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

Prishtina, on 24 nëntor 2023
Ref. no.: AGJ 2297/23

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JUDGMENT

in

case no. KO173/22

Applicant

Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo

Constitutional review of the Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market

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

Applicant

1. The Referral was submitted by ten (10) deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), respectively: Arben Gashi, Anton Quni, Armend Zemaj, Avdullah Hoti, Besian Mustafa, Driton Selmanaj, Doarsa Kica–Xhelili, Hykmete, Bajrami, Valentina Bunjaku–Rexhepi and Vlora Dumoshi (hereinafter: the Applicants or deputies Applicants).

Challenged Law

2. The Applicants challenge the constitutionality of the Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market (hereinafter: the contested Law), adopted by the Decision [no. 08-V -426] of 8 November 2022 of the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

Subject matter

3. The subject matter of the Referral is the constitutional review of the contested Law, which, according to the Applicants' allegations is not compatible with Article 7 [Values], Article10 [Economy] and paragraphs 1 and 5 of Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

4. In the context of the effects of submitting the relevant Referral to the Court, the Applicants, among others, state that: "*We respectfully remind the Court that our authorization to challenge the constitutionality of this draft law is of preventive nature, which means that we challenge it before it has entered into force. On such a basis, the draft law is automatically in suspensive effect, which means that - as is the consolidated practice of the Constitutional Court, expressly established in some cases of the constitutional review of laws - the draft law cannot be processed for decree by the President of Republic, and of course the deadline for its decree does not begin to run [....]".*

5. However, the Applicants also request the Court to impose an interim measure, emphasizing the importance of imposing this measure, among others*: "for these three basic reasons: first, because by the interim measure the damage would be prevented caused by the implementation of this draft law, causing massive disruptions in the supply in the market, which would result in the bankruptcy of many small and medium traders. Secondly, the interim measure would prevent the implementation of the Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, through which an attempt is made to give the Kosovo economy a centralist character. Thirdly, because by this draft law the constitutional order is violated as a determinant for the market economy and its entry into force and eventual implementation could create irreparable consequences for the market and Kosovar traders."*

Legal basis

6. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, Articles 22 (Processing Referrals), 27 (Interim Measures), 42 (Accuracy of the Referral) and 43 (Deadline) of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as 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 Rules of Procedure of the Court, no. 01/2023 (hereinafter: Rules of Procedure).

7. 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

8. On 16 November 2022, the Applicants submitted the Referral to the Court.

9. On the same date, the President of the Court by Decision [No. KSH. KO173/22] appointed judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel, composed of judges: Selvete Gërxaliu-Krasniqi (Presiding), Safet Hoxha and Nexhmi Rexhepi (members).

10. On 17 November 2022, the Court notified the Applicants about the registration of the Referral.

11. On the same date, the Court notified about the registration of the Referral (i) the President of the Republic of Kosovo (hereinafter: the President); (ii) the President of the Assembly; and (iii) the General Secretary of the Assembly, with the clarification that based on paragraph 2 of Article 43 (Deadline) of Law, "*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 18 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 Court, based on the aforementioned provision of the Law and its case law, recalled that this provision means that the contested Law cannot be decreed, enter into force or produce legal effects until the final decision of the Court, regarding the issue raised before it. The President of the Assembly was also requested to notify the deputies that they can submit their comments regarding the referral of Applicants, if any, within fifteen (15) days, respectively until 2 December 2022.

12. On the same date, the Court notified about registration of the Referral (i) the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); (ii) the Institution of the Ombudsperson of the Republic of Kosovo (hereinafter: the Ombudsperson); and (iii) Ministry of Industry, Entrepreneurship and Trade of Kosovo (hereinafter: MIET), informing them that they can submit to the Court their comments regarding the submitted referral, if any, within fifteen (15) days, respectively until 2 December 2022.

13. On 29 November 2022, the General Secretary of the Assembly submitted to the Court the document entitled *"Legal Opinion on Compatibility with EU Legislation of the Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market"*, of 26 September 2022 of the Legal Office, respectively the EU Law Division of the Prime Minister's Office, as well as the additional documentation related to the review procedure and adoption of the contested Law in the Assembly, as following: (i) Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, proceeded by the Government of the Republic of Kosovo, no. 08/L-179, of 3 October 2022; (ii) the report of the functional Committee on Economy, Industry, Entrepreneurship and Trade, for review in principle of the draft law on interim measures of essential products in special cases of destabilization in the market, no. 08/2787/L-179, of 11 October 2022; (iii) the transcript of the Plenary Session related to the first review of the draft Law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, of 14 and 20 October 2022; (iv) part from the transcript of the Plenary Session related to the voting in principle of draft law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, of 27 October 2022; (v)

Decision of the Assembly of the Republic of Kosovo on the adoption in principle of draft law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, no. 08-V-415, of 27 October 2022; (vi) Decision of the Assembly of the Republic of Kosovo for the second review of the draft law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, no. 08-V-414, dated 27 October 2022, by avoiding the deadlines set by the Rules of Procedure of the Assembly; (vii) the minutes of the meeting of the functional Committee on Economy, Industry, Entrepreneurship and Trade related to the review in principle of draft law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, of 11 October 2022; (viii) the report with amendments of the functional Committee on Economy, Industry, Entrepreneurship and Trade, proceeded for review in the permanent committees, no. 08/2912/L-179, of 1 November 2022; (ix) the supplementary report with amendments of the functional Committee on Economy, Industry, Entrepreneurship and Trade, proceeded for review in the permanent committees, no. 0812953/L-179, of 7 November, 2022; (x) the minutes of the meetings of the Committee for European Integration regarding the review of the draft law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, with the amendments of the functional committee of 3 and 8 November 2022; (xi) the minutes of the meeting of the Committee on Rights and Interests of Communities and Returns related to the review of the supplementary report for draft law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, with the amendments of the functional committee, of 8 November 2022; (xii) minutes of the meetings of the functional Committee on Economy, Industry, Entrepreneurship and Trade related to the second review of draft law no. O8/L-179 on interim measures of essential products in special cases of destabilization in the market, with the amendments of the functional committee, of 1, 7 and 8 November 2022; (xiii) the final report with amendments of the functional Committee on Economy, Industry, Entrepreneurship and Trade, proceeded for review and voting in the plenary session, no. O8/2961/L-179, of 8 November 2022, together with the Report of the Committee on Budget, Labor and Transfers, no. 08/2925/L-179, of 2 November 2022; (xiv) the report of the Committee on Legislation, Mandates, Immunities, the Rules of Procedure the Assembly and Oversight of the Anti-Corruption Agency, no. O8/2921/L-179, of 2 November, 2022; (xv) the report of the Committee on European Integration, no. O8/2933/L-179, of 3 November 2022; (xvi) the report Committee on Rights and Interests of Communities and Returns, no. 08/2960/L-179, of 8 November 2022; (xvii) the transcript of the Plenary Session related to the second review of draft Law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, of 8 November 2022; (xviii) Decision of the Assembly on the adoption of Law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market, no. 08-V -426, of 8 November 2022; and (xix) Law no. 08/L-179 on interim measures of essential products in special cases of destabilization in the market.

14. On 2 December 2022, Minister of MIET, respectively, Rozeta Hajdari, submitted to the Court the comments related to the Applicants' Referral.

15. Also, on the same date, the Parliamentary Group of Movement VETËVENDOSJE!, through the deputy, Armend Muja, submitted to the Court response to the Applicants' Referral.

16. On 16 December 2022, Judge Enver Peci took the oath in front of the President of the Republic of Kosovo, whereby his mandate to the Court began.

17. On 12 May 2023, with the purpose of clarification of response of the MIET Minister, the Court sent the new request for provision of additional information related to the Referral KO173/22, among others, as follows:

> *"More specifically, in the third part of the paragraph 17, You state:*
>
> *" […]*
>
> *From the above, specifically in Article 8, paragraph 7 of the draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, it is emphasized that: "Each decision taken according to this law must be in accordance with the bilateral protection commitments that Kosovo has taken within the framework of the SAA and other international agreements".*
>
> *Therefore, Please answer:*
>
> *a) Do you have anything to add regarding the issue of "bilateral protective commitments", which the Republic of Kosovo has undertaken within the framework of the SAA? Please submit any written and specific documents if you have regarding the "bilateral protection commitments" under the SAA other than those mentioned in the letter [No. 7348-01] of 2 December 2022?*
> *b) To state clearly what are "other international agreements" to which you refer in the part of paragraph 17 and clarify their influence on the contested Law? And at the same time, please send us their written versions (other international agreements)"?*

18. On 18 May 2023, the Court received the answers of Minister of MIET.

19. On 24 May 2023, regarding the letter submitted to MIET and the answers received, the Court notified (i) the President of the Republic; (ii) the President of the Assembly; (iii) the Prime Minister; (iv) the Ombudsperson Institution, as well as (v) the Applicants, also allowing them to submit additional comments, if any, to the Court, until 31 May 2023.

20. On the same date, the Court sent to the Minister of MIET, the comments received on 2 December 2022 from the parliamentary group of Movement VETËVENDOSJE!, through the deputy, Mr. Armend Muja, with the request that if there are any comments, they should be submitted to the Court by 31 May 2023.

21. On 31 May 2023, MIET submitted comments to the Court regarding the comments submitted by the parliamentary group of Movement VETËVENDOSJE!.

22. On 6 July 2023, the Review Panel considered the preliminary report proposed by the Judge Rapporteur and decided to postpone the review of Referral to one of the following sessions after the necessary supplementations.

23. On 8 November 2023, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same date, the Court: (i) unanimously declared the referral admissible; (ii) held by seven (7) votes for and one (1) against, that paragraphs 2 and 4 of Article 4 (Essential Products), paragraph 2 of Article 5 (Interim Measures), paragraphs 1, 2, 3, 4, 5, 6 and 9 of Article 8 (Decision-Making) and paragraph 2 of Article 9 (Supervision and sanctions) of Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, are not in compliance with paragraph 1 of Article 7 [Values], Article 10 [Economy] and paragraph 5 of Article 119 [General Principles] of

the Constitution of the Republic of Kosovo; (ii) held with seven (7) votes for and one (1) against, that Article 10 (Entry into force) of Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market is not in compliance with paragraph 1 of Article 7 [Values] and paragraph 1 of Article 119 [General Principles] of the Constitution of the Republic of Kosovo ; (iii) declared invalid, with seven (7) votes for and one (1) against, in its entirety, Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market; and (iv) rejected, unanimously, the request for interim measure.

Summary of facts

24. On 27 October 2022, the Assembly in the Plenary Session with sixty-three (63) votes for, approved in the first reading the Draft Law no. 08/L-149 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market.

25. On the same date, the Assembly of the Republic of Kosovo, with sixty-three (63) votes for, also approved the motion to avoid the procedural deadlines of the Rules of Procedure of the Assembly of the Republic of Kosovo (hereinafter: Rules of Procedure of the Assembly), based on Article 123 (Avoidance of Rules of Procedure) of the Rules of Procedure of the Assembly.

26. On 8 November 2022, the Assembly in the Plenary Session adopted in the second reading with sixty-five (65) votes for, Law no. 08/L-149 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market.

Applicant's allegations

27. The Applicants challenge the constitutionality of the contested Law in its entirety, claiming that the contested Law is contrary to Article 7 [Values], Article 10 [Economy] and paragraphs 1 and 5 of Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution.

28. In relation to the aforementioned allegations, the Applicants presented arguments regarding: (I) the admissibility of the referral; (II) the content of the contested Law; and (III) imposition of interim measure. The Court will further present the allegations of the Applicants for all these categories.

(I) regarding admissibility of the referral

29. The Applicants emphasize, among other things, that they, as signatories of the relevant referral, are authorized parties to challenge the constitutionality of the contested Law before the Court in accordance with Article 113.5 of the Constitution, adding *"[...] that our authorization to challenge the constitutionality of this Draft Law is preventive in nature, meaning that we challenge it before it has entered into force. On such a basis, the draft law is automatically in suspensive effec*t...*[...]"*.

