil servants who are not re-elected to their position or have not competed at all, are classified in the professional category or if they are not classified in professional category positions, they can be dismissed from the civil service. Consequently, the Court notes that the acquired rights of the latter by a previous law, through the challenged Law, suffer limitation of the acquired rights, including (i) reduction of the "*ex-lege*" salary with the loss of the management position; or even (ii) total loss of the right to the employment relationship in case of non-classification in the professional category, including in all cases when the relevant employees refuse the relevant assignment to the professional position and/or placement on the waiting list.

363. In this context, the Court finds that the "*interference*" with the peaceful enjoyment of the right to property, namely the "*future income*" of the aforementioned civil servants, is "*prescribed by law*", namely by Article 99 of the challenged Law. The Court, once again, emphasizes that acquired and/or property rights are not absolute and may be subject to restrictions and interference and may not result in a violation of constitutional rights and/or those established by the ECHR. Having said this and as explained above, in order for "*interferences/restrictions*" of rights, including acquired

rights, to be compatible with constitutional guarantees, the latter, in addition to being "*prescribed by law",* must also pursue a "*legitimate aim*" and be "*proportionate*". Consequently, the Court will further proceed with the assessment of the "*pursued legitimate aim*" and the corresponding "*proportionality*".

(3) if the interference/restriction with the peaceful enjoyment of property had a "legitimate aim (general interest)";

364. The list of purposes for which "*interference/restriction*" with individual rights would fall within the scope of the concept of public interest, according to the case law of the ECtHR, is extensive and may include various purposes that are subject to consideration of public policy in different factual contexts. Based on the case law of the ECtHR, and *inter alia*, the decision to adopt a law under which property is confiscated or social security compensation usually involves consideration of political, societal and social issues (see, ECtHR cases, *Former King of Greece and others v. Greece*, cited above, paragraph 87; *Vistiņš and Perepjolkins v. Latvia*, cited above, paragraph 106 and the Court's case, KI185/21, Applicant *LLC "Co Cocolina",* cited above, paragraph 203). In this context, the Court emphasizes the case of the ECtHR, *Mihăieş v. Rumania*, where the ECtHR decided that the Romanian legislature, when it reduced the salaries of civil servants by 25% (twenty-five percent) for a six-month period through a law, was pursuing a goal of public interest, namely maintaining the budget balance between expenditures and public revenues public of the state, which was faced with a worldwide situation of economic crisis (see, the case of the ECtHR, *Mihăieş v. Rumania,* no. 44232/11 and 44605/11, Admissibility Decision, 6 December 2011, paragraph 18).

365. Returning to the present case, the Court reiterates the comments of the Prime Minister as a representative of the Government, which was the drafter of the challenged Law, in which case the latter, among other things, considers that: (i) *"[...] the general public interest determined by the public authority in this case includes but is not limited to the creation of an efficient, professional, comprehensive administration and on the basis of meritocracy to guarantee the provision of quality services to citizens as a common good of the entire society"* and that *(ii): "another essential aspect of the public interest is the opening of the opportunity for the inclusion of women, non-majority communities and persons with disabilities in middle and lower management positions of the civil service as the content of the* challenged *law enables"* because according to him this representation is currently still low.

366. In this case, the Court assesses that the reform of the public administration represents a legitimate aim of the state in the public interest with the aim of creating an efficient, professional, comprehensive administration and on the basis of meritocracy to guarantee the provision of quality services to the citizens of the Republic. Such a goal is also in accordance with the international obligations of the Republic of Kosovo, including the SAA. The Court recalls that the state authorities enjoy a wide margin of appreciation both in terms of the choice of enforcement means and in terms of ascertaining whether the consequences of enforcement are justified by the general interest to achieve the purpose of the given law (see, among others, ECtHR case *Beyeler v. Italy*, cited above, paragraph 112, and the Court's case, KI185/21, Applicant *LLC "Co Colina",* cited above, paragraph 209).

