



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

Prishtina, on 20 November 2023
Ref. no.: RK 2291/23

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RESOLUTION ON INADMISSIBILITY

in

case no. KO160/23

Applicant

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

Constitutional review of “Decision No. Ref. L-VIII, SP-119 of 11 July 2023 on scheduling of the plenary session of 13 July 2023, of the President of the Assembly of the Republic of Kosovo”

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

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

Challenged act

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

Subject matter

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

Legal basis

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

Proceedings before the Court

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

10. On 27 July 2023, the Applicants were notified of the registration of the Referral. On the same day, the Court, notified about the registration of the Referral: (i) the President of the Republic of Kosovo (hereinafter: the President); (ii) the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); and (iii) the President of the Assembly of the Republic of Kosovo (hereinafter: the President of the Assembly), who was requested to hand over a copy of the Referral to all deputies of the Assembly. The Court informed the abovementioned interested parties that their comments regarding the Referral, if there are any, should be submitted to the Court, by 10 August 2023, at the Court's electronic address or by personal delivery.
11. On the same day, the Court notified the Deputy Secretary General of the Assembly about the registration of the Referral and requested from him that to the latest by 31 July 2023: (i) he submits to the Court all relevant documents regarding the challenged act; (ii) he notifies the Court which of the items of the agenda according to the contested act were adopted in the Assembly at the session of 13 July 2023; and (iii) he notifies the Court what steps were taken by the Assembly regarding the issues decided by the Assembly based on the agenda according to the challenged act.
12. On 28 July 2023, the Deputy Secretary of the Assembly submitted the requested information to the Court.
13. On 28 July 2023, the President submitted a letter to the Court requesting clarification regarding the suspensive effects of the submission of Referral KO160/23 in relation to the decisions and laws adopted in the Assembly at the session of 13 July 2023, which is subject to the decree procedure by the President of the Republic of Kosovo.
14. On 31 July 2023, the Court submitted a response to the President regarding the letter of 28 July 2023, clarifying thereby as in the aforementioned letter of 27 July 2023, and mentioned above, that the Applicants also requested imposition of the interim measure with respect to the challenged act and that all interested parties and public opinion will be notified of the Court's decision-making on the interim measure.
15. On 1 August 2023, the Review Panel considered the proposal of the Judge Rapporteur regarding the decision on the interim measure. On the same day, the Court, by seven (7) votes in favour and one (1) against, decided to reject the interim measure regarding the contested act and the decisions adopted at the session of 13 July 2023.
16. On 10 August 2023, the Court sent to the interested parties the Decision on Interim Measure, of 1 August 2023.
17. On the same date, the Court received the comments regarding the referral from the President of the Assembly Mr. Glauk Konjufca.
18. On 24 August 2023, the Court notified (i) the Applicants; (ii) the President; and (ii) the Prime Minister for the receipt of documents from the Secretariat of the Assembly and the comments of the President of the Assembly related to the referral, and informed the latter that their comments, if any, should be submitted to the Court by 26 September. On the same date, the Court notified the Deputy Secretary of the Assembly for the receipt of comments, while it asked the President of the Assembly that a copy of the documents and comments regarding the referral be sent to all the deputies of the Assembly, and that they be informed that their comments, if any, should be submitted to the Court, by 26 September 2023. The Court, within the specified period, did not accept comments from the interested parties.

19. On 1 November 2023, the Review Panel considered the report of the Judge Rapporteur and, unanimously, recommended to the Court the inadmissibility of the Referral.