30. In addition, the Applicants allege that the submitted referral, whereby the constitutional review of the contested Law is requested, is also based on Articles 42 (Accuracy of the Referral) and 43 (Deadline) of the Law on the Constitutional Court, as well as Rule 72 (Referral in accordance with paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) of the Rules of Procedure of the Court.

(II) Regarding the unconstitutionality of the content of the contested Law

31. The Applicants allege that the contested Law, in its entirety, is in full contradiction with Article 7 [Values], Article 10 [Economy] and paragraphs 1 and 5 of Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution.

32. More specifically, the Applicants emphasize that the contested Law *"contains a number of constitutional violation"*, including (i) the interference of the state with the authorities and economic operators that trade essential products, setting the maximum allowed prices for certain products; (ii) determining the trade margin for wholesale and retail sales; (iii) the obligation of the economic operator to maintain the certain part of the product stock as well as the obligation to supply and offer for sale essential products as before the imposition of protective measures.

33. In the aforementioned context, the Applicants, among other things, emphasize that *"a large number of provisions of the Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, seriously violate the constitutional regulation of the market economy, as an economic system that is based on the values of free competition, acting through market mechanisms, where supply and demand determine market prices"*. In this context, the Applicants specifically refer to the content of Article 2 (Scope), Article 3 (Definitions), Article 5 (Interim Measures) and Article 7 (Calculation of the Margin) of the contested Law, emphasizing that the respective articles violate the following constitutional provisions, respectively Article 7 [Values], Article 10 [Economy] and paragraphs 1 and 5 of Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution.

34. In the following, the Court will summarize the Applicants' allegations regarding the alleged incompatibility of the above-mentioned articles of the contested Law with the above-mentioned articles of the Constitution, namely the allegations regarding the incompatibility of the contested Law with (i) Article 7; (ii) Article 10; and (iii) paragraphs 1 and 5 of Article 119 of the Constitution.

(i) regarding incompatibility of contested Law with Article 7 [Values] of the Constitution

35. The Applicants, among other things, emphasize that "*Article 7 of the Constitution defines the values and principles on which the Republic of Kosovo stands. Those principles, which according to the constitutional provisions represent the most important values, include the principle of freedom, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, pluralism, and separation of state power, and a market economy"*.

36. More specifically, the Applicants consider that "*the principle of the market economy is based on the system of entrepreneurship and free competition, acting through market mechanisms, where supply and demand determine prices in the market. The market and market mechanisms as such are based on economic theory. Participants are free to operate under conditions of free competition and a market economy, and a free market economy includes the areas of goods, services, products, labor, land and capital"*.

37. According to the Applicants, *"the market economy is an economic system based on free competition, private ownership of the means of production, entrepreneurial initiative and equal economic freedoms for all economic subjects. The basic principle of the market economy consists in the free formation of prices, in which case the main mechanism is the balance of demand and supply in the market"*.

38. Further, the Applicants emphasize that *"the functioning of the market economy is based on the existence of mechanisms, which orient the factors of production in those activities in which their most efficient use is ensured. In connection with this, the market economy means that the state/government performs the function of the guarantor of the operation of market laws. The government acts in the formulation and implementation of legal regulations which enable the unimpeded functioning of the market laws, which are related to the freedom of formation of supply and demand in the market, and it does not interfere directly with the economy*. Also, according to the Applicants, *"the attempt for the state to set maximum prices for certain products through intervention measures distorts the constitutional character of the market economy with free competition, which would consequently cause great damage to businesses, especially small and medium businesses, empowering large traders, while on the other hand it would limit the rights of citizens to decide for themselves the quantities and prices of the goods they buy in the market"*.

(ii) regarding incompatibility of contested Law with Article 10 [Economy] of the Constitution

39. The Applicants emphasize that Article 10 [Economy] of the Constitution defines the basis of economic organization in the Republic of Kosovo, which is based on two basic principles: (i) market economy; and (ii) the free economy, and that this Article, due to its importance for the state, extends to several other principles, among them are: "*freedom of entrepreneurship, self-support of economic entities, equality of private property and all other forms of property"*.

40. The Applicants, in this context, also emphasize that *"one of the most important characteristics of a market economy, also called a free entrepreneurship economy, is the limited role of the government to interfere with the market. A competitive market economy promotes the efficient use of its resources, and the government creates conditions for the functioning of this economy, in which economic decisions in the market are made by buyers and sellers"*.

(iii) regarding incompatibility of contested Law with paragraphs 1 and 5 of Article 119 [General Principles] of the Constitution

41. Referring to the content of Chapter IX Economic Relations of the Constitution, the Applicants emphasize that economic relations are specifically defined in ten paragraphs of Article 119 of the Constitution, along which, according to the Applicants, "*the general principles of the state economic system are defined, and some of the basic guarantees of the market economy are established. The tendency of this Article for an open and free economy is indicative of the nature of the free-market economy that is guaranteed by the Constitution. From this chapter it can be understood that the Kosovo state model of economic relations is an advanced model of pluralism of property and equality of local and foreign actors in the market, thus. a liberal political system where constitutional democracy, rule of law, equality and respect for human and minority rights represent the key pillars without which there can be no market economy and liberal economic relations"*.

42. In this regard, the Applicants add that Article 119 [General Principles] of the Constitution has provisions that create obligations towards the state of Kosovo, in order to ensure a favorable legal environment for the market economy, freedom of economic activity and security of public and private property. In terms of this Article, the Applicants consider that the state institutions are obliged to establish all the necessary institutional and legal mechanisms to guarantee that in Kosovo there will be an open market, where supply and demand contain the model of circulation of goods, labor,

knowledge and capital in the economy, and where private economic operators are protected by a legal system sufficient to operate freely in the internal market.

43. The Applicants further reiterate that "*competition is an essential characteristic of a market economy. Instead of regulation by the government, first of all is the mechanism of margin directly in the market which will limit the abuse of prices by businesses or individuals in the market. The opening of opportunities for free participation in the market and free competition enables them to offer higher prices than consumers can afford to leave the market, while abusers are sanctioned by market inspection bodies. If the supply of a needed good or service is low, due to restrictive government measures, the consumer must pay a higher price*".

44. According to the Applicants, "*the intervention of the government in the economy, as is done with the mentioned Law, violates the inclusivity of the economy but also the inclusive character of the government. Difficult economic circumstances may also require special measures, but these special measures should not be in conflict with the character and constitutional arrangement of the country. This practice would pave the path for justifying actions for violation of the Constitution in every difficulty faced by the government*".

45. The Applicants further state that *"constitutional provisions have determined the obligation of the state to establish independent bodies for the regulation of the market when the market, as such, cannot sufficiently protect the public interest. This Article implicitly authorizes the government to regulate the market in those areas where the latter harms the public interest of the state"*. Moreover, according to the Applicants, *"such an independent body known as the Kosovo Competition Authority, was established by the state of Kosovo in 2010 by Law No. 08/L-056 on Protection of Competition. The mission of this institution is to develop activities in creating conditions for markets to offer more benefits to consumers, businesses, and society as a whole, protecting competition in the market and promoting a culture of competition in Kosovo. This institution does this by implementing competition rules and through actions aimed at ensuring fair competition between the interests of other public authorities"*.

46. The Applicants further note that "*this is also reflected in the purpose defined by Law on protection of competition, relying on three main pillars that define the protection of competition: Abuse of dominant position; prohibited agreements in the form of cartels and mergers or concentrations of enterprises. Thus, this leads to the conclusion that the state of Kosovo has built independent mechanisms for regulating the market, and that any other intervention by the state damages the values and principles on which the economic model of Kosovo rests*".

47. The Applicants further state that "*The Government as the proposer of this draft law seems to refer to Article 119 of the Constitution, par. 3 quoted: Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law. The interpretation of this provision, with special emphasis on the last part that says unless explicitly allowed by law, means the cases when the Government and the Assembly decide to regulate a certain market in a complete way, thus, in its entirety, as for example, the energy market, the telecommunications market, the railway market, the financial and banking market, etc. Even in these cases, for each regulated market, the creation of a relevant regulator is also required*".

48. The Applicants consider that "*a careful reading of the Draft Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the*

Market, adopted by the Assembly of Kosovo, from the scope, definitions, protective measures and calculation of the margin, it is clearly understood the intention of the Government to intervene in arbitrary way in the principles of the free market economy and with this violates Articles 7, 10 and 119 of the Constitution of the Republic of Kosovo".

49. The Applicants consider that "*another arbitrary interference through which traders are forced to keep reserves (stocks) of certain goods. In the model of our economy, no state mechanism can force traders to keep stock of goods, because for such a thing the Assembly of Kosovo already in 2010 approved Law no. 03/L-244 on the State Reserves Goods, with which the state reserves of goods were created in the Republic of Kosovo".*

50. The Applicants consider that the contested Law *"in addition to the violations of Articles of the Constitution, described above, and its implementation would be impossible in practice"* because *"thirteen (13) products with which businesses do business, according to this draft law, for each day the financial analyzes should be taken (expenses, sales, losses, etc.), the profit margin should be assigned to each business and then the maximum price should be set. Technically this task is impossible. It is impossible, because the companies that do business with these products do not have the same operating expenses, the same losses, the same purchases, and the same profits".*

51. The Applicants also consider that the implementation of this law would completely disrupt the economic chain of these markets and other markets related to the products defined by this law. In support of this allegation, the Applicants, among other things, point out that *"as evidence, we have the practice with the Administrative Instruction of setting ceiling prices for oil derivatives. This A.I has not shown the effect of price reduction, because MTI, for each day, has set the ceiling price of derivatives based on the OPEC market. It is worth noting that the ceiling price of derivatives has in some cases been raised and, in some cases, has been lowered, all based on price movements in the region. By setting ceiling prices for derivatives, the Government of the Republic of Kosovo has directly legalized the oil cartel. Because the establishment of the ceiling price has enabled all the companies that operate with derivatives to raise the prices to the value that the Government has determined*". In support of this allegation, the Applicants also refer to the content of a report, respectively that of Senator Mike Lee on the Economics of Price Control of the Republican Joint Economic Committee of September 2022.

52. Referring to paragraph 1 of Article 5 of the contested Law, the Applicants emphasize the fact that economic operators "*are obliged to supply and offer for sale essential products as before the imposition of measures".*

53. Further, the Applicants emphasize that *"the initiator of this draft law has promoted the discourse that this initiative aims to lower the prices of some essential products. However, starting to set the same margin or the maximum price, some operators who have high costs will make no profit at all, and in some cases, there is a possibility that someone has to work even at a loss. On the other hand, the Government by Article 5, para. 1.6. tells the operators that the state forces you to work without profit at all or forces you to work even at a loss. Such unconstitutional obligation forces them to declare bankruptcy".*

54. Finally, regarding the content of the contested Law, the Applicants emphasize that "*draft law no. 08/L-179, which determines the maximum prices, trade margins for wholesale and retail sales, and forces companies to keep stored goods (reserves), distorts the market, limits competition and therefore can only apply to cases where*

the Assembly declares state of emergency or in cases where the country is in a state of war. Consequently, all the issues addressed above lead to the conclusion that most of the provisions of the Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, seriously violate the constitutional regulation of the market economy, and are in direct conflict with Article 7, Article 10 and Article 119 of the Constitution of the Republic of Kosovo. The entry into force and eventual implementation of this draft law would cause massive supply disruptions in the market – and as a result would bring bankruptcy and the expulsion of small and medium traders from the market".