367. As stated above, whether a public policy specified through the law adopted in the Parliament is appropriate or not, is a matter for other public authorities and not for the Court, as long as it does not violate the provisions of the Constitution. Consequently, the Court assesses that the "*interference*" in the acquired rights of civil

servants of lower and senior management level, follows a "*legitimate aim"*. Therefore,, the Court will further assess whether the measures undertaken are "*proportionate*" in relation to the goal that is intended to be achieved, which is also the last step to assess whether the "*interference/restriction*" of fundamental rights and freedoms may not result in the violation of the latter.

(4) if the interference/restriction with the peaceful enjoyment of property was "proportionate";

368. To be in accordance with the general rule established in the first sentence of the first paragraph of Article 1 of Protocol No. 1 of the ECHR, "*interference*" with the right to the peaceful enjoyment of "*property*", in addition to being "*prescribed by law*" and pursuing a "*legitimate aim*", must result in a "*fair balance*" between requirements of the public interest and obligations to protect the fundamental rights of the individual (see, among others, the cases of the ECtHR, *Beyeler v. Italiy* cited above, paragraph 107; *Ališić and others against Bosnia and Herzegovina, Croatia, Serbia and former Yugoslav Republic of Macedonia*, cited above, paragraph 108 and the Court's case, KI185/21, Applicant *LLC "Co Colina",* cited above, paragraph 211).

369. More precisely, in cases involving alleged violations of Article 1 of Protocol no. 1 of the ECHR, based on the case law of the ECtHR, the Court must assess whether, due to the action or inaction of the State, the person in question had to bear a disproportionate and excessive burden. When assessing compliance with this requirement, the Court based on the abovementioned practice, must make a comprehensive review of the various interests in this matter, bearing in mind that the ECHR aims to protect the rights which are "*practical and effective*" and not "*illusory"*. In this context, it should be emphasized that uncertainty - whether legislative, administrative or arising from the practices applied by the public authorities, is a factor that is taken into account when assessing the behavior of a State (see the case of the ECtHR, *Broniowski v. Poland*, cited above, paragraph 151 and the Court's case, KI185/21, Applicant *LLC "Co Colina",* cited above, paragraph 212).

370. The purpose of the proportionality test is to establish first how and to what extent the individual' exercise of rights affected, namely, in the circumstances of the specific case, civil servants of middle and lower management level, the exercise of the rights affected by the "*interference*" in their peaceful enjoyment of property and what were the negative consequences of the restriction imposed on the exercise of the rights by the latter. After that, this impact is compared with the importance of the public interest, due to which the interference has come about (see, among others, the Court's case, KI185/21, Applicant *LLC "Co Colina",* cited above, paragraph 216).

371. In the present case, the Court underlines that paragraph 2 of Article 99 of the challenged Law stipulates that all current civil servants in middle and lower management level positions will be announced the recruitment procedures for their positions in the order planned through an open and public competition, except for positions that have been vacant and that those who do not regain their positions or do not compete at all, are organized in the professional category insofar as they meet the conditions for appointment and until this happens they are placed on the list of waiting and enjoy the rights in accordance with Article 67 of the challenged Law, including the possibility to be dismissed from the civil service in case they cannot be classified in professional positions. The Court also underlines that the legislator has decided that the category that is systematized in professional positions, to provide compensation in relation to the difference between the basic salary of the management position he exercised and the salary of the professional category where he is systematized, with a formula that is proportionally reduced within a period of 4

(four) years. Such a right is not established for the relevant employees who are placed on the waiting list according to Article 67 of the challenged Law.

372. In this context, the Court notes that based on Article 99 of the challenged Law, all those officials who are affected by the announcement of the positions, may lose their current positions according to the force of the law based on a legal basis that did not exist when they have acquired the corresponding right according to the Law in force on Public Officials.

373. In this regard, the Court must further assess whether the legitimate goal of the reform of the state administration could be achieved by other means, with less and proportional burden on the individual, namely all the employees of the state administration and who have obtained lower and middle management positions based on the provisions of the current Law on Public Officials.