Summary of facts

20. On 11 July 2023, the President of the Assembly, Mr. Glauk Konjufca, rendered the contested act on the scheduling and convening of the plenary session of the Assembly of the Republic of Kosovo, on 13 July 2023, at 10:00 HRS.
21. On the same day, according to the Applicants, the challenged act was sent to the deputies of the Assembly of the Republic of Kosovo, at 16:20, by the Secretariat of the Assembly together with (i) the agenda; and (ii) the materials for the plenary session of 13 July 2023.
22. Based on the case file, the proposed agenda included thirty-one (31) items, as follows:
 1. Adoption of the minutes from the previous session;
 2. Statements off the agenda;
 3. Parliamentary questions;
 4. Voting in principle of the Draft Law no. 08/L-212 on Reproductive Health and Medical Assisted Fertilization;
 5. Voting of the Draft Law no. 08/L-221 on Ratification of the Loan and Project Agreement between the Republic of Kosovo, represented by the Ministry of Finance, Labour and Transfers, KOSTT (Kosovo Electricity Transmission, System and Market Operator J.S.C.) and KFW, Frankfurt Am Main (KFW) for the Project - Development of the Energy Sector VII – improvement of the transmission network;
 6. Voting of the Draft Law no. 08/L-222 on Ratification of the Loan Agreement between the Republic of Kosovo and the European Bank for Reconstruction and Development for the “Prishtina Solar Heating” Project;
 7. Voting of the Draft Law no. 08/L-223 on Ratification of the Agreement for Co-funding of Higher Education Scholarships at Master's level between the Ministry of Education, Science, Technology and Innovation and the French Embassy in Prishtina;
 8. Voting in Principle of the Draft Law no. 08/L-207 on School Textbooks;
 9. Review of the Draft Law no. 08/L-234 on Ratification of the Loan Agreement for the Public Finance and Economic Growth Program between the Republic of Kosovo and the OPEC Fund for International Development;
 10. Review of the Draft Law no. 08/L-236 on the Ratification of the Treaty between the Republic of Kosovo and the Kingdom of Denmark on the use of the correctional institution in Gjilan for the purpose of executing Danish sentences;
 11. Second Review of the Draft Law no. 08/L-102 on Amending and Supplementing the Law no. 04/L-139 on Enforcement Procedure, as amended and supplemented by Law no. 05/L-118;
 12. Second Review of the Draft Law no. 08/L-199 on Amending and Supplementing the Law no. 05/L-060 on Forensic Medicine;
 13. Second Review of the Draft Law no. 08/L-177 on the Institute of Crimes committed during the war in Kosovo;
 14. Second Review of the Draft Law no. 08/L-191 on Judicial Experts;
 15. Second Review of the Draft Law no. 08/L-142 Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income;

16. Second Review of the Draft Law no. 08/L-190 on Balanced Regional Development;
 17. Second Review of the Draft Law no. 08/L-200 on Prevention and Control of Communicable Diseases;
 18. Second Review of the Draft Law no. 08/L-201 on Amending and Supplementing the Law no. 05/L-081 on Energy;
 19. First Review of the Draft Law no. 08/L-227 on the Representation of State Institutions in Judicial Proceedings and Arbitration;
 20. First Review of the Draft Law no. 08/L-237 on Cadastre of Immovable Property;
 21. First Review of the Draft Law no. 08/L-238 on the Sovereign Fund of the Republic of Kosovo;
 22. Review of the report with recommendations for supervision of the implementation of Law no. 06/L-009 on Mediation;
 23. Review of the report with recommendations for supervision of the implementation of Law no. 04/L-156 on Tobacco Control and Law no. 08/L040 on Amending and Supplementing the Law no. 04/L-156 on Tobacco Control; 5
 24. Establishment of the ad hoc Committee for the selection of 2 (two) members from the Albanian community to the Independent Media Commission;
 25. Appointment of the Chairperson and one (1) member of the Board of the Privatization Agency of Kosovo;
 26. Election of the Parliamentary Commissioner for the Kosovo Security Force;
 27. Election of members of the Board of the Energy Regulatory Office;
 28. Election of one (1) member of the Property Claims Commission of the Kosovo Property Comparison and Verification Agency;
 29. Appointment of the Chairperson and members of the Steering Board of the Kosovo Pension Savings Fund;
 30. Election of the Governor of the Central Bank of the Republic of Kosovo;
 31. Review of the Proposal - Decision of the Government of the Republic of Kosovo on the dismissal of Mrs. Kimete Gashi from the position of member of the Procurement Review Body.
23. On 13 July 2023, the plenary session was held in which, based on the case file, the Assembly adopted:
1. Decision No. 08-V-579 on the appointment of the Chairperson and one (1) member of the Board of the Privatization Agency of Kosovo;
 2. Decision No. 08-V-580 on the adoption of the report regarding the supervision of Law no. 04/L-156 on Tobacco Control and Law no. 08/L040 on Amending and Supplementing the Law no. 04/L-156 for Tobacco Control;
 3. Decision No. 08-V-581 on the adoption in principle of the Draft Law no. 08/L-237 on Cadastre of Immovable Property;
 4. Decision No. 08-V-582 on the election of one (1) member of the Property Claims Commission of the Kosovo Property Comparison and Verification Agency;
 5. Decision No. 08-V-583 on the dismissal of Mrs. Kimete Gashi from the position of member of the Procurement Review Body;
 6. Decision No. 08-V-584 on the adoption in principle of the Draft Law no. 08/L-238 on the Sovereign Fund of the Republic of Kosovo;
 7. Decision No. 08-V-585 on the appointment of the Chairperson and members of the Steering Board of the Kosovo Pension Savings Fund;