(III) Regarding the need to impose interim measure

55. The Court reiterates that the Applicants before the Court have also requested the imposition of an interim measure regarding the contested Law. In this context, the Applicants, among others, emphasize that *"we respectfully remind the Court that our authorization to challenge the constitutionality of this Draft Law is of a preventive nature, which means that we challenge it before it has entered into force. On such basis, the draft law is automatically in suspensive effect, which means that - as is the consolidated practice of the Constitutional Court, explicitly established in some cases of the constitutional review of laws - the draft law cannot be proceeded for decree by the President of Republic, and of course the deadline for its decree does not begin to run [....]".*

56. Also, referring to paragraph 1 of Article 27 (Interim Measures) of the Law on the Constitutional Court in conjunction with Rule 56 (Request for Interim Measures) paragraph 1 of [Rules of Procedure No. 01/2018 of 31 May 2018], emphasize the need to impose interim measure, among others, on the grounds of (i) *"through the interim measure, the damage that will be caused by the implementation of this draft law, causing massive disturbances in the supply in the market, would be prevented, and which would result in the bankruptcy of many small and medium traders"*; *(ii) "the interim measure would prevent the implementation of the Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, through which the Kosovo economy is attempted to be given a centralist character*"; and (iii) "*through this Draft Law, the constitutional order is violated as a determinant for the market economy, and its entry into force and eventual implementation could create irreparable consequences for the market and Kosovar traders".*

57. Consequently, and finally, the Applicants request the Court to (i) declare the Referral admissible; (ii) impose interim measure regarding the contested Law; (iii) declare that the contested Law is in violation of Article 7, Article 10 and paragraphs 1 and 5 of Article 119 of the Constitution; and (iv) declare the latter invalid.

Comments and responses submitted by the interested parties

58. The Court will further present the responses to the Applicants' Referral, respectively (i) the comments of MIET; (ii) the comments of the parliamentary group of the VETËVENDOSJE! Movement; (iii) MIET response to the Court's request for clarification; and (iv) MIET response to the comments of the parliamentary group of the VETËVENDOSJE Movement!.

(i) *Comments of MIET on the Applicants' Referral*

59. On 2 December 2022, the Minister of MIET, Ms. Rozeta Hajdari (Minister of MIET) submitted to the Court *"Comments of the Government regarding Referral KO173/22"*

emphasizing that the contested Law (i) is in full compliance with the spirit and letter of the Constitution; and (ii) serves social justice, as a basic value of the Republic according to Article 7 [Values] of the Constitution and that it is not contrary to Article 10 [Economy] of the Constitution, *"as it protects the essence of the free market from misuse and destabilization with interim measures"*. According to the Minister of MIET, the Law particularly revives the obligations of the Republic from Article 119 [General Principles] of the Constitution, to protect (ii) free competition defined in its paragraph 3; (ii) to promote the welfare of citizens defined in paragraph 4 thereof; and (iii) to protect consumers under the provisions of paragraph 7 thereof. Also related to this, the comments refer to *the "Commentary on the interpretation of the Constitution, in which it is explicitly stated: "From the contextual reading of these two judgments of the Court (the case of microfinance in Kosovo and the case of the Law on Health of Kosovo), it can be freely said that the economic relations should not be viewed in isolation from Chapter I ("Basic Provisions") and II ("Fundamental Rights and Freedoms") of the Constitution because these relations develop in a wider socio-political and legal-constitutional context normed by these two chapters".*

60. The relevant comments of MIET further emphasize that, referring to "*[...] Article 119, par. 4 of the Constitution of the Republic of Kosovo, which defines the obligation of the state of Kosovo to promote well-being for all its citizens, encouraging sustainable economic development. Changes in the international stock market lead to changes in the Kosovar market, which are also reflected in the increase in product prices".* According to the comments*, "various economic operators have abused the created situation and produced artificial prices, abusing for personal material gain the situation created at the international level. In this case, when in relation to the harmful actions that oppose the free market economy in every principle, the citizens of the Republic are affected, but also the businesses that continue to operate in accordance with the rules of the free market and the laws in force, the state has constitutional obligation to react and act".*

61. Furthermore, returning to Article 119 of the Constitution, the Minister of MIET claims that the purpose of the principles stemming from paragraph 4 of Article 119 of the Constitution is that *"the state encourages sustainable economic development through its public policies, which by the draft law in question, the Government has offered the same basis of action for all economic operators that sell food products"*. The same *"ceiling price",* according to comments, applies to all economic operators.

62. In this context, the comments emphasize that the "*ceiling price"* is a form of regulation of economic relations in the market, known and applied in a free market economy. Therefore, based on the interpretation given above, it cannot be considered that the Government has violated competition and that it has violated Article 119 of the Constitution, by regulating the current state of market abuse through the contested Law.

63. Furthermore, the Minister of MIET considers that *"price adjustment is allowed in the market economy and that this is the opposite of what the Applicants allege, that the draft law does not directly determine demand, offer or price. It depends on market forces. However, the latter controls the maximum price and trade margin in special cases of market destabilization, to protect the consumer from possible abuses that threaten the dignity and well-being of the citizen. Price ceiling and margin are calculated by taking into account the market and by adding necessary/reasonable income for the operation and profit of the traders".*

64. In support of this, the Minister of MIET considers "*that the Law also protects the market, because it prohibits price inflation and manipulations that do not reflect the*

real situation in the market, despite the difficulties that may arise. Price inflation and such manipulations hinder the fair judgment of the consumer, cause supply shortages, undermine free and fair competition, endanger economic growth, and cause market disturbances that could be prevented through price control. By providing interim measures in special circumstances and emphasizing the proportionality of the measures, the Law has a corrective or restorative character in accordance with constitutional values and principles".

65. In addition, the Minister of MIET alleges that the measures approved by the contested Law are necessary and proportional because *"unlike what the Applicants allege, the measures accompanying the obligation to maintain the stock and the obligation to supply goods and to sell it as before the imposition of measures are not intended to impede free activity or profit, but to ensure that price regulation can be effectively implemented. Therefore, it is not a question of an obstacle to abandon or change the activity, but a stop to manipulations, such as hiding the vital goods in anticipation of a bigger price".*

66. According to the Minister of MIET, *"the accompanying measures are proportional measures, in accordance with Article 55 of the Constitution. Like price regulation itself, accompanying measures are based on law. If they limit any constitutional right, they do so in proportion to the need to achieve a legitimate aim: to implement social justice as a value from Article 7 of the Constitution, to ensure the economic order according to Article 10 and to protect free competition, welfare and the consumer according to Article 119. Furthermore, Law 08/L-179 protects human dignity as a fundamental right and "the basis of all fundamental human rights and freedoms", protected by Article 23 of the Constitution".*

67. Further, the Minister of MIET emphasizes that the aforementioned measures have been in law since 2004, and that *"the content of Law 08/L-179 is borrowed from existing legislation, that articles 42 and 43 of Law no. 2004/18 on internal trade provides for restrictions on the performance of commercial activities in special cases, specifically for the purpose of consumer protection".*

68. Furthermore, referring to paragraph 2 of Article 19 [Application of International Law] of the Constitution, the Minister of MIET, among other things, states that: "*Ratified international agreements and legally binding norms of international law have precedence over the laws of the Republic of Kosovo".* In this regard, she also states that *"on 2 November 2015, the Assembly of the Republic of Kosovo adopted Law No. 05/L-069 on the Ratification of the Stabilization and Association Agreement between Kosovo on the one hand and the European Union and the European Atomic Energy Community on the other. And that from the above, Article 8, paragraph 7 of the Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market states that: "Each decision taken according to this law must be in accordance with the bilateral protection commitments that Kosovo has taken within the framework of the SAA and other international agreements". Whereas, based on Article 43 of the SAA, respectively the clause on protective measures, paragraph 2, is allowed to adopt protective measures for imported products, if they harm the domestic market and these measures can last up to two years".*

69. Further, the comments emphasize that *"also according to Article 44 of the SAA, the clause on shortage allows Kosovo and the EU to take necessary measures to maintain the supply of the market in order to sufficiently meet the demands of local consumers".* It is especially emphasized that based on the measures defined by Article 5 (Interim protective measures) of the contested Law: "*such as: limitation of the quantity sold to the consumer within the specified period; the obligation of the economic operator to*

maintain the certain part of the product stock and the obligation of the economic operator to supply and offer for sale the essential products as before the imposition of protective measures are aimed at maintaining the market supply as well as sufficient fulfilment of consumer demands for essential products in special cases of destabilization in the market".

70. According to the comments of MIET, the interim measures for essential products in special cases of destabilization in the market aim to protect consumers in special cases of market destabilization, but also taking into account the burden of economic operators.

71. Finally, the Minister of MIET emphasizes that "*so it is most clear that the Draft Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market has nothing to do with the violation of the constitutional regulation of the market economy, because based on Article 6, paragraph 2 of this draft law, it is emphasized that "Safeguard measures are temporarily assigned and removed when the reasons for which they were assigned cease". While the causes on the basis of which protective measures can be assigned under Article 5, according to Article 6, paragraph 1[...]".*

72. Whereas, regarding the Applicants' Referral for the imposition of interim measure, MIET, among others, emphasizes that *(i) we consider that the request of the Applicants for the imposition of interim measure is in violation of Article 27 of the Law on Constitutional Court of the Republic of Kosovo No. 03/L-121 and Rule 55 (4) and (5) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2018; and (ii) "referring to and citing the legal provisions, they emphasize that "it is noted that the Applicants for the imposition of interim measure have not presented any argument nor have they presented any evidence, why and how the interim measure is necessary to avoid risks, or irreparable damage or if the imposition of this interim measure is in the public interest as required by Article 27 of the Law on the Constitutional Court. So, the request for the imposition of interim measure must be argued on real basis of causing irreparable risk or damage, the value of which is irreparable in the material and monetary sense*".

73. At the end of the presented comments, the Minister of MIET presents her conclusions whereby she considers that *"the Applicants have failed to prove or support the allegation that Law no. 08/L-179 on Law on Interim Measures of Essential Products in Special Cases of Destabilization in the Market contradicts the Constitution. In fact, they have tried to give their own interpretations even on behalf of the Government, in order to avoid the correct interpretations of the relevant constitutional articles. For this reason, the Constitutional Court must reject as manifestly ill-founded the Applicants' Referral, reject the request for interim measure as unnecessary, and find that the contested Law is not incompatible with the Constitution*".

(ii) Comments of Parliamentary Group of VETËVENDOSJE Movement!

74. On 2 December 2022, the Parliamentary Group of the VETËVENDOSJE! Movement, through the deputy Mr. Armend Muja submitted comments to the Court, emphasizing first that the Court should reject the referral as manifestly ill-founded, because "*the Applicants have not proven or sufficiently supported the claim that the law violates any constitutional provision*. In support of these allegations, the comments emphasize that "*the arguments do not reflect constitutional violations, but political dissent. The Applicants simply do not agree with the political conviction and policy of the Government and the majority in the Assembly, which proposed and adopted the contested Law. The Law is in full compliance with the spirit and letter of the*

Constitution. The Law serves social justice, as a fundamental value of the Republic from Article 7 [Values]. It does not conflict with the order sanctioned by Article 10 [Economy], as it protects the essence of the free market from abuses and destabilization by interim measures. The Law in particular implements the obligations of the Republic from Article 119 [Economic Relations: General Principles], to protect free competition (para. 3), to promote the welfare of citizens (para. 4) and to protect the consumer (para. 7)".

75. According to the relevant comments*, "price adjustment is allowed in the market economy [….",* that *"the Law provides measures that by nature should be decided by the executive [...]",* and that *"The foreseen measures are necessary, proportional [...]".* The comments also emphasize that despite the of the Applicants' allegations, *"the law does not directly determine demand, supply or price. It depends on market forces. However, the Law controls the maximum price and trade margin in special cases of market destabilization, to protect the consumer from possible abuses that threaten the dignity and well-being of the citizen. Price ceiling and margin are calculated by taking the market as reference and adding the necessary/reasonable revenues for the operation and profit of the traders".*

76. The comments emphasize that "*the Law actually protects the market, because it prohibits inflation of prices and manipulations that do not reflect the real situation in the market, despite the difficulties that may arise. Price inflation and such manipulations hinder the fair judgment of the consumer, cause supply shortages, undermine free and fair competition, endanger economic growth, and cause market disturbances that could be prevented through price control. By providing interim measures in special circumstances and emphasizing the proportionality of the measures, the law has a corrective or restorative character in accordance with constitutional values and principles".*

77. Moreover, the comments emphasize *that "the Applicants admit that the price adjustment refers to the market, when they mention the administrative instruction for the price adjustment of oil products (item 11). Even the discussion of the Applicants about this instruction reveals their contradictions: on the one hand they say that the Government is against the profit of traders, therefore it has proposed the law on prices, and on the other hand they say that the ceiling price for the mafia has harmed competition, because the traders agreed to maximize profit by selling at the maximum allowable price. If there is an agreement that violates competition, there are tools and legal institutions that can be set in motion for this purpose. If there is a wrong policy, for this too there are periodic elections in which citizens express their will for change. Thus, the Applicants fail to prove that there are constitutional violations, which the Constitutional Court should stop".*

78. The comments further emphasize that price control is a widespread mechanism in all countries with a market economy, and the debate there has nothing to do with constitutionality, but with policy-making behavior. According to the comments, the Applicants have not cited a single prior case in any state where price controls have been characterized as unconstitutional in principle because of their incompatibility with the market economy.