374. In this context, initially, the Court once again recalls that none of the Constitutional Courts that are members of the Venice Forum that have submitted answers to the Court regarding the challenged Law, have undertaken a reform which has transformed career positions with a term of indefinite in fixed-term positions, moreover, within one year. As explained above, Austria is the exception, but which started the reform in 1994 and implemented it gradually, leaving the relevant civil servants the opportunity to choose the career or position system and not affecting their rights retroactively acquired. Moreover, in addition to the "*interference* in the peaceful enjoyment of property as explained above, the implementation of Article 99 of the challenged Law regarding civil servants in lower and middle management positions is also done in exclusion of the right to legal remedy and judicial protection of rights, established through articles 32 and 54 of the Constitution in conjunction with article 13 (Right to an effective remedy) of the ECHR, due to the fact that those affected will not be able to use a legal remedy legal related to the announcement of the competition for their positions, reassignment to professional positions and/or dismissal from civil service. These rights are among the most fundamental rights of individuals, included in the context of the principle of access to justice, foreseen by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR. As mentioned above, the OECD/SIGMA, in its principles for public administration, specifically recognizes the right of public servants to appeal against unjustified demotion and dismissal (OECD/SIGMA, General Principles of Public Administration , cited above, paragraph 7 of the principle 3).

375. On the other hand, the Court notes that the challenged Law also defines clear mechanisms on the basis of which the legitimate goal related to the public interest could be achieved for a state administration based on the principles of meritocracy, professionalism and inclusiveness. This is because the latter clearly defines (i) the issue of evaluating work results; (ii) circumstances of professional insufficiency; and (ii) disciplinary issues of civil servants. In this regard, the Court notes that based on paragraph 1 of Article 52 (Performance appraisal) of the challenged Law, *"Performance appraisal is an ongoing process including the assessment of the realization of preset objectives, the evaluation of the civil servant's professional capacity in achieving the objectives and the overall fulfillment of the unit's responsibilities."* Therefore, it results that civil servants are regularly assessed, including the evaluation of professional skills. The latter, according to paragraph 13 of Article 52 of the challenged Law, can be given appraisal: (i) extraordinary achievement; (ii) exceeds expectations; (iii) meets expectations; (iv) needs improvement; and (v) unacceptable. In case of these last two, it is determined that it can be decided that the latter should be assessed separately, based on paragraph 15 of this article.

376. In addition, the challenged Law also contains a separate article, namely Article 54 (Professional inadequacy) of the challenged Law that defines the procedure for initiating and imposing the measure for the assessment of professional inadequacy when such a thing is necessary and which may result in, among other things, transfer to another position, or initiation of the procedure in the Disciplinary Commission, based on sub-paragraphs 3.2 and 3.3 of paragraph 3 of this same article.

377. Moreover, the challenged Law contains Chapter IV (Change of employment relationship in civil service), where the issue of discipline in the civil service is also defined. In this context, Article 57 (Disciplinary measures) defines the measures for disciplinary violations, including non-fulfillment of work duties, which may result in transfer, or dismissal from the civil service. Also, based on Article 74 (Dismissal from the civil service) of the challenged Law, the employment relationship in the civil service ends with the dismissal from the civil service, among other things, after two (2) "*unsatisfactory*" evaluations of work results, two (2) consecutive times. For the second time in a row, the special assessment defined in paragraph 15 of Article 52 and sub-paragraph 1.3 of paragraph 1 of Article 74 of the challenged Law is also considered for civil servants.

378. Therefore, based on the aforementioned provisions, the challenged Law has comprehensively defined the issue of (i) performance of work duties; (ii) professional ability to perform work duties; (iii) the issue of evaluating regular and special results, including work skills; (iv) the consequences due to disciplinary violations and "*unsatisfactory*" evaluation of work results and which may result in transfer or even dismissal from the civil service. Moreover, the challenged Law has also defined in detail the procedures to be followed and the right to use legal remedies in case such a procedure is initiated, ensuring to all those who are affected, the right to a legal remedy as constitutional guarantee.