8. Decision No. 08-V-586 on the election of the Governor of the Central Bank of the Republic of Kosovo;
 9. Decision No. 08-V-587 on the adoption in principle of the Draft Law no. 08/L-227 on the Representation of State Institutions in Judicial Proceedings and Arbitration;
 10. Decision No. 08-V-588 on the election of members of the Board of the Energy Regulatory Office;
 11. Decision No. 08-V-589 on the adoption of the Law no. 08/L-142 on Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income;
 12. Decision No. 08-V-590 on the adoption of the Law no. 08/L-177 on the Institute of Crimes Committed during the Kosovo War;
 13. Decision No. 08-V-591 on the adoption of the Law no. 08/L-199 on Amending and Supplementing the Law no. 05/L-060 on Forensic Medicine;
 14. Decision No. 08-V-592 on the adoption of the Law no. 08/L-191 on Judicial Experts;
 15. Decision No. 08-V-593 on the adoption of Law no. 08/L-201 on Amending and Supplementing the Law no. 05/L-081 on Energy;
 16. Decision No. 08-V-594 on the adoption of the Law no. 08/L-190 on Balanced Regional Development;
 17. Decision No. 08-V-595 on the adoption of Law no. 08/L-102 on Amending and Supplementing the Law no. 04/L-139 on Enforcement Procedure, as amended and supplemented by Law no. 05/L-118;
 18. Decision No. 08-V-596 on the adoption of the Law no. 08/L-200 on the Prevention and Control of Communicable Diseases; and
 19. Decision No. 08-V-597 on the adoption of the Report with Recommendations for the Supervision of the Implementation of Law no. 06/L-009 on Mediation.
24. The Court notes that on the same day, 13 July 2023, an extraordinary session was also held in the Assembly beginning at 15:30, in which two decisions were adopted, as follows:
1. Decision No. 08-V-598 on the Adoption of Law no. 08/L220 on the Price of Medicinal Products;
 2. Decision No. 08-V-599; on the appointment of the members of the Selection Body for the appointment of one (1) member of the Board in the Procurement Review Body.

Applicant's allegations

25. The Applicants of this Referral allege before the Court that the challenged act, of the President of the Assembly on the scheduling of the plenary session of 13 July 2023, is not in accordance with Article 68 [Sessions], Article 69 [Schedule of Sessions and Quorum], Article 76 [Rules of Procedure] of the Constitution in conjunction with Article 16 (President of the Assembly), Article 19 (Duties of the Presidency) and Article 52 (Agenda of the Plenary Session) of the Rules of Procedure of the Assembly.

(i) *regarding the legal nature of the challenged act*

26. Regarding the legal nature of the challenged act, the Applicants consider that the scheduling of this session cannot be outside the scope of the constitutional control