79. The comments also emphasize that "*unlike what the applicants allege, the implementation of the measures provided by the contested Law is an executive matter, which cannot be left in the hands of regulator. The independent body according to Article 119.5 may be established for the protection of competition or the ongoing regulation of certain activities, as is the case with the Competition Authority, the Energy Regulatory Office, the Regulatory Authority for Electronic and Postal*

Communications (ARKEP) and the Independent Commission of Mines and Minerals. These bodies must be independent, impartial and non-political, to make general decisions based mainly on professional analysis as well as individual decisions for the parties in the procedure. Protecting the supply of essential products in times of crisis is an executive and security issue, which means political decision-making according to the Constitution and the Law. By analogy, Article 25 of Law no. 05/L-081 on energy allows the Government to set commercial conditions in circumstances of market disorder, even though the energy sector has its own independent regulator. The reason for the Government's role is precisely the necessity for quick executive action. "By analogy, Article 25 of Law no. 05/L-081 on energy allows the Government to set commercial conditions in circumstances of market disorder, even though the energy sector has its own independent regulator. The reason for the Government's role is precisely the necessity for quick executive action". In this context, the comments emphasize (i) the ministry responsible for industry and trade defines industrial standards and supervises the goods market; (ii) the ministry responsible for health supervises the drug market; and (iii) other ministries also regulate commercial activities in a way that creates costs or limits the income of companies.

80. The comments also point out that Article 93 [Competencies of the Government] of the Constitution gives the Government jurisdiction over domestic and foreign policy, which includes trade policy. Moreover, they emphasize that paragraph 11 of Article 93 [Competencies of the Government] of the Constitution defines that the Government *"exercises other executive functions not assigned to other central or local level bodies"*. According to the comments, (i) protection of supply under the contested Law means a general executive act or a policy-making act; and (ii) although the contested Law provides principles and procedures to be followed, decision-making cannot be left to an independent body without jeopardizing the government's competence over trade policy.

81. The comments also emphasize that *"contrary to what the Applicants claim, the follow-up measures - the obligation to store the stock and the obligation to supply with goods and sell them as before the imposition of the measures - are not intended to hinder free activity or profit, but ensure that price regulation can be effectively implemented. So, it is not a question of an obstacle to abandoning or change the activity, but a ban on manipulation, such as hiding vital goods in anticipation of a higher price. Therefore, the follow-up measures are proportional measures, in accordance with Article 55 of the Constitution"*. Further, according to the comments, *"like price regulation itself, the follow-up measures relied on the Law. If they limit a constitutional right, they do so in proportion to the need to achieve a legitimate aim: to revive social justice, as a value from Article 7 of the Constitution, to ensure the economic order in accordance with Article 10 and to protect free competition, welfare and the consumer, in accordance with Article 119. Also, the contested Law protects human dignity as a fundamental value and "the basis of all fundamental human rights and freedoms", which are protected by Article 23 of the Constitution"*.

82. Further and finally, the comments emphasize that (i) *"first, Article 7 cannot be understood without the conjunction with Article 119. The market economy means competition and the free choice of the consumer, and the main prerequisite for its operation is the existence of property private sector and freedom of enterprise. The law in question does not contest or limit it, because it does not have as its subject the limitation of competition and the choice of the consumer, nor private ownership. On the contrary, in the last instance it aims to guarantee free competition among economic operators, avoiding impossible abuses resulting from speculation. In the market economy, in addition to the laissez faire principle, the state has the obligation to establish the general rules of the game of economic activities and to ensure the rule of law, creating an equal and non-discriminatory environment. This law is entirely in*

function of establishing general rules and ensures the rule of law, avoiding and limiting abuses outside the sphere of the market economy".; (ii) "The Republic of Kosovo provides a favorable legal environment for the market economy, the freedom of economic activity and the security of public and private property [...]", as well as, (iii) "Article 119.7 establishes the guarantee for the protection of consumers, in accordance with the law. Such a guarantee, although put as a positive obligation for the state, is automatically transformed into a subjective right of consumers. This guarantee constitutes a standard that protects the purchasers' side in the market from possible abuses by the bidders".

(iii) Response of MIET Minister, of 18 May 2023

83. The Court recalls that on 12 May 2023, in order to clarify its response of 2 December 2022, a request was sent to MIET for the provision of additional information related to the allegation that: *"every decision made under this law must be in accordance with the bilateral protection commitments that Kosovo has undertaken within the framework of the SAA and other international agreements". In this regard, the Court, among other things, asked the MIET if: "[...] you have something to add regarding the issue of "bilateral protection commitments", which the Republic of Kosovo has undertaken within the SSA? Please submit any written and specific documents you have regarding the "bilateral protection commitments" within the SAA other than those mentioned in the letter [No. 7348-01] of 2 December 2022. The Court also asked MIET to "clearly state what are the "other international agreements" you refer to in part 17 and clarify their impact on the contested Law? And at the same time, please send us their written versions (other international agreements)?"*

84. Based on the questions submitted, the response of the MIET Minister , of 18 May 2023, essentially contained, as follows:

85. In response to the first question, MIET highlighted two additional provisions within the *"bilateral protection commitments"* undertaken by the Republic of Kosovo, which may be relevant to the contested Law, respectively the preamble of the SAA and paragraph 5 of Article 44 (Shortage Clause) of the SAA. Doing so, MIET presented two additional documents to the Court, namely the Stabilization Association Agreement between the EU and the European Atomic Energy Community, on the one hand, and Kosovo, on the other hand, in its English version; and the relevant ratifying Law no. 05/L-069. First, MIET referred to the preamble of the SAA which underlines "*the commitment of the Parties* to *increasing political and economic freedoms as the very basis of this Agreement, as well as their commitment to respect human rights, including the rights of persons belonging to minorities and vulnerable groups."* MIET then elaborated further on Article 44.5 (Shortage Clause) of the SAA, and its relevance to the contested Law. Based on Article 44 (Shortage Clause) of the SAA, it follows that the Republic of Kosovo is obliged to immediately notify the Stabilization and Association Council (SAC) of the implementation of any measure related to *"critical shortages, or the threat of shortages , of foodstuffs or other products essential to the exporting Party"* or t; *"re-export to a third country of a product against which the exporting Party maintains quantitative export restrictions, export duties or measures or charges having equivalent effect, and where the situations referred to above give rise, or are likely to give rise to major difficulties for the exporting Party".*

86. In response to the second question, which aims to clarify the "other international agreements" mentioned in the previous letter [No. 7348-01] of 2 December 2022, MIET specified that the legal provisions related to the SAA in terms of protective measures also apply to the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, which was

incorporated by presidential decree no. 04/2020 of 16.01.2020. (Clarification: this Agreement was also submitted to the Court as an additional document. Regarding the impact of the above-mentioned provisions on the contested Law, MIET explained that Article 8, paragraph 7, of the contested Law, was added to meet the requirements of international agreements Therefore, Article 8, paragraph 7, provides that any decision taken by MIET *"must be in accordance with the bilateral protection commitments that Kosovo has taken within the framework of the SAA and other international agreements"*.

87. MIET further concluded by reiterating its conviction that Law 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market "*is in full compliance with the spirit and letter of the Constitution"*, emphasizing that "*the law serves social justice, as a fundamental value of the Republic from Article 7 [Values]"*. MIET reiterated that the contested Law *"does not contradict the order sanctioned by Article 10 [Economy], as it protects the essence of the free market from misuse and destabilization with interim measures"*, and further that it implements the obligations of the Republic of Kosovo under Article 119 [General Principles] of the Constitution, *"to protect free competition (paragraph 3), to promote the welfare of citizens (paragraph 4) and to protect the consumer (paragraph 7)"*.

(iv) Response of MIET Minister of 31 May 2023, as response to the comments of Parliamentary Group of Movement VETËVENDOSJE!.

88. On 31 May 2023, the Minister of MIET submitted a response to the comments of the Parliamentary Group Movement VETËVENDOSJE! represented by deputy Armend Muja, with the following content *"as far as referral KO173/22 is concerned, we continue to stand by the comments made according to the letter of 2 December 2022, as well as the letter of 16 May 2023, where further, we consider that Law 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market is in full compliance with the spirit and letter of the Constitution. The law serves social justice, as a fundamental value of the Republic from Article 7 (Values). It does not conflict with the order sanctioned by Article 10 (Economy), since it protects the essence of the free market from abuses and destabilization with interim measures. The law in particular implements the obligations of the Republic, from Article 119 (Economic Relations: General Principles), to protect free competition (paragraph 3), to promote the well-being of citizens (paragraph 4) and to protect the consumer (paragraph 7)"*.

Provisions and relevant documents

89. In the following, the Court will present, (I) the relevant provisions of the Constitution of the Republic of Kosovo; (II) the relevant provisions of the applicable laws of the Republic of Kosovo, including (i) Law No. 05/L-069 on Ratification of the Stabilization and Association Agreement between the Republic of Kosovo, on the one part, and the European Union and the European Atomic Energy Community, on the other part; (ii) Law No. 2004/18 on internal trade; (iii) Law No. 06/L-040 on safeguards measures on imports; (iv) Law No. 08/L-056 on protection of competition; and (v) Law No. 03/L-244 on state reserves goods; (III) Applicable International Principles, including (i) the basic principles of the functioning of the European market; (ii) relevant opinions of the Venice Commission; and (iii) the contribution of member states of the Venice Commission; and (IV) the provisions of the contested Law.

I. RELEVANT PROVISIONS OF THE CONSTITUTION

Constitution of the Republic of Kosovo

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.

2.The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.

Article 10
[Economy]

"A market economy with free competition is the basis of the economic order of the Republic of Kosovo."

Chapter II
Fundamental Rights and Freedoms

Article 21
[General Principles]

1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.
2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.
3. Everyone must respect the human rights and fundamental freedoms of others.
4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

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.
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."

Article 65
[Competencies of the Assembly]

"The Assembly of the Republic of Kosovo:

(1) adopts laws, resolutions and other general acts;
[…]'
(9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law;
[…]
(14) decides in regard to general interest issues as set forth by law.

Article 80
[Adoption of Laws]

"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."

Article 93
[Competencies of the Government]

"The Government has the following competencies:
(1) proposes and implements the internal and foreign policies of the country;
(2) promotes the economic development of the country;
(3) proposes draft laws and other acts to the Assembly;
[…]
(11) exercises other executive functions not assigned to other central or local level bodies."

Chapter IX Economic Relations

Article 119
[General Principles]

"1. The Republic of Kosovo shall ensure a favorable legal environment for a market economy, freedom of economic activity and safeguards for private and public property.
2. The Republic of Kosovo shall ensure equal legal rights for all domestic and foreign investors and enterprises.
Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law.
4. The Republic of Kosovo promotes the welfare of all of its citizens by fostering sustainable economic development.
5. The Republic of Kosovo shall establish independent market regulators where the market alone cannot sufficiently protect the public interest.
6. A foreign investor is guaranteed the right to freely transfer profit and invested capital outside the country in accordance with the law.
7. Consumer protection is guaranteed in accordance with the law.

8. Every person is required to pay taxes and other contributions as provided by law.
9. The Republic of Kosovo shall exercise its ownership function over any enterprise it controls consistently with the public interest, with a view to maximizing the long-term value of the enterprise.
10. Public service obligation may be imposed on such enterprises in accordance with the law, which shall also provide for a fair compensation."