379. In contrast to this, and as explained above, Article 99 of the challenged Law stipulates that within one (1) year from the entry into force of the challenged Law, a competition will be announced for lower and middle management positions, resulting in the possibility of losing their positions as civil servants in these positions with an indefinite term, which they have acquired and enjoy based on a law adopted by the Assembly, namely the current law on Public Officials, in case that they are not re-elected and, moreover, even if they are re-elected, they will have fixed-term positions.

380. In this context, the Court notes that the same results as in the present case, through Article 99 of the challenged Law, can be achieved through the procedure for evaluating work results, or through disciplinary procedures in case of non-fulfillment of work duties 0, namely transfer to another position or dismissal from the civil service, according to the provisions specifically defined in the challenged Law. Moreover, the possibility of a gradual reform of the transfer of positions with an indefinite term to a fixed term, enabling the relevant individuals to choose between possibility of choice, as the example of Austria shows, could be a more proportional "*interference*" with the rights of individuals, placing a balanced burden between the individual and the state.

381. Based on the aforementioned clarifications, the Court finds that paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 of the challenged Law, through which all lower and middle level management positions are announced for open competition in the public administration, affecting the acquired rights of all civil servants based on the laws of the Republic of Kosovo through a new law that affects them retroactively, constitutes *interference*" with their rights to property in the context of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR. Having said

that, and as explained above, the acquired rights are not absolute rights and they can be limited, if they are "*prescribed by law*", "*pursue a legitimate aim"* and are "*proportionate*" to the purpose pursued. In the circumstances of paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 of the challenged Law, the Court assesses that (i) "*interference*" is "*prescribed by law*"; and (ii) "*pursues a legitimate aim"*, namely the public interest of the reform of the state administration with an emphasis on the principles of meritocracy, professionalism, efficiency and inclusiveness.

382. Having said this, the Court, based on the principles stemming from the case law of the ECtHR, assesses that the solution determined through Article 99 of the challenged Law does not present a "*fair balance*" between the stated purpose of public interest and the rights and fundamental freedoms and is therefore not "*proportional"*, among other things, because (i) the same "*legitimate goal*" could be achieved through mechanisms less restrictive/interfering with fundamental rights and freedoms through the application of the existing provisions of the Law in force on Public Officials, including the detailed provisions of the challenged Law that are related, among other things, to performance evaluation and/or disciplinary measures, including in case of non-fulfillment of work duties; (ii) the existing category of state administration officials who hold lower or middle management positions, in violation of the constitutional rights to effective legal remedy and judicial protection of the rights established in articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution, respectively, they have been completely denied the right to appeal in terms of placement in the relevant professional position, placement on the "*Waiting List*" or dismissal from civil service; and that (iii) based on the principle of legal certainty but also on the answers received by the constitutional courts and/or the corresponding equivalent members of the Forum of the Venice Commission, it results that such a reform of the public administration has either not been undertaken, or has not has passed the constitutionality evaluation test, with the exception of the clarifications given by the Constitutional Court of Austria, regarding the relevant reform which was implemented gradually and without effect to officials who had permanent mandates/contracts, enabling them to choose between the career system or the position system, with the corresponding benefits if they voluntarily accept the transition to the position system in the public administration.

383. The Court also recalls that in connection with the premature termination of the mandate acquired through a new law adopted by the Assembly, although more specifically and in other circumstances, the Court also found violations in connection with the shortening of the mandate of a number of members of the Kosovo Prosecutorial Council of, by its Judgment in the case KO100/22 and KO101/22. In this case, among other things, the Court had assessed that Article 18 of the challenged Law, namely the law on the amendment of the Law on the Prosecutorial Council, by which Article 23/A of the Basic Law on the Prosecutorial Council was supplemented, respectively added, was not in compliance with Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution. This is because the termination of the mandate of a part of the members of the Council through the relevant draw, in the complete absence of an effective legal remedy, violated the security of the mandates of the members of the Prosecutorial Council, based on the case law of the ECtHR (see case KO100/22 and KO101/22, cited above, *inter alia*, paragraph 403).

384. Consequently, the Court finds that paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 of the challenged Law are not in compliance with paragraph 1 and 2 of Article 46 of the Constitution in conjunction with paragraph 1 of Article 1 of Protocol no. 1 of the ECHR.