- exercised by the Constitutional Court because the contested act, even though it is not a “*decision of the Assembly*” within the meaning of Article 65 [Competencies of the Assembly] and 80 [Adoption of Laws] of the Constitution, was rendered by the holder of this constitutional institution, who has constitutional responsibility according to Article 67 of the Constitution and Article 16 of the Rules of Procedure of the Assembly. The fact that the challenged act of the President of the Assembly has produced legal consequences should be subject to constitutional review by the Constitutional Court.
27. The Applicants emphasize that the term “*decision*” used in paragraph 5 of Article 113 of the Constitution, refers to “*any action of the Assembly or its holder, which produces legal consequences according to its constitutional competencies*”. Therefore, the term ‘*decision*’, according to the Applicants, includes “*not just a legal act of the Assembly, but the decision of the representative of the latter, by whom the contested decision was rendered*”. Further, according to the Applicants, it can be argued that “*any action of the Assembly and/or the President as its representative, which produces legal consequences (general or individual), whether rendered in written or unwritten form, both in regard to substantive issues and procedural issues*”, may be subject to constitutional control.
 28. According to the Applicants, “*we cannot assume that this is simply an “act” which, as a rule, has no binding force or does not have the character of a legal act*”, because it is about a “*decision*” of the Assembly, respectively its President, within the meaning of paragraph 5 of Article 113 of the Constitution, insofar as its decisions produce such effects and consequences as the scheduling and convening of a session in which issues of state interest are reviewed and decided for the citizens in the Republic of Kosovo – as it has happened in the circumstances of the present case.
 29. In this regard, they also refer to Court case KO93/21, Applicant *Blerta Deliu-Kodra and twelve (12) other deputies of the Assembly*, Judgment of 28 December 2021, where the Court had assessed the constitutionality of “*Recommendation*” of the Assembly.
 30. According to them, if such a decision, as in the circumstances of the present case, were excluded from constitutional control, “*it would enable unprecedented arbitrariness in the organization, manner of work, and functioning of the Assembly, on one hand, and effectively lack of necessity for the implementation of the Rules of Procedure, on the other hand*”, which, according to Article 76 of the Constitution, is adopted by two thirds (2/3) of all deputies of the Assembly.
 - (ii) *regarding the compliance of the challenged act with the Constitution and the Rules of Procedure of the Assembly*
 31. The Applicants emphasize, among other things, that they do not challenge the competence of the President of the Assembly to convene and schedule the agenda for the plenary session but challenge the procedure that preceded the session of 13 July 2023, and therefore the constitutional and legal effects of the decision making of the Assembly in this session.
 32. Applicants allege that “*the contested decision raises a constitutional issue of special importance because the President of the Assembly represents the highest legislative and constitutional institution in the Republic of Kosovo and he, according to paragraph 7 of Article 67 of the Constitution, represents the Assembly; sets the agenda, convenes and chairs the sessions; signs acts adopted by the Assembly; and exercises other functions in accordance with this Constitution and the Rules of Procedure of the Assembly*”.

33. In this regard, the Applicants consider that the President of the Assembly, by rendering the challenged act, has substantially violated the provisions of Articles 68, 69 and 76 of the Constitution and Articles 16, 19 and 52 of the Rules of Procedure of the Assembly, by scheduling and holding “*arbitrarily*” a session which has resulted in the following constitutional violations:
- (a) not meeting the deadline for convening and scheduling the plenary session according to Article 52 of the Rules of Procedure of the Assembly according to which, among other things, the agenda, together with materials, is distributed to deputies at least two (2) working days prior the plenary session is held; and
 - (b) by not putting for adoption the agenda of this session due to the absence of the consensus of the Presidency as a result of the lack of the necessary quorum, namely the failure to hold the Presidency meeting, according to paragraph 1 of Article 19 of the Rules of Procedure, which stipulates that “*The Presidency of the Assembly, in the joint meeting with the heads of the parliamentary groups, shall discuss the agenda of the plenary session, proposed by the President of the Assembly. The agenda is adopted by consensus, and if no consensus is reached, the President shall present the agenda to the plenary session for adoption*”, the agenda of the plenary session should have been put to a vote in the Assembly session of 13 July 2023.
- (iii) *regarding the request for interim measure*
34. In regard to the issue of the interim measure, the Applicants request that the Court “*accept the application of Article 43 of the Law on the Constitutional Court, regarding the ex-lege suspensive effect of the implementation of the decision of the President of the Assembly [the contested act], with the effect of suspending the implementation of all decisions of the plenary session of 13 July 2023, since the same is contested before the Constitutional Court [...]*.” The Applicants also base the request for *ex-lege* suspension of the contested act on Article 116 of the Constitution which stipulates that the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.
35. Consequently, the Applicants request the Court that, “*without prejudice to the admissibility or merits of the Referral*”, to inform the parties involved that the contested act of the President of the Assembly, be suspended *ex-lege* so that the “*laws adopted in this session not be sent for decreeing and publication in the Official Gazette until the final decision of the Constitutional Court on the contested case*”, and consequently to suspend the implementation of all other decisions rendered by the Assembly in this plenary session.
36. Finally, the Applicants request the Court (i) to declare the Referral admissible; (ii) to declare the challenged act, namely the “*Decision*” [Ref. no. L-VIII, SP-119] of the President of the Assembly of 11 July 2023, on the Scheduling of the Plenary Session of 13 July 2023” in violation of the Constitution; and (iii) to annul the plenary session of the Assembly of the Republic of Kosovo held on 13 July 2023 and all decisions taken at the same session.