II. RELEVANT PROVISIONS OF THE APPLICABLE LAWS

LAW No. 05/L -069 ON RATIFICATION OF THE STABILIZATION AND ASSOCIATION AGREEMENT BETWEEN THE REPUBLIC OF KOSOVO, OF THE ONE PART, AND THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE OTHER PART

[…]

Article 43
(Safeguards clause)

"1. The parties agree that the rules and principles of Article XIX GATT 1994 and the WTO Agreement on Safeguards are applied.
2. Notwithstanding paragraph 1, the importing Party may take appropriate bilateral safeguard measures under the conditions and in accordance with the procedures laid down in this Article, where any product of one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:
(a) serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party; or
(b) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region of the importing Party.
3. Bilateral safeguard measures directed at imports from the other Party shall not exceed what is necessary to remedy the problems, as defined in paragraph 2, which have arisen as a result of application of this Agreement. The safeguard measure adopted shall consist of a suspension in the increase or in the reduction of the margins of preferences provided for under this Agreement for the product concerned up to a maximum limit corresponding to the basic duty referred to in Article 20, paragraph 4(a) and (b) and paragraph 5, for the same product. Such measures shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest, and shall not be taken for a period exceeding two years. In very exceptional circumstances, measures may be extended for a further period of maximum two years. No bilateral safeguard measure shall be applied to the import of a product that has previously been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of nonapplication is at least two years since the expiry of the measure.
4. In the cases specified in this Article, before taking the measures provided for therein or, in the cases to which paragraph 5(b) of this Article applies, as soon as possible, the EU or Kosovo shall supply the SAC with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the Parties.
5. For the implementation of the paragraphs 1, 2, 3 and 4 the following provisions shall apply:

(a) The problems arising from the situation referred to in this Article shall be immediately referred for examination to the SAC, which may take any decisions needed to put an end to such problems. If the SAC or the exporting Party has not taken a decision putting an end to the problems, or no other satisfactory solution has been reached within 30 days of the matter being referred to the SAC, the importing Party may adopt the appropriate measures to remedy the problem in accordance with this Article. In the selection of safeguard measures, priority must be given to those which least disturb the functioning of the arrangements established in this Agreement. Safeguard measures shall preserve the level/margin of preference granted under this Agreement.
(b) Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the Party concerned may, in the situations specified in this Article, apply forthwith provisional measures necessary to deal with the situation and shall inform the other Party immediately thereof.
The safeguard measures shall be notified immediately to the SAC and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances so permit.
6. In the event of the EU, or Kosovo, subjecting imports of products liable to give rise to the problems referred to in this Article to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows, it shall inform the other Party.

Article 44
(Shortage clause)

1. Where compliance with this Title leads to:
(a) critical shortage, or threat thereof, of foodstuffs or other products essential to the exporting Party; or
(b) reexport to a third country of a product against which the exporting Party maintains quantitative export restrictions, export duties or measures or charges having equivalent effect, and where the situations referred to above give rise, or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.
2. In the selection of measures, priority must be given to those which least disturb the functioning of the arrangements in this Agreement. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or a disguised restriction on trade, and shall be eliminated when conditions no longer justify their maintenance.
3. Before taking the measures provided for in paragraph 1 or, as soon as possible in cases to which paragraph 4 applies, the EU or Kosovo shall supply the SAC with all relevant information, with a view to seeking a solution acceptable to the Parties. The SAC may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of the matter being referred to the SAC, the exporting Party may apply measures under this Article on the exportation of the product concerned.
4. Where exceptional and critical circumstances requiring immediate action make prior information or examination, as the case may be, impossible, the EU or Kosovo may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.
5. Any measures applied pursuant to this Article shall be immediately notified to the SAC and shall be the subject of periodic consultations within that body,

particularly with a view to establishing a timetable for their elimination as soon as circumstances so permit.

Article 47
(Restrictions authorised)

This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property, or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

LAW No.2004/18 ON INTERNAL TRADE

Article 1
(no title)

This Law regulates requirements for the development of internal market trade, wholesale, retail sale, auction, mediation in trade, restrictive practices and protection measures for the development of trade activity, illegal competition, supervisory measures, administrative measures, and punitive provisions.

Article 42
(Restrictions in conducting trade activity)

42.1. The Government may, by special act, temporarily restrict conduct of trade activity in cases of:
a. elementary and natural disasters when there is or may be inflicted disruption in trade, in supplying the population, or disruptions in the region that jeopardize residents' health and safety,
b. considerable disruption in the internal market such as: lack of reproductive goods for production, processing and for ensuring the livelihood of residents,
d. where there is a threat to the supply of, raw material or material of strategic importance.
42.2. The Government shall determine the restrictions on the conduct of trade activity under Paragraph 1 of this Article, only if disruptions cannot be avoided by other measures, or if needs cannot be met from the goods reserve, imports or other measures of economic policy.

Article 43
(no title)

In the cases described in Article 40 of this Law, the Government may determine:
a. restriction of trade or restriction of certain goods, as well as special requirements for trade with certain goods,
b. restriction of import or export of certain goods, or special requirements for import and export of certain goods,
c. prohibition of selling certain goods,
d. obligation of the trader to supply and sell specified types and quantities of goods, as well as selling the goods to certain consumers, based on the foreseen ranking,
e. obligation of some traders to keep a specific type and quantity of goods.

Punitive provisions

Article 59
(no title)

59.1. A fine of 5.000 to 15.000 € shall be imposed on any natural or legal person who:
a). fails to comply with the restrictions imposed on conducting trade activities pursuant to Articles 42 and 43, and
b). Engage in unfair commercial practices pursuant to Articles 47, 48, 49, and 50.
59.2. For actions mentioned in Paragraph 1 of this Article, the responsible person shall be fined for offense with an amount from 500 to 1.500 €.

LAW NO. 06/L-040 ON SAFEGUARD MEASURES ON IMPORTS

Article 1
(Purpose)

1. A safeguard measure may be applied for a product only if it has been determined pursuant to the provisions of this Law, that such product is imported in a such increased quantity, absolute or relative to domestic production, and/or terms or conditions that cause or threaten to cause serious injury to the domestic industry that produces like or competitive products.
2. Safeguard measures shall be applied to a product that is imported, irrespective of its source.

Article 2
(Scope)

1. This Law shall not exclude the approval or implementation of prohibitions, and/or quantity restrictions foreseen by Article 26 of this Law.
2. This Law shall not exclude the implementation of safeguard rules included in the agreements concluded between Republic of Kosovo and third countries. Safeguard measures shall be regulated by the provisions of relevant agreement, which shall be applied by the case through the provisions of this Law.
3. Provision of the WTO Agreement on Safeguard Measures shall also be taken into consideration during the interpretation and implementation of this Law.

Article 4
(Safeguard measures and terms of their application)

1. Safeguard measures shall be temporary and constitute an ad valorem safeguard measure, calculated according to the value of imported product, which can be applied even through the tariff quota on imports of the like or competitive product.
2. Safeguard measures on products imported into the territory of the Republic of Kosovo shall be applied only if it is determined, through an investigation conducted pursuant to the provisions of this Law, that the investigated product is imported into the territory of the Republic of Kosovo in such increased quantities and under such conditions that causes or threatens to cause serious injury to producers of like or competitive products in Republic of Kosovo.

Article 25
(Exclusive provisions)

1. This Law does not prevent the application of:

1.1. prohibitions, restrictions or quantity controls of imports, in support of legislation public order and safety; health protection and protection of human life, animals and plants, protection of artistic, historic property and archaeological value or the protection of industrial and commercial property;
1.2. actions regarding the exchange of foreign currencies;
1.3. obligations arising from international treaties;
1.4. legal and sub-legal acts on imports and other legislation related to imports that are not inconsistent with this Law.

LAW NO. 08/L-056 ON PROTECTION OF COMPETITION

Article 1
(Purpose)

1. This law determines the rules and measures for the protection of free and effective competition on the market, the competencies and the organization of the Competition Authority of the Republic of Kosovo, as well as the procedures for the implementation of this law.
[...]

Article 2
(Scope)

1. This law applies to all forms of prevention, restriction or distortion of competition by enterprises inside or outside the territory of the Republic of Kosovo, if their activity affects the market of the Republic of Kosovo.
2. Insofar as it does not interfere with duties provided to them by law or for which they have been established, this law applies to enterprises exercising economic activity and that according to the law:
2.1. perform services of general economic interest;
2.2. have the character of a revenue-producing monopoly;
2.3. have exclusive rights.
3. This law does not apply to the relationship between employers and employees and also to relationships that are the subject of a collective agreement between employers and trade unions.

CHAPTER V THE AUTHORITY
Article 21
(The Authority)

1. The Authority is an independent agency, accountable for its duties to the Assembly of the Republic of Kosovo.
2. The Authority has its headquarter in Prishtina.
3. Any political, public or private interference that may impair the independence or impartiality of the Authority is prohibited.
4. The organization and functioning of the Authority are regulated by this Law and by the statute approved by the Commission.
5. From the budget of the state shall be allocated sufficient funds for the needs of the Authority, including the employment of qualified professionals and the purchase of goods and services necessary for work.
6. Administrative fees and fines collected by the Authority are deposited to the budget of the state.

Article 22

(The Commission)

1. The Commission is a collegial body that manages the work of the Authority.
2. The commission is composed of five (5) members, including the President and the Vice President of the Authority appointed by the Assembly of the Republic of Kosovo.
3. The Government, after holding a public competition, proposes the new Commission to the Assembly six (6) months before the end of the mandate of the Commission or immediately after the position of the member of the Commission is vacant.
4. The mandate of the member of the Commission lasts five (5) years.
5. A member of the Commission may be reappointed only once.

Article 26
(Responsibilities of the Commission)

1. The Commission has the following responsibilities:
1.1. proposes and endorses sub-legal acts in accordance with this law;
1.2. decides to initiate procedures for investigating competition disturbances;
1.3. impose fines for violation of this law;
1.4. issues a decision for allowing concertation;
1.5. defines conditions, measures, and deadlines for performing concentration;
1.6. finalizes procedures and defines measures, conditions and deadlines for reestablishment of effective competition of the market;
1.7. requests from the court to authorize unexpected controls according to Articles 40, 41, 42, 43 and 44 of this Law;
1.8. informs and increases public awareness about market competition;
1.9. defines methodological principles for investigating market competition;
1.10. defines rules and measures for protection of competition;
1.11. provides professional opinions and recommendations under Article 32 of this Law;
1.12. cooperates with sister institutions regarding the scope of the Authority defined under this law and international obligations of the Republic of Kosovo;
1.13. approves the annual work report of the authority and presents the same to the Assembly of the Republic by 31st of March of the following year;
1.14. performs market studies and collects data pursuant to this law.

2.The Commission sets implementation priorities based on the sensitivity and importance of cases.

Article 49
(Interim Measures)

1. The Authority may initiate proceedings and decide on interim measures against a Party when there is a risk of irreparable damage to competition in the market, in particular when certain actions distort competition.
2. With the decision for interim measures, the Authority orders the enterprise to stop the certain action or to implement measures, conditions and deadlines for the elimination of the harmful effects on the competition in the market.
3. Interim measures last up to six (6) months. The Authority may extend the duration of the interim measures if necessary.
4. If the Party does not implement the decision for interim measures, the Authority ascertains the violation of this law and imposes a fine according to this law.

Article 66

(Judicial protection)

1. An appeal is not allowed but the party may initiate an administrative dispute with a lawsuit in the competent court against the following acts of the Authority: […]
1.4. the decision for interim measures from Article 49 of this law; […].

LAW NO.03/L –244 ON STATE RESERVE GOODS

Article 1
(Purpose)

This law defines procedures of establishment, security, finance, storage, preservation, utilization, management, renewal, refreshment and distribution of state reserve of goods in the Republic of Kosovo.

Article 2
(Scope)

State reserve goods shall be created to interfere in operational manner for protection of the population, economy in the event of market distortion, and defending the country in emergency situations, situation of civil emergency, terrorist acts, military actions in the state of war, which bring immediate and heavy damages to life, health of population, livestock, property, cultural heritage, environment and providing humanitarian aid in compliance with the norms of the international right.