E. Regarding the Right to Legal Remedy of Public Officials

385. The Court in the above part and in connection with the challenged articles clarified the importance of the right to a legal remedy stipulated in articles 32 and 54 of the Constitution and Article 13 of the ECHR, which guarantee: (i) the right to judicial protection in case of violation or denial of any right guaranteed by the Constitution or by law; (ii) the right to use a legal remedy against judicial and administrative decisions which violate the guaranteed rights in the manner defined by law; (iii) the right to effective legal remedies if it is established that a right has been violated; and (iv) the right to an effective remedy at the national level if a right guaranteed by the ECHR has been violated (see, in this context and among others, the Court's cases KI48/18, Applicants: *Arban Abrashi and the Democratic League of Kosovo*, Judgment of 23 January 2019, paragraph 198; and KO100/22 and KO101/22, cited above, paragraph 346). Also, in the context of the OECD/SIGMA principles for public administration, the Court recalls that the right to appeal against unfair demotion and dismissal belongs specifically to public servants (OECD/SIGMA, General Principles for Public Administration, cited above, paragraph 7 of the principle 3).

386. Moreover, the Court in its case law referring to that of the ECtHR regarding the right to a legal remedy in the context of the right to "*access to the Court*", among other things, has emphasized that: *"[...] in order for the state to request before the ECtHR the exemption of the protection embodied by Article 6 of the ECHR, in relation to the status of Applicant as a civil servant, two conditions must be met. First, the state must have explicitly exempted the right to access to court for the post or category of staff concerned, in its national legislation. Secondly, in the interest of the state, the exemption must be justified on objective grounds. (see case of the Court KI214/21, Applicant: Avni Kastrati, Judgment of 7 December 2022, paragraph 124).*

387. Consequently, in accordance with the case law of the Court, as noted above, the right to an effective legal remedy against any act of public authority that may have violated the fundamental rights and freedoms of the individual defined by law and/or the Constitution , in principle, cannot be limited unless the limitation is "*prescribed by law*", followed a "*legitimate aim*" and the measure taken was "*proportional*" to the purpose that was intended to be achieved (see Court cases, KO100/22 and KO101/22, cited above, paragraph 337; and KI214/21, Applicant *Avni Kastrati,* cited above, paragraph 124*)*.

388. In the circumstances of the present case, the Court notes that the challenged Law foresees the right to a legal remedy for two categories: (i) civil servants; and (ii) public service employees.

389. More specifically, the Court notes that Article 27 (The right to information about the employment relationship and the right to appeal) of the challenged Law in conjunction with Article 88 (The right to appeal of A public service employee) thereof, among other things, determine that (i) the civil servant has the right to file a complaint with the Independent Oversight Board of the Civil Service of Kosovo for any action or inaction that violates the rights or legal interests, stemming from the employment relationship in the civil service, "*in the cases provided for by this law*"; while (ii) the review of the complaints of the public service employee is under the competence of the Labor Inspectorate. The Court considers that the provisions in question raise serious constitutional issues in the context of the aforementioned constitutional rights.

(i) Regarding civil servant

390. First and in the context of civil servants, Article 27 of the challenged Law has established the right of the civil servant to submit a complaint to the Independent Oversight Board and then, to the competent court, these rights, as regards the complaint before to the Independent Oversight Board, are conditioned only *"according to this law"*.

391. In this regard, the challenged Law itself refers to the right to appeal in a limited number of cases, such as the case with (i) paragraph 12 of Article 39 (Civil Service admission procedure); (ii) paragraph 10 of Article 44 (Admission to a position of the lower and middle management category); and (iii) Article 59 (Disciplinary proceedings), while excluding, among other things, entirely the appeal regarding the issues related to middle and lower management positions that are defined by Article 67 and Article 99 of the contested Law.