Comments of the President of the Assembly Mr. Glauk Konjufca

37. Regarding the Applicants' allegations, the President of the Assembly initially refers to paragraph 5 of Article 113 of the Constitution, which establishes that *“Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed”*, stating that the challenged act does not constitute a *“decision adopted by the Assembly”* for the purpose of paragraph 5 of Article 113 of the Constitution.
38. In this regard, he refers to the competences of the Assembly established in Article 65 of the Constitution, emphasizing that in none of the fourteen (14) paragraphs of Article 65 of the Constitution *“it has not been determined that the Assembly [...] takes a decision on scheduling or convening its plenary session”*. He further refers to Article 67 [Election of the President and Deputy Presidents] of the Constitution which stipulates in paragraph 7 (2) that the President *“sets the agenda, convenes and chairs the sessions”* adding that the competence to convene the session belongs to the President of the Assembly.
39. He also emphasizes that according to Article 80 [Adoption of Laws] of the Constitution, laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution. In this regard, the President of the Assembly emphasizes that the act of convening the plenary session in *“no form is considered a “Decision of the Assembly” due to the procedural form of its adoption, which remains at the discretion of the President of the Assembly and no one else”*. In this regard, he also refers to paragraph 1.31 of Article 2 (Definitions) of the Rules of the Assembly, according to which *“Decision of the Assembly”* is *“Legal act, adopted by the Assembly, signed by the President of the Assembly”*.
40. Therefore, according to him, this definition makes it clear and explains precisely the meaning of the term *“Decision of the Assembly”* and which are adopted by the Assembly as an institution and are signed by the President of the Assembly. Therefore, according to him, the Applicants' referral does not fulfill the necessary elements in a cumulative manner, since the criterion that through paragraph 5 of Article 113 of the Constitution, a *“decision of the Assembly”* must be challenged has not been met.
41. In support of his arguments, the President of the Assembly also refers to Court case KO115/13, Applicant *Ardian Gjini and 11 other deputies of the Assembly of the Republic of Kosovo*, Resolution on Inadmissibility of 14 November 2013, emphasizing that the Constitutional Court by the aforementioned Resolution found that paragraph 5 of Article 113 of the Constitution allows the Court to decide only on the constitutionality of *“any law or decision adopted by the Assembly”* and that this constitutional provision does not allow the Court to assess whether other acts or decisions of the Assembly are in compliance with the Constitution.
42. Therefore, the President of the Assembly alleges that *“the contested issue does not constitute a constitutional issue and that it is an internal issue of the Assembly, for which without entering the merits of the case are not grounded, the Rules of Procedure of the Assembly have provided the internal mechanisms for addressing and handling any issue that is related to the Regulation”*. In this regard, he refers to Article 122 (Interpretation of the Rules of Procedure) of the Rules of Procedure of the Assembly, adding that *“precisely because there was no remark regarding the way of convening the session, there was nothing unusual from previous practice of the work of the Assembly, no deputy has contested the call of the session or the agenda, neither by addressing the request for interpretation to the relevant Committee, nor even by declaring at the beginning of the session.”*

43. Finally, the President of the Assembly emphasizes that *“The decision of the President of the Assembly is not a legal act adopted by the Assembly, by the majority of the deputies in a plenary session, the issuance of this act is an internal matter of the Assembly and does not under any circumstances affect any Constitutional norm in the present case.”* Consequently, he states that *“The Applicant’s referral is incompatible ratione materiae with the Constitution”*.