Article 14
(Utilization of state reserves)

1. State reserve goods shall be utilized for supply purposes in case:
1.1. of war or direct danger from the war;
1.2. of natural disasters of large scale and technical-technological and ecological catastrophes;
1.3. of providing emergency aid to other states affected as in sub-paragraph 1.2 of this paragraph.

Article 16
(Manufacturer's obligations during the danger time)

The Government of Kosovo may oblige natural and legal persons carrying manufacture activity, respectively which handle circulation of given assortment of goods which are considered as state reserve goods that in the time of war or direct endangerment of territorial integrity should produce, respectively sell such assortment of goods for the purpose to fill in, respectively refresh state reserve goods.

Article 28
(Punitive provisions)

Inaction according to a decision issued by the Government, as under the Article 16 of this law, shall be considered as a penal act, and for the same, the natural person and person responsible to a legal entity may be convicted with imprisonment from one (1) to five (5) years.

III. INTERNATIONALLY APPLICABLE PRINCIPLES

(i) Fundamental Principles of the Functioning of the European Market

a. Treaty on the Functioning of the European Union

CHAPTER 3
Prohibition of Quantitative restrictions between Member States

Article 34
(Article 28, TEC)

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

Article 35
(Article 29, TEC)

Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

Article 36
(Article 30, TEC)

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

TITLE III
AGRICULTURE AND FISHERIES

Article 39
(Article 33, TEC)

1. The objectives of the common agricultural policy shall be:
[…]
(d) to assure the availability of supplies;
(e) to ensure that supplies reach consumers at reasonable prices.

Directive 2005/29/EC

of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market

Article 5(4) of Treaty on European Union
[…]
4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

Council Regulation No. 2679/98 of 7 December 1998 (articles 3 and 6)

(3) Whereas, in order to ensure fulfilment of the obligations arising from the Treaty, and, in particular, to ensure the proper functioning of the internal market, Member States should, on the one hand, abstain from adopting measures or engaging in conduct liable to constitute an obstacle to trade and, on the other hand, take all necessary and proportionate measures with a view to facilitating the free movement of goods in their territory;
[...]
(6) Whereas Member States have exclusive competence as regards the maintenance of public order and the safeguarding of internal security as well as in determining whether, when and which measures are necessary and proportionate in order to facilitate the free movement of goods in their territory in a given situation;
[...]
(8) Whereas a Member State on the territory of which obstacles to the free movement of goods occur should take all necessary and proportionate measures to restore as soon as possible the free movement of goods in their territory in order to avoid the risk that the disruption or loss in question will continue, increase or intensify and that there may be a breakdown in trade and in the contractual relations which underlie it; whereas such Member State should inform the Commission and, if requested, other Member States of the measures it has taken or intends to take in order to fulfil this objective;

(ii) Venice Commission

Report of the Venice Commission on the legal foundations of the economic system during the period of transition from a planned to a market economy, [CDL(1994)009-e], adopted on 28 February 1994

90. Some of the principles established in the 1994 Report of the Venice Commission on "*The Legal Foundations of the Economic System during a Transition Period from a Planned to a Market Economy"*, drafted on the basis of a study by Professor Michel HERBIET, are relevant to the circumstances of the case in question. The relevant principles will be summarized as follows: (i) the basic legal principles that regulate market economies; (ii) the specific role of constitutions in the economic sphere; (iii) the inclusion of the principle of state intervention in the constitution; and (iv) the role of legislation in the economic sphere.

91. The Venice Commission identified the key elements of the legal bases of the economic system during a *period of transition from a planned economy to a market economy, among which are "the formal recognition of the freedom of economic activity", "the principle of the principle of free competition, based on economic freedom and the principle of equality".* Most importantly, the report emphasized that *"the market economy must be social, in the sense that it operates for the benefit of society as well as individuals.".* However, a market economy which takes into account the interests of all parts of society while leaving room for state intervention in economic life to correct certain deficiencies, for example *"through the provision of social welfare framework and by regulating economic activity or creating public enterprises to fill the gaps where the market economy is not performing properly".* In the view of the Venice Commission, these are some of the necessary elements for a market economy, as long as private economic operators are still able to take advantage of the opportunities available to them.

92. Regarding the specific role of constitutions in the economic sphere, the Venice Commission also stated that, *"constitutions necessarily form the basis of states' legal*

and economic systems" and as such, *"must safeguard the stability and predictability of free market"*. Recognizing the critical role of constitutions in providing a *"clear framework funded on the rule of law",* the Venice Commission nevertheless cautioned that the detailed rules and regulations governing the market are *"best left to ordinary legislation",* as constitutions *"lack the flexibility which the regulation of market conditions requires"*. It follows that it should be left to the legislature to limit, if necessary, the application of traditional rights and freedoms (including economic freedom). In this regard, the Venice Commission underlined the importance of conformity with the principle of proportionality, effectively defining the standards to which such restrictions must adhere. Thus, the Commission emphasized that *"[they] must be specific and limited and must be justified by the general interest of or the need to maintain public order"*. In essence, they must be provided by law and they *"should never call into question the very existence of these fundamental rights"*. Furthermore, such restrictions must comply with the principle of proportionality: *"they must be necessary, effective and commensurate to the requirements and the gravity of the situation and should not amount to excessive erosion of the freedom concerned"*.

93. On the question of whether the principle of state intervention in the economy as such should be included in a constitution, the Venice Commission stated that any specific reference to such intervention should be limited to *"an exception to the principle of economic freedom, justified from the general interest"*.

94. Regarding the role of legislation in the economic sphere, the Venice Commission stated that "*legislation plays a fundamental but finite role, as it translates the basic principles laid down in the constitution into a detailed form"*. Thus, any restriction on economic rights and freedoms "*must have a statutory basis [...] and must not pose a threat to the very existence of these rights and freedoms"*. The report identifies two main legislative approaches to the regulation of economic rights and freedoms, which can take the form of direct or indirect intervention. In particular, the report predicts that a form of indirect intervention is "*enabling legislation"*, which *"grants the executive powers for which the constitution does not make express provision"*. Such enabling legislation may take the form of framework laws, which "*lay down the policy guidelines and principles of policy which are to be followed but leave it to the executive to draw up the detailed regulations" or of laws conferring special powers to the executive "for a set period and within a strictly defined area of responsibility" that usually falls within the legislative competence. This latter approach can also be seen as an "actual delegation to the executive [...] of the legislature's power to amend or repeal existing legislation"*.

(iii) Contribution of Member Courts of the Forum of the Venice Commission

95. Initially, the Court clarifies that the Constitutional Court of the Republic of Albania has dealt with two cases related to special measures in cases of market destabilization, namely (i) case no. 8 dated 22.02.2023 (V-8/23); and (ii) no. 21 dated 18.04.2023 (V-21/23). In the first case, the Constitutional Court of Albania addressed the Forum of the Venice Commission with a request to share the relevant experiences of the member states regarding the applicable laws through which restrictive measures were defined in the market in cases of market destabilization. The responses of member states of the Venice Commission Forum in this context are public to all member states of the Venice Commission and considering that they are relevant to the circumstances of the present case, the Court will summarize them below. In that case, the Court takes into account that the Constitutional Court of Albania had received eight (8) responses from the Constitutional Courts and other national mechanisms with constitutional jurisdiction, respectively it had received responses from the Constitutional Court of (i) the Republic of North Macedonia; (ii) Constitutional Court of Croatia; (iii) the Supreme Court of Ireland; (iv) the Department for Constitutional Law and Human Rights of the Ministry

of Justice of Denmark; (v) the Dutch State Council; (vi) the Supreme Court of Mexico; (vii) Constitutional Court of the Czech Republic; and (viii) the Constitutional Court of Liechtenstein.

96. The Court will further present the responses received by the national Constitutional Courts submitted to the Forum of the Venice Commission regarding the request of the Constitutional Court of the Republic of Albania:

(i) Response from the Constitutional Court of the Republic of North Macedonia

97. Regarding the first question, namely whether any legislative measures were taken to control market prices due to special circumstances, the Constitutional Court of North Macedonia confirmed that similar measures were taken. The Constitutional Court of North Macedonia emphasized that the measures were approved by a government decision, by the Decision on determining the highest prices of certain products in wholesale and retail, and not by an act approved by the Assembly. In particular, the Decision was approved at the proposal of the Ministry of Economy, in the session held on 4 December 2021. The decision was initially valid until 31 January 2022, and since then it has been amended and extended in several cases.

98. The Constitutional Court of North Macedonia specified that the price control measures implemented by the Decision consisted in *"determining the amount of trade margins" for certain products in wholesale and retail trade.* Thus, *"the amount of trade margin of commercial companies and commercial individuals participating in the commercial chain of white bread, white sugar and edible sunflower oil is set up to 5% in wholesale trade and up to 5% in retail trade". Regarding "wheat flour - type 400 and type 500, durum wheat pasta, Macedonian white rice, milk and eggs, they are determined up to 10% in the wholesale trade and up to 10% in the retail trade".*

99. In response to the second question, namely whether the price control measures were subject to constitutional review, the Constitutional Court of North Macedonia stated that the measures were not subject to "*constitutional review, since no initiative has been submitted for their constitutional review before the Constitutional Court until now".*

(ii) Response of the Constitutional Court of Croatia

100. In its submission to the Venice Forum, the Constitutional Court of Croatia also stated that legislative measures to control market prices can be taken under the Law on Extraordinary Price Control Measures (Official Gazette No. 73/1997, 128/1999 and 66/2001) and introduced the provisions provided therein. Thus, the purpose of the law, according to the relevant submission, is to regulate "*the conditions under which the competent state bodies can take control measures in the field of prices*"and to determine the manner of their implementation, according to Article 1 of the relevant Law. The implementation of these extraordinary price control measures can be done with the *"setting of direct price control measures*" provided for in Article 5 of the Law, namely the setting of the maximum or minimum price and the registration of price lists or tariffs before their change or by "*monitoring general price movements, and establishing guaranteed prices for agricultural products"*. The Constitutional Court of Croatia emphasized that direct price control measures are defined "*exclusively to prevent the negative effects of price changes or to prevent monopolistic prices*, and provided that these goals are not achieved by other economic policy measures.

101. The Constitutional Court of Croatia specified that extraordinary price control measures are determined by the Government of Croatia upon the proposal of the Ministry of

Economy and Sustainable Development, as provided in Article 6 of the Law. After determining direct price control measures, according to Article 8 of the Law, the Government should *"take appropriate economic policy measures"* to eliminate the reasons that justified the implementation of the measures.

102. The Constitutional Court of Croatia then gave concrete examples of two cases where direct price control measures had been implemented under Article 6 of the Law in relation to food products specifically. The first time the Croatian government determined direct price control measures was in response to the outbreak of the COVID-19 pandemic. These measures were approved on 14 March 2020 with the Decision on Extraordinary Price Control Measures for Certain Products (Official Gazette no. 30/2020, 53/2020 and 88/2020). Maximum prices were set for certain products "*to prevent the negative effects of changes in the prices of individual products and to prevent monopolistic pricing of products*". The maximum price was set based on the price of a certain product on 30 January 2020, "*when the World Health Organization declared the infectious disease COVID-19 a public health threat of international concern*." Then, the Constitutional Court of Croatia presented a more recent example when the Government of Croatia approved the Decision on Direct Price Control Measures for Certain Food Products (Official Gazette No. 104/2022) on 8 September 2022. This Decision has set the maximum price. for basic products such as cooking sunflower oil, milk, sugar, certain types of flour and meat, "*in order to prevent the negative effects of individual price changes and with the aim of eliminating the harmful consequences of market disturbances related to the supply of basic foods [...] for the population in the Republic of Croatia*".

103. In response to the second question, the Constitutional Court of Croatia, neither the Law on Extraordinary Price Control Measures, nor the two above-mentioned Decisions, were challenged before the Constitutional Court and, therefore, have not been subject to constitutional review.

(iii) Answer from the Supreme Court of Ireland

104. On the other hand, the Supreme Court of Ireland stated in its submission to the Venice Forum that Ireland has not taken any legislative measures to control market prices due to special circumstances. Therefore, in Ireland, no price control measures have been implemented which would take the form of minimum or maximum prices for goods or services.