392. In this context, according to the case law of the ECtHR and the Court, in order to exclude the right to a legal remedy, (i) it must be argued that the domestic law completely excludes the right to a legal remedy in the certain type of disputes; and moreover (ii) such exclusion is based on objective reasons of state interest (see Court case KO100/22 and KO101/22, cited above, paragraph 381, and ECtHR case, *Grzęda v. Poland*, No. 43572/18, Judgment of 15 March 2022, paragraph 290).

393. However, in the present case, paragraph 3 of Article 27 of the challenged Law, (i) has defined the right to appeal of civil servants only in cases where this is provided for under the challenged Law, and moreover, (ii) the Court notes that from the case file it does not appear to have a legitimate purpose according to which the provision which limits the complaints of civil servants to the Independent Oversight Board only "*according to this law*" will be justified. Therefore, based on the aforementioned practice of the ECHR and the Court, while Article 27 of the challenged Law, in principle, recognizes the right to appeal to civil servants before the Independent Oversight Board, the wording only "*according to this law*", limits the right to a legal remedy, without a specific justification.

394. Therefore, in these circumstances, the wording only "*in the cases foreseen under this law*"of paragraph 3 of article 27 (The right to information about the employment relationship and the right to appeal) of the challenged Law is not in compliance with articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.

(ii) Regarding public service employee

395. Secondly, and in the context of the public service employee's right to appeal, based on articles 27 and 88 of the challenged Law, the public service employee's right to appeal, namely legal remedy, in the Labor Inspectorate is defined and then, to the competent court.

396. In this regard, the Court emphasizes that according to paragraph 1 of Article 1 (Scope of the Labor Inspectorate) of the Law on the Labor Inspectorate, no. 2002/9, amended and supplemented by Law No. 03/L-017 (hereinafter: Law on the Labor Inspectorate), the Labor Inspectorate supervises the implementation of legal and sub-legal acts provisions in the field of work, including employment relations, safety at work, protection of the health of employees and the working environment.

397. Moreover, the Court has emphasized that according to Article 2 of the Law on the Labor Inspectorate, the functions of the Labor Inspectorate are: (i) effective supervision of the implementation of primary and secondary legislation from the employment relationship, safety and health at work; (ii) providing information and advice of a technical nature, for the employee and the employer; (iii) notifying the MLSW or any other competent body about non-implementation or possible non-compliance with the applicable law; (iv) identified flaws that are not covered by existing legal provisions; as well as (v) providing information and advice to employees and employers in cases of reorganization or restructuring of an enterprise (see Court case, KO27/21, Applicant: *the Supreme Court of Kosovo*, Judgment of 7 December 2022, paragraph, 98).

398. The Court has also emphasized that the functions, namely the responsibilities or jurisdiction of the Labor Inspectorate is specifically defined in Law no. 2002/9 on the Labor Inspectorate. According to the clarifications given in the Court's Judgment in the case KO27/21, the Labor Inspectorate exercises its function within the framework of the responsibilities assigned to it by the legislator by Law no. 2002/9 on the Labor Inspectorate. What has been allowed to the Labor Inspectorate by Article 83 [Disciplinary Measures] of the Law on Labor and Article 25 [Fines] of the Law on Safety and Health, is the possibility of applying punitive measures (fines) in case of finding irregularities by the employer, as well as reporting these irregularities to the MLSW or any other competent authorities (see the case of the Court, cited above, paragraph, 99).

399. Furthermore, as the Court has emphasized in the aforementioned Judgment (i) the Labor Inspectorate, based on the law on its establishment, is an executive authority established by the Ministry responsible for Labor and Social Welfare and, consequently, is an integral part of the power executive; and (ii) in the legal order of the Republic of Kosovo, which is based on the values and principles of the separation and balancing of powers, it is the judicial power, and not the executive power, that has the competence to decide on disputes related to rights and obligations, including those arising from the employment relationship (see Court case, KO27/21, cited above, paragraph 95 and 106).