Admissibility of the Referral

44. In this regard, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes that: *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*

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

“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.”

46. In addition to the abovementioned 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 defines as follows:

Article 42 (Accuracy of the Referral)

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

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

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

Rule 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law)

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

(2) [...]

(3) A referral filed under this Rule must, inter alia, contain the following information:

- (a) Names and signatures of all the members of the Assembly challenging the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;
- (b) Provisions of the Constitution or other act or legislation relevant to this referral; and
- (c) Presentation of evidence that supports the contest.

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

48. The Court also refers to Rule 34 (Admissibility Criteria) of the Rules of Procedure which stipulates that:

“3) The Court may also consider a referral inadmissible if any of the following conditions are met:

[...]

(b) The Referral is incompatible racione materiae with the Constitution;

[...]”

49. Based on the above, a referral submitted to the Court according to paragraph 5 of Article 113 of the Constitution, (i) must be submitted by at least 10 (ten) deputies of the Assembly; (ii) must be submitted within a period of 8 (eight) days from the day of adoption of the challenged act; and (iii) that the Applicants should challenge the constitutionality of “*any law or decision adopted by the Assembly*”, for the content and/or for the procedure followed.

50. The Court also refers to the Judgment in case [KO93/21](#), where it stated that referrals filed with the Court based on paragraph 5 of Article 113 of the Constitution must meet the following constitutional criteria: (i) ten (10) or more deputies have the right to challenge the constitutionality of any law or decision adopted by the Assembly; and (ii) the law or decision may be challenged both as regards its substance and the procedure followed. Therefore, the deputies of the Assembly, in the capacity of Applicants, may challenge the constitutionality of a law or decision, adopted by the Assembly (see case KO93/21, cited above, paragraph 197).

51. The Court, in assessing the fulfillment of the criterion of the necessary number of deputies of the Assembly to submit the relevant referrals, notes that the referral KO160/23 was submitted by 12 (twelve) members of the Assembly. Therefore, the Applicants fulfill the criterion defined through the first sentence of paragraph 5 of Article 113 of the Constitution regarding the necessary number of deputies to submit a referral to the Court.

52. Likewise, regarding the criterion that the referral be submitted within a period of 8 (eight) days from the day of adoption of the challenged act, the Court recalls that the referral was submitted by more than 10 (ten) deputies of the Assembly, within 8 (eight) days from the date of adoption of the challenged act, since the challenged act was adopted on 11 July 2023, while the referral was submitted to the Court on 19 July 2023.

53. The Court must further assess whether the current Referral KO160/23 has fulfilled the third criterion defined by paragraph 5 of Article 113 of the Constitution, namely if the Applicants challenge “*the constitutionality of any law or decision adopted by the*

Assembly”, a criterion which is also reflected in paragraph 3 (1) of Rule 72 of the Rules of Procedure.

54. Regarding the decision “*adopted*” by the Assembly, the Court refers to paragraph 1 of Article 65 [Competencies of the Assembly] of the Constitution which defines, among other things, that “*the Assembly of the Republic of Kosovo: (1) adopts laws, resolutions and other general acts [...].*”
55. The Court also refers to paragraph 1 of Article 80 [Adoption of Laws] of the Constitution that determines the manner of adoption of laws and decisions by the Assembly, as follows:

“Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution”.
56. Therefore, based on the above, it results that the “*Decision*” of the President of the Assembly differs from a decision of the Assembly for which the majority of votes of the deputies present and voting is required. This is because, in order for an act of the Assembly to become a “*decision*”, it must go through the voting process in the Assembly as provided by paragraph 1 of Article 80, in conjunction with paragraph 1 of Article 65 of the Constitution.
57. In this regard, the Court also refers to the case [KO115/13](#), in which the Court, in relation to an act/decision of the Presidency of the Assembly that was challenged before the Court by the aforementioned referral, emphasized that 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. Therefore, the Court emphasized that in order for an act of the Assembly to be a “*decision*”, it has to go to the voting process in the Assembly. Therefore, the Court’s jurisdiction, or authority, to interpret constitutional referrals cannot be extended to include internal acts of the Assembly’s bodies or decisions of individual deputies or officials of the Assembly (see case of the Court KO115/13, cited above, paragraphs 46, 47 and 50).
58. Therefore, the Court had declared the Applicants’ referral inadmissible because the latter was not *ratione materiae* compatible with the Constitution, since the Applicants in case KO115/13 challenged before the Court an act of the Presidency of the Assembly and not a “*decision of the Assembly*” (see Court case KO115/13, cited above, paragraph 51).
59. In connection with the circumstances of the present case and regarding the convening of the plenary session, the Court refers to Article 65 (Competencies of the Assembly) of the Constitution, which enumerates fifteen (15) competencies of the Assembly, including the competence added by amendment no. 23 of the Constitution, none of which includes the scheduling of the agenda by the Assembly.
60. On the other hand, paragraph 7 (2) of Article 67 [Election of the President and Deputy Presidents] of the Constitution, establishes that the President of the Assembly, among other things, “*sets the agenda, convenes and chairs the sessions*”.
61. Moreover, despite the fact that they do not constitute constitutional norms, based on the Applicants’ allegations, the Court also refers to paragraph 1 of Article 52 (Agenda OF the plenary session) of the Rules of the Assembly which stipulates that “*The President of the Assembly, shall set the agenda for the next session of the Assembly, according to Article 16 of this Regulation. The agenda, together with materials, is distributed to the MPs at least two working days prior the plenary session*”

According to paragraph 2 of Article 52 of the Rules of Procedure of the Assembly “*The agenda is considered adopted, except when, there was no consensus in the Presidency of the Assembly*” or “*when at the beginning of the session, a proposal is presented for amending the agenda*”. Also, paragraph 1 of Article 19 (Duties of the Presidency), of the Rules of Procedure of the Assembly, defines: “*The Presidency of the Assembly, in the joint meeting with the heads of the parliamentary groups, shall discuss the agenda of the plenary session, proposed by the President of the Assembly. The agenda is adopted by consensus, and if no consensus is reached, the President shall present the agenda to the plenary session for adoption.*”

62. Therefore, according to the above, it follows that, (i) the sessions of the Assembly are convened by the President of the Assembly; and that (ii) the agenda of the Assembly sessions is set by the President of the Assembly and the latter is discussed in the Presidency of the Assembly and is considered adopted, except when there is no consensus in the Assembly, and if this is the case, the latter is presented to the plenary session for adoption.
63. In the present case, the Court clarifies that the Applicants challenge specifically “*Decision No. Ref. L-VIII, SP-119 of 11 July 2023, for scheduling the plenary session of 13 July 2023, of the President of the Assembly of the Republic of Kosovo*”.
64. In this regard and based on the case file, it results that the challenged act was not submitted to “*voting by the deputies of the Assembly*”, according to the voting procedure established in paragraph 1 of Article 80 of the Constitution, therefore as such, it does not constitute a “*decision adopted in the Assembly*”, as foreseen in paragraph 5 of Article 113 of the Constitution.
65. Moreover, the Court notes that according to the case file, it does not result that such a vote was requested by the deputies of the Assembly before the review of the agenda submitted by the President of the Assembly. In this regard, the Court also refers to Article 74 [Exercise of Function] 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.
66. Moreover, and in the context of the Applicant’s allegation about the nature of the legal act in connection with the “*Recommendations*” of the Assembly challenged by referral KO93/21, there is the fact that the Court through its case-law, has determined that regardless of the formal designation of decisions rendered by public authorities, they are subject to constitutional control, taking into account the legal effects they produce and whether they raise constitutional issues and always taking into consideration whether they have been filed with the Court in the manner provided by the Constitution and the Law (see Court case KO93/21, cited above paragraph 202; and cases of the Court, [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 on 21 January 2016, Judgment of 16 November 2016, paragraph 49; [KO12/18](#), Applicant: *Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo*, regarding the constitutional review of the Decision of the Government of the Republic of Kosovo, no. 04/20, of 20 December 2017, Judgment of 29 May 2018, paragraphs 88-90; [KO58/19](#), Applicant: *Bilall Sherifi and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of the decisions of the President of the Republic of Kosovo, no. 57/2019, no. 58/2019, no. 59/2019, no. 60/2019, no. 61/2019, no. 62/2019, no. 63/2019 and 65/2019, of 28 March 2019, Judgment of 29 July 2019; [KO54/20](#), Applicant: *President of the Republic of Kosovo*, Constitutional review of Decision No.