(iv) Response from the Department for Constitutional Law and Human Rights of the Ministry of Justice of Denmark

105. As regards Denmark, the Danish Ministry of Justice stated similarly to the Irish Supreme Court that no measures to control market prices had been taken in response to special circumstances in the market which led to an increase in prices.

(v) Answer from the State Dutch Council

106. In its submission to the Venice Forum, the State Dutch Council of stated that so far no legislative measures had been taken to control market prices in relation to food products. The Dutch government took measures in 2022 to financially compensate households for rising energy and fuel prices. The Dutch Council of State explained that the government, by means of a parliamentary act (*Ëet auspellen fiscale koopkrachtmaatregelen 2022*), had reduced the value added tax (VAT) "f*or gas, electricity and taxes for petrol, diesel and GLN"* and had given financial compensation to all Dutch households for the increase in their electricity bills at the end of 2022.

However, the Dutch Council of State added that following EU regulations, the Dutch government could set ceiling prices for gas and electricity for Dutch households, a proposal which at the time of submission was still being debated in parliament.

(vi) Response from the Supreme Court of Mexico

107. In its response to the Venice Forum, the Mexican Supreme Court stated that until now, no legislative measure had been taken to control market prices due to the particular circumstances that led to an increase in prices. However, the Mexican Supreme Court explained that the possibility of implementing such measures is foreseen by the Mexican Constitution. Article 28, paragraph 3, of the Constitution of Mexico empowers the Mexican Congress to "*establish the basis for determining the maximum prices of articles, objects, or products considered to be essential for the national economy or popular consumption, as well as the rules applicable to the organization and the distribution of those items, objects or products to exclude unnecessary or excessive interference which may cause shortages of supplies or increases in prices*". Expanding on the various mechanisms established for determining maximum prices, the Mexican Supreme Court gave the example of the Federal Antitrust Law, which "*creates an extraordinary process to set the maximum prices of goods considered necessary for the national economy or popular consumption therein which is attended by the Federal Antitrust Commission, the Chairman of the Federal Executive Branch and the Secretariat of the Economy*". Regarding the decision-making to implement such measures and the authorities involved, the Mexican Supreme Court described that the goods and services that may be subject to maximum prices are determined by decree of the Federal Executive and then the respective maximum prices are set by the Secretariat of the Economy. To ensure the supply of regulated goods, the Ministry of Economy can coordinate with manufacturers or distributors, in an effort to minimize the effects on free competition. The Mexican Supreme Court pointed out, however, that until now, no maximum price has been determined based on the extraordinary procedure contained in the Federal Antitrust Law.

(vii) Response of the Constitutional Court of the Czech Republic

108. The Constitutional Court of the Czech Republic, in its response, explained that two types of price control measures had been imposed by the Czech government. On the one hand, the Czech Finance Ministry monitored profit margins on fuel sales from March to September 2022, after the consumption tax cut. According to the Constitutional Court of the Czech Republic, the purpose of monitoring fuel sales margins was to effectively translate the tax reduction into lower fuel prices. On the other hand, ceiling prices of energy are also set by the Government.

109. Regarding the second question, the Constitutional Court of the Czech Republic confirmed that none of the aforementioned measures had been challenged in the Constitutional Court.

(viii) Response of the Constitutional Court of Liechtenstein

110. The Constitutional Court of Liechtenstein stated in its submission that no legislative measures had been taken in Liechtenstein to control market prices due to special circumstances that have led to an increase in prices in recent years.

IV. Contested Law

LAW no. 08/L-179 ON INTERIM MEASURES OF ESSENTIAL PRODUCTS IN SPECIAL CASES OF DESTABILIZATION IN THE MARKET

Article 1
(Purpose)

The purpose of this law is to regulate safeguard measures of the supply with essential products to consumers in the event of special cases of destabilization in the market in accordance with this law and the manner of their implementation.

Article 2
(Scope)

This law applies to authorities and economic operators that trade essential products to eliminate the effects of price increases and lack of essential products in the market.

Article 3
(Definitions)

1. Essential product means, products defined according to Article 4 of this law.
2. Consumer means any natural person who purchases and uses goods or services to meet their own needs, and that is not related to commercial, business, craft or professional activity.
3. Destablization of the market refers to the situations caused by force majeure, uncontrolled circumstances which cause speculations in the market resulting with immediate increase in prices and emphasized abscence of essential products.
4. In personal hygiene products are included: soap, detergent, hair shampoo, toilet paper, hygienic papers and diapers.
5. Minister means the minister in charge of trade.

Article 4
(Essential products)

1. Essential products in terms of this law are:
1.1. 1. Cereals; 1
.2. Wheat flour;
1.3. Bread;
1.4 Rice;
1.5. Pasta;
1.6. Edible sunflower oil;
1.7. Milk;
1.8. Kitchen salt;
1.9. Chicken eggs;
1.10. Chicken meat;
1.11. Crystal sugar;
1.12. Personal hygiene products;
1.13. Firewood logs.
2. For other essential consumer products for living, the Government consults in advance with the SAA Council before making the decision.
3. The essential products are determined according to the tariff codes in the appendix, which is part of this law.
4. The Commission, in accordance with Article 8 of this law, may categorize the products from paragraph 1 of this article.
5. Product serving in gastronomy is not called essential product.

Article 5
(Interim measures)

1. Safeguards measures for supply with essential products are:
1.1. limiting the quantity sold to the consumer within the specified period;
1.2. prohibiting the removal of product from sale;
1.3. determining the trade margin for wholesale and retail sales;
1.4. setting the maximum allowed price,
1.5. obliging economic operator to maintain certain part of the product stock;
1.6. obliging economic operator to supply and offer for sale essential products as before the imposition of protective measures;
1.7. prohibiting, restricting export.
2. Safeguard measures provided for in paragraph 1 of this article are set by the Minister in accordance with article 7 of this law.
3. Safeguard measures are set in proportion to the need for consumer protection and taking into account the burden on the economic operator.

Article 6
(Causes and duration of safeguard measures)

1. Safeguard measures from Article 5 of this law can be assigned in these cases:
1.1.sudden or continuous lack of essential products;
1.2. sudden or immediate rise in prices of essential products;
1.4. non-adjustment of local prices with large price movements in the world market;
1.4. unjustifiable difference of local prices from prices in neighbouring countries;
2. Safeguard measures are temporarily assigned and removed when the reasons for which they were assigned cease.

Article 7
(Calculation of the margin)

1. The purchase price of imported products means the sum of the costs as follows:
1.1. the purchase price of the product.
1.2. transport cost, calculated according to the legislation in force;
1.3. customs duties;
1.4. customs clearance cost, which includes the cost of customs terminal and freight forwarding, the cost of product security measurement, as well as other invoiced cost related to the product clearance;
2. The purchase price of local products means the sum of the costs as follows;
2.2. cost of expenses, calculated according to the legislation in force.

Article 8
(Decision-making)

1. The Minister by decision determines the protective measures in accordance with Article 5 of this law.
2. The Minister appoints a commission which recommends to the Minister the definition or change of protective measures according to Article 5 of this law.
3. The Commission is obliged to make a preliminary study and analysis regarding the situation in the market regarding the products provided for in Article 4 of this law.
4. The composition and duration of the commission is determined by the decision of the Minister.
5. The minister may consult the minister responsible for finance, minister responsible for agriculture, Consumer Protection Council, Competition Authority, Customs, Tax Administration, Market Inspectorate, Chamber of Commerce of Kosovo, as well as

public authorities and other responsible organizations.
6. Each decision taken according to this law must be in accordance with the bilateral protection commitments that Kosovo has taken within the framework of the SAA and other international agreements.
8.Before taking decisions on safeguard measures, the SAA Council must be notified.
9. The Prime Minister may revoke, cancel or change the Minister's decision.

Article 9
(Supervision and sanctions)

1. The supervision for the implementation of this law is carried out by Market Inspectorate and market inspectors at the municipal level, in cooperation with the Customs and Tax Administration.
2. Anyone who does not implement the protective measures determined by decision of the Minister, for each basic product that sells or keeps in violation of the protective measures, shall be fined as follows:
2.1. from one thousand (1,000) to twenty thousand (20,000) euros, as a legal entity;
2.2. from five hundred (500) to five thousand (5,000) euros, as a natural person running an individual business;
2.3. from five hundred (500) to two thousand (2,000) euros, as a responsible person of the legal entity.
3. In addition to the penalty for minor offence from paragraph 2 of this article, in case of repeated violations in accordance with article 5 of this law, the market inspectorate may also impose a safeguard measure by which trade is prohibited for a duration of up to 30 days.
4. The competent body publishes the decisions on penalties in accordance with applicable laws.
5. An appeal against the decision is allowed within 8 days from the day of its acceptance
6. This article does not exclude the application of penal provisions from other laws.

Article 10
(Entry into force)

This law enters into force on the day it is published in the Official Gazette of the Republic of Kosovo.

Assessment of the admissibility of the Referral

111. The Court first examines whether the Referrals submitted before the Court have fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and as further specified in the Rules of Procedure.

112. In this respect, the Court refers to paragraphs 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".*

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

"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".

114. 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 ten (10) deputies of the Assembly; (ii) challenging the constitutionality of a law or decision approved by the Assembly, for its content and/or for the procedure followed; and (iii) the referral must be submitted within a period of eight (8) days from the day of approval of the challenged act.

115. The Court, in assessing the fulfillment of the first criterion, namely the necessary number of deputies of the Assembly to submit the relevant referrals, notes that the Referral was submitted by ten (10) deputies of the Assembly, the number which fulfills the criteria defined through the first sentence of paragraph 5 of Article 113 of the Constitution to set the Court in motion.

116. The Court, also in assessing the fulfillment of the second criterion, notes that the Applicants challenge Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, which was adopted on 8 November 2022 by the Assembly of the Republic of Kosovo.

117. As for the third criterion, namely the time limit within which the relevant referral must be submitted to the Court, the latter notes that the Referral was submitted to the Court on 16 November 2022, while the contested Law was adopted by the Assembly on 8 November 2022, which means that the Referral was submitted within the deadline set by paragraph 5 of Article 113 of the Constitution.

118. Therefore, the Court notes that the Applicants are legitimized as an authorized party 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 the present case, the Applicants, who are all deputies of the Assembly of Kosovo, are authorized party and, therefore, have the right to challenge the constitutionality of the contested Law adopted by the Assembly.

119. 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 submission 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".

120. The Court also refers to Rule 72 [Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law] of the Rules of Procedure, which:

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) ofthe Law.
(2) A referral filed under this Rule shall have a suspensive effect.
(3) A referral filed under this Rule must, inter alia, contain the following information:

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

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

121. 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 contested Law of the Assembly; (iii) referred to specific articles of the Constitution, whereby they claim that the provisions of the contested Law are incompatible; and (iv) submitted arguments to support their allegations.

122. Therefore, taking into account the fulfillment of the constitutional and legal criteria regarding the admissibility of the respective Referral, the Court concludes that the Applicants' Referral is admissible and will further examine its merits.

Merits of the Referral

I. Introduction

123. The Court first recalls that the Applicants, respectively ten (10) deputies of the Assembly of the Republic of Kosovo, based on paragraph 5 of Article 113 of the Constitution, request the constitutional review of the contested Law which they claim is contrary to articles 7 [Values], 10 [Economy] and paragraphs 1 and 5 of Article 119 [General Principles] of Chapter IX of the Constitution. These claims, in essence and according to the clarifications given in the part of this Judgment that is related to the claims and responses of the interested parties before the Court, are opposed by MIET and the Parliamentary Group of the VETËVENDOSJE Movement!