400. Returning to the present case, the Court reiterates once again that the challenged Law has defined the Labor Inspectorate as a complaint body for all public service employees in the Republic of Kosovo, before they turn to the courts. In this regard, since the Court in case KO27/21 has clearly defined the role and competencies of the Labor Inspectorate in labor disputes based on the Law on the Labor Inspectorate, which do not include the resolution of labor disputes between the employer and the employee but which has supervisory competence in terms of (i) the implementation of punitive measures (fines) in case of finding irregularities by the employer; as well as (ii) reporting these irregularities to the relevant ministry or to any other competent authorities, the vesting of the latter with competence to decide on the complaint of public service employees, does not coincide with the nature of the work of this institution as an executive body of which is established by the Ministry of Labor and Social Welfare, and as such is not in accordance with the right to a legal remedy and the principle of separation and balancing of powers.

401. Therefore, based on the above, the Court finds that paragraph 6 of Article 27 (The right to information about the employment relationship and the right to appeal) and paragraphs 3 and 4 of Article 88 (The right to appeal of a public service employee) of the challenged Law are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power], Article 32 [Right to Legal Remedies] and

Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

402. As defined in the enacting clause of this Judgment, and in order to have clarity and predictability, and consequently, legal certainty regarding the provisions of the challenged Law, the Assembly is obliged to supplement and amend Article 27 (The right to information about the employment relationship and the right to appeal) and Article 88 (The right to appeal of the public service employee) of Law No. 08/L-197 on Public Officials, to determine the right to a legal remedy related to with public service employees, in accordance with the Constitution and this Judgment.

Request for Interim Measure and suspension of entry into force of the challenged Law

403. The Court recalls that the Applicants have requested the Court to impose an interim measure to suspend the entry into force and implementation of the challenged Law, until the final decision on the Referrals by the Court.

404. The Court, in this context, emphasizes that paragraph 2 of Article 43 (Deadline) of the Law determines the suspensive effect of the entry into force of the challenged laws under paragraph 5 of Article 113 of the Constitution, emphasizing that *"[…] In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5 of the Constitution, such a law or decision shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest"*. Based on the aforementioned provision, the Court on 4 July 2022, requested the President of the Assembly, the President and the Secretary of the Assembly to take into account the requirements of paragraph 2 of Article 43 of the Law.

405. Therefore, taking into account that based on paragraph 2 of article 43 of the Law, the challenged Law according to paragraph 5 of Article 113 of the Constitution cannot be decreed, enter into force, or produce legal effects without the decision being rendered by the Court, as well as in accordance with Article 27 (Interim Measures) of the Law and Rule 57 [Decision on Interim Measure] of the Rules of Procedure, the request for interim measure is without subject of review and, as such, is rejected (see, *mutatis mutandis,* Judgment of the Court in the case KO43/19, Applicant *Albulena Haxhiu, Driton Selmanaj and thirty other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Law no. 06/L-145 on the Duties, Responsibilities and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia, Judgment of 13 June 2019, paragraph 113, and the Court's Judgment in the case KO100/22 and KO101/22, cited on above, paragraph 411).

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with articles 113 (5) and 116 (2) of the Constitution, articles 20, 27 and 42 of the Law and based on rules 45, 48 (1) (a) and 72 of the Rules of Procedure, on 2 August 2023:

DECIDES

I. TO DECLARE, unanimously, the Referrals admissible;

II. TO HOLD, with 7 (seven) votes for and 1 (one) against, that the procedure followed for the adoption of Law No. 08/L-197 on Public Officials is not contrary to articles 77 [Committees] and 78 [Committee on Rights and Interests of Communities] of the Constitution of the Republic of Kosovo;

III. TO HOLD, unanimously, that the criterion of *"eligibility"* established in paragraph 2 and 5 of Article 9 (General requirement for admission of public officials) of Law No. 08/L-197 on Public Officials is not in compliance with paragraph 1 of Article 3 [Equality Before the Law] and paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo;

IV. TO HOLD, unanimously, that the wording "*as well as supervise their implementation*" of point 1.1 of paragraph 1 and paragraph 2 of article 12 (Government of the Republic of Kosovo) and sub-paragraphs 1.1, 1.2, 1.5, 1.9 of paragraph 1 and paragraphs 3, 4 and 5 of Article 13 (Ministry responsible for public administration) of Law No. 08/L-197 on Public Officials are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 2 of Article 101 [Civil Service] of the Constitution of the Republic of Kosovo;