01/15 of the Government of the Republic of Kosovo, of 23 March 2020, Judgment of 31 March 2020, paragraphs 162-165; and [KO61/20](#), Applicant, *Uran Ismaili and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, on declaration of the Municipality of Prizren a “*quarantine zone*”; and Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipalities of Prizren, Dragash and Istog, Judgment of 5 May 2020, paragraphs 92 to 98 and other references used therein).

67. In this context, the Court in the present case does not deviate from its previous case law, since in the present case the name of the challenged act is not contested, but whether it is a “*decision of the Assembly*” or “*adopted*” by the Assembly, for purpose of paragraph 5 of Article 113 of the Constitution. Therefore, the present case differs from the cases above, due to the fact that (i) in case KO93/21, the challenged Act of the Assembly entitled “*Recommendations*”, was adopted by the Assembly in its plenary session, on 6 May 2021, with sixty one (61) votes for, none against and no abstentions; while (ii) the other cases mentioned above were not submitted to the Court based on paragraph 5 of Article 113 of the Constitution.
68. The Court also notes that the Applicants through this referral have not specifically challenged the decisions of the Assembly, mentioned in paragraph 23 of this Resolution, which were adopted according to the agenda mentioned above, either in relation to the procedure followed or their content.
69. Therefore, based on the circumstances of the present case, the Court notes that “*Decision with Ref. No. L-VIII, SP-119 of 11 July 2023, on the scheduling of the Plenary Session dated 13 July 2023, of the President of the Assembly of the Republic of Kosovo*” does not constitute “*any decision adopted by the Assembly*”, as clearly stipulated by paragraph 5 of Article 113 of the Constitution.
70. Therefore, the Court finds that the Applicants’ Referral is inadmissible for review, because it is incompatible *ratione materiae* with the Constitution (see Court case KO09/16, Applicant *Behgjet Pacolli*, Resolution on Inadmissibility of 17 March 2016, paragraphs 34 and 35).
71. In connection with this, the Court recalls that as it clarified in the Decision on Interim Measure of the case [KO160/23](#), of 1 August 2023, it has already received two separate referrals in which two of the decisions adopted by the Assembly at the session of 13 July 2023 are challenged, (i) the Referral for constitutional review of Decision no. 08-V-583 for the dismissal of Mrs. Kimete Gashi from the position of member of the Procurement Review Body, registered in the Court as Referral KO157/23; and (ii) Referral for constitutional review of “*Law no. 08/L-142 Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income*”, registered in the Court as a Referral KO158/23.
72. Therefore, the latter are not the subject of consideration of the present referral and will be examined by the Court separately. Therefore, this Resolution on Inadmissibility does not prejudice the Court’s decision-making regarding the two (2) above-mentioned referrals.

Regarding the request for interim measure

73. The Court also recalls that the Applicants requested the imposition of an interim measure in relation to the challenged act, thereby suspending the entry into force and implementation of “*laws, draft laws and decisions taken by the Assembly of Kosovo in the session of 13 July 2023*” until the final decision of the Court.
74. In this regard, the Court reiterates that by the Decision on Interim Measure in case KO160/23, of 1 August 2023, the Court decided to reject the interim measure regarding the challenged act, based on the reasoning given in the aforementioned Decision on Interim Measure.
75. Therefore, the Court finds that the request for interim measure will not be dealt with in this decision.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.5 of the Constitution, Articles 20 of the Law, and Rules 34 (3) (b) and 48 (1) (b) and 72 of the Rules of Procedure, on 1 November 2023, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 4 of Article 20 (Decisions) of Law No. 03/L-121 for the Constitutional Court of the Republic of Kosovo;
- IV. TO HOLD that this Decision 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 (Decisions) of Law No. 03/L-121 for the Constitutional Court of the Republic of Kosovo.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.