124. The Court emphasizes that the essence of the Applicants' allegations is related to the intervention of the state in the free-market economy guaranteed by the Constitution. In this context, and as explained in the part related to the Applicants' allegations, among other things, they emphasize that based on the Constitution, the state is obliged to (i) provide a favorable legal environment for the market economy, the freedom of economic activity and the security of public and private property, including establishing all the necessary institutional and legal mechanisms to guarantee that in Kosovo there will be an open market, where supply and demand contain the pattern of circulation of goods, work, knowledge and capital in the economy, and where private economic operators are protected by a legal system sufficient to operate freely in the internal

market; and (ii) refrain from interfering in the market economy, through any measure which, among other things, limits the freedom of authorities and economic operators trading essential products. According to the Applicants, the contested Law violates these principles, among others, by interfering with the free market economy, including by setting (i) the maximum prices allowed for certain products; (ii) trade margin for wholesale and retail sales; (iii) the obligation of the economic operator to maintain the certain part of the stock of the product; and (iv) the obligation to supply and offer for sale essential products as before the imposition of protective measures. The Applicants also emphasize the fact that (i) according to the Constitution, the state can establish independent bodies for the regulation of the market, when the latter cannot sufficiently protect the public interest; (ii) in Kosovo, there is already such an independent body, namely the Kosovo Competition Authority, established according to Law No. 08/L-056 on Protection of Competition; and (iii) the obligation of economic operators, by Government decisions, to keep reserves/stocks of certain goods, is arbitrary because such an approach is also contrary to the provisions of Law no. 03/L-244 on State Reserves of Goods. On the other hand, and as elaborated in detail in the section related to the Applicants' allegations and the relevant counter-arguments in the respective comments and responses, the MIET, among other things, emphasizes that the contested Law, (i) is not contrary to the constitutional principles of freedom of the market economy, because the Constitution enables the action, namely the intervention of the state in the regulation of the freedom of economic activity through the laws of the Assembly, and that in the circumstances of the present case, the contested Law pursues the legitimate aim of protecting the public interest, namely consumer protection in special circumstances of market destabilization and also the measures determined by the contested Law, are proportional to the aim pursued; and (ii) is not contrary to the obligations of the Republic of Kosovo arising from the SAA. Whereas, the Parliamentary Group of the VETËVENDOSJE! Movement, through the deputy Mr. Armend Muja, among other things, emphasized that (i) the Court should reject the Referral as manifestly ill-founded because the Applicants have not sufficiently supported the claims that the contested Law is contrary to a constitutional provision, also specifying, among other things, that (ii) the imposition of protective measures through the contested Law are necessary and proportional; and that (iii) price controls are a widespread mechanism in all market economies.

125. The Court further reiterates that the Applicants challenge the contested Law in its entirety, claiming its incompatibility with the Constitution, but not necessarily offering concrete arguments regarding the provisions of the contested Law separately.

126. Having said this, the Court based on the aforementioned claims of the Applicants points out that their claims are essentially related to whether: (i) the undertaking of protective measures through the contested Law constitutes interference with the free market economy; (ii) the decision-making mechanisms regarding the establishment of interim protection measures are in accordance with the requirements of paragraph 5 of Article 119 of the Constitution; and (iii) the compatibility of the law with the principle of legal certainty, taking into account other applicable laws, including the Law on State Reserves.

127. Following this, the Court will subject to the constitutional review of the contested Law in its entirety and in the light of the arguments and counter-arguments presented, and for this purpose, it will first elaborate (i) the basic principles of free market economy according to the Constitution and legislation in force of the Republic of Kosovo; (ii) insofar as it is relevant in the circumstances of the present case, the relevant principles arising from international instruments and relating to the free market economy and the circumstances in which the relevant state intervention may be compatible with the freedom of the market economy as are defined through applicable EU legislation and

CJEU case law, including principles arising from ECtHR case law, relevant Venice Commission Opinions, and input from constitutional courts and/or their equivalents of the Forum of the Venice Commission; and then (iii) will apply these principles in the constitutional review of the contested Law.

II. General Principles

1. Free Market Economy as a value of the constitutional order of the Republic of Kosovo

128. The Court initially emphasizes that the Constitution consists of a unique entirety of constitutional principles and values on the basis of which the Republic of Kosovo has been built and must function. The norms provided by the Constitution must be read in conjunction with each other, because that is the only manner through which their exact meaning derives. Constitutional norms cannot be taken out of context and interpreted mechanically and in isolation from the rest of the Constitution. This is due to the fact that the Constitution has an internal cohesion, according to which each part is connected to the other. Any ambiguity of the norms must be interpreted in the spirit of the Constitution and its values (see the Court case KO72/20, Applicant: *Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of the Decree of the President of the Republic of Kosovo, No. 24/2020, of 30 April 2020, Judgment of the Court of 28 March 2020, paragraph 549; and KO100/22, Applicant: *Abelard Tahiri and ten (10) other deputies* and KO101/22, Applicant: *Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo*, constitutional review of Law no. 08/L-136 on Amending and Supplementing Law no. 06/L-056 on the Prosecutorial Council of Kosovo, Judgment of the Court of 24 March 2023, paragraph 153).

129. In the aforementioned context and in the following, the Court emphasizes that based on the first article of the Constitution of the Republic of Kosovo, namely Article 1 [Definition of State], the Republic of Kosovo is "*an independent, sovereign, democratic, unique and indivisible state*". The "*democratic*" definition of the state of the Republic of Kosovo, among other things and as far as it is relevant to the circumstances of the present case, is complemented by three (3) essential constitutional provisions, namely Article 3 [Equality Before the Law], Article 7 [Values] and Article 16 [Supremacy of the Constitution] of the Constitution.

130. First, Article 3 of the Constitution, among other things, specifies that (i) the Republic of Kosovo is governed democratically, with full respect for the rule of law, through its legislative, executive and judicial institutions; and (ii) the exercise of public authority in the Republic of Kosovo is 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. Second, Article 7 of the Constitution, specifies that the constitutional order of the Republic of Kosovo, among other things, and as far as it is relevant in the circumstances of the present case, is based on the principles of democracy, respect for human rights and freedoms, the rule of law, property rights, environmental protection, social justice, pluralism, separation of state power and market economy. This article, insofar it is relevant for the circumstances of the present case, is also supported through (i) Article 21 [General Principles] of the Constitution, based on which, among other things, basic human rights and freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo, and (ii) Article 55 [Limitations on Fundamental Rights and Freedoms] according to which, among other things, the fundamental rights and freedoms guaranteed by this Constitution can be limited only by law and only to the extent that it is necessary to

fulfill the purpose for which, in an open and democratic society limitation is allowed. Finally, and importantly, Article 16 of the Constitution specifies that: (i) the Constitution is the highest legal act of the Republic of Kosovo and that laws and other legal acts must be in accordance with this Constitution; (ii) the Republic of Kosovo respects international law; and (iii) each person and body in the Republic of Kosovo is subject to the provisions of the Constitution (see, among others, Court case KO100/22, Applicant: *Abelard Tahiri and ten (10) other deputies and KO101/22*, Applicant: *Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Law no. 08/L-136 on Amending and Supplementing Law no. 06/L-056 on Prosecutorial Council of Kosovo, Judgment of the Court of 24 March 2023, paragraph 155).

131. Relevant to the circumstances of the present case, there are also two categories of provisions of the Constitution, namely Article 10 [Economy] and those of Chapter IX [Economic Relations] of the Constitution. First, Article 10 of the Constitution specifies that the market economy with free competition is the basis of the economic regulation of the Republic of Kosovo, thus defining the principle of the free market economy, which is the basis of the economic order of the Republic of Kosovo, and as such, it is characterized by the principle of freedom of economic activity and free competition, in principle, without the intervention of the executive power. Secondly, Chapter IX related to economic relations, consists of four (4) articles, respectively, Article 119 [General principles], Article 120 [Public Finances], Article 121 [Property] and Article 122 [Use of Property and Natural Resources] in the context of the basic principles that define economic relations in the Republic of Kosovo.

132. As far as it is relevant in the circumstances of the present case, Article 119 of the Constitution defines the general principles related to the market economy and which must be read and interpreted in connection with Articles 7 and 10 of the Constitution, respectively, freedom of market economy with free competition as the basis of the economic regulation of the Republic of Kosovo. This article, namely Article 119 of the Constitution, in ten paragraphs establishes the general principles that regulate economic relations in the Republic of Kosovo.

133. More precisely and as far as it is relevant to the circumstances of the present case, Article 119 of the Constitution defines the obligation of the Republic of Kosovo to (i) ensure a favorable legal environment for the market economy, freedom of economic activity and security of public and private property according to the definitions of its first paragraph; (ii) to prohibit all actions that restrict free competition through the establishment or abuse of a dominant position or practices that restrict competition, except when these are explicitly permitted by law, according to the provisions of the third paragraph thereof; and (iii) to establish independent bodies for the regulation of the market when the market itself cannot sufficiently protect the public interest according to the provisions of paragraph five thereof. Beyond the aforementioned obligations of the Republic of Kosovo, Article 119 of the Constitution, among other things, and as far as it is relevant to the circumstances of the present case, also determines that the Republic of Kosovo (i) ensures equal legal rights for all investors and all domestic and foreign enterprises, according to the provisions of paragraph two thereof; and (ii) promotes well-being for all its citizens, encouraging sustainable economic development and guarantees consumer protection in accordance with the law.

134. Based on the aforementioned provisions of the Constitution, as far as it is relevant in the circumstances of the present case, it results that the Republic of Kosovo, namely the legislative power, has the competence to determine the general principles of the economic system through the law-making process, including the competence to, by the

law (i) ensure a favorable environment for the market economy, freedom of economic activity and security of public and private property; (ii) determine exceptions to the principles of free competition; (iii) to establish independent bodies for the regulation of the market when the market itself cannot sufficiently protect the public interest; and (iv) guarantee consumer protection.

135. The Court also emphasizes the fact that economic operators also have the quality of a legal entity, and to whom, based on paragraph 4 of Article 21 of the Constitution, the fundamental rights and freedoms provided for in the Constitution also apply to legal entities, insofar as they are applicable. Consequently, economic operators enjoy all the fundamental rights and freedoms guaranteed by Chapter II of the Constitution, insofar as they are applicable. The same can be limited only to the criteria and conditions defined in Article 55 of the Constitution and consequently, any interference with these rights must (i) be "*prescribed by law*"; (ii) to "*pursue a legitimate aim"*; and (iii) be "*proportional to the aim pursued*".

136. Based on the above clarifications, the Court emphasizes that the market economy is a value of the Republic of Kosovo and any intervention of the state in this freedom and value should be done only by the law and in accordance with the definitions and limitations defined by the Constitution.

137. The same principles regarding the market economy also originate from the commitment of the Republic of Kosovo to be included in the Euro-Atlantic integration processes as defined in the preamble of its Constitution. This commitment of the Republic of Kosovo is also reflected through the adoption of Law no. 05/L-069 on Ratification of the Stabilization and Association Agreement between the EU and Kosovo on 2 November 2015. This international agreement, based on articles 16 and 19 of the Constitution of Kosovo, respectively, among others, is part of the internal legal system and has precedence over the laws of the Republic of Kosovo. The latter aims at supporting the Republic of Kosovo for strengthening democracy and the rule of law, contributing to political, economic and social stability, aligning legislation with community law and supporting Kosovo to complete the transition towards a functional market economy. In this way, the SAA is an agreement that has created a process of association of the parties in order to stabilize and prepare the Republic of Kosovo for the eventual membership in the EU (see, among others, decisions no. 30, of 02.11.2022; no 14, of 21.03.2014 of the Constitutional Court cited in Decision No. 21 of 18.04.2023, (V-21/23), paragraph 92 of the Constitutional Court of Albania).

138. In the aforementioned context, the Court emphasizes that beyond the obligations arising from Articles 16 and 19 of the Constitution, respectively, the principle of the rule of law contained in Articles 3 and 7 of the Constitution, among other things, also includes the principle of the supremacy of the law and respecting the hierarchy of laws and the principle of legal certainty. These constitutional principles determine that a law must not only be in harmony with the Constitution but also with binding international agreements and which, based on the Constitution, have precedence over laws. More precisely, the Court emphasizes that respecting the hierarchy of normative acts is an obligation derived from the principle of the rule of law and coherence in the legal system. The hierarchy of normative acts, sanctioned in Article 16 and 19 of the Constitution, defines the relationship between legal norms, which are based on the relation of their superposition/subordination. Based on Articles 16 and 19 of the Constitution, the Republic of Kosovo implements the international law binding on it, ranking the ratified international agreements, which are part of the internal legal system, in the hierarchy of normative acts that have force before laws (see, among others