V. TO HOLD, unanimously, that the wording "*according to this law"* of paragraph 3 of Article 27 (Right to information about the employment relationship and the right to appeal) of Law No. 08/L-197 on Public Officials is not in compliance with Article 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo;

VI. TO HOLD, unanimously, that paragraph 6 of Article 27 (The right to information about the employment relationship and the right to appeal) and paragraphs 3 and 4 of Article 88 (The right to appeal of a public service employee) of Law No. 08/L- 197 on Public Officials are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo;

VII. TO HOLD, with 7 (seven) votes for and 1 (one) against, that Article 46 (Appointment and mandate of lower and middle management positions) of Law No. 08/L-197 on Public Officials is not contrary to paragraph 2 of Article 19 [Applicability of International Law] and Article 101 [Civil Service] of the Constitution of the Republic of Kosovo;

VIII. TO HOLD, unanimously, that paragraph 6 of Article 67 (Waiting list) of Law No. 08/L-197 on Public Officials is not in compliance with paragraph 1 of Article 3 [Equality Before the Law] and paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo;

IX. TO HOLD, unanimously, that paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 (Transitional provisions) of Law No. 08/L-197 on Public Officials are not in compliance with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights;

X. TO HOLD, unanimously, that paragraph 2 of Article 104 (Repeal) of Law No. 08/L-197 on Public Officials is not in compliance with paragraph 1 of Article 3 [Equality Before the Law], paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo;

XI. TO DECLARE, with 7 (seven) votes for and 1 (one) against, that based on Article 43 (Deadline) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, Law No. 08/L-197 on Public Officials is sent to the President of the Republic of Kosovo for promulgation:

a. without the wording "*eligibility for appointment to the position and/or*" in paragraph 2 and "*eligibility and/or*" in paragraph 5 of Article 9 (General requirements for admission of public officials);
b. without the wording "*as well as supervise their implementation*" of point 1.1 of paragraph 1 and without paragraph 2 of Article 12 (Government of the Republic of Kosovo) and without sub-paragraphs 1.1, 1.2, 1.5, 1.9 of paragraph 1 and without paragraphs 3, 4 and 5 of Article 13 (Ministry responsible for public administration);
c. without the wording "*according to this Law*" of paragraph 3 of Article 27 (The right to information about the employment relationship and the right to appeal);
d. without paragraph 6 of Article 27 (The right to information about the employment relationship and the right to appeal) and without paragraphs 3 and 4 of Article 88 (The right to appeal of a public service employee);
e. without paragraph 6 of Article 67 (Waiting List);
f. without paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 (Transitional provisions); and
g. without paragraph 2 of Article 104 (Repeal).

XII. TO ORDER, with 7 (seven) votes for and 1 (one) against, in accordance with paragraph 1 of Article 116 [Legal Effect of Decisions] of the Constitution, the Assembly of the Republic of Kosovo, that within 6 (six) months from the entry into force of this Judgment, takes the necessary actions:
a. for supplementing and amending paragraph 6 of Article 67 (Waiting List) of Law No. 08/L-197 on Public Officials, in accordance with the Constitution and this Judgment;
b. for supplementing and amending paragraph 6 of Article 27 (Right to information about the employment relationship and the right to appeal) and paragraphs 3 and 4 of Article 88 (Right to appeal of a public service employee) of Law No. 08/L-197 on Public Officials, in accordance with the Constitution and this Judgment; and
c. for supplementing and amending Article 6 (A civil servant with special status) of Law No. 08/L-197 on Public Officials, in relation to Independent Agencies according to Article 142 [Independent Agencies] of the Constitution, in accordance with the Constitution and this Judgment;

XIII. TO REJECT, unanimously, the request for interim measure;

XIV. TO NOTIFY this Judgment to the parties;

XV. TO HOLD that this Judgment enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law;

Judge Rapporteur	**President of the Constitutional Court**
Enver Peci	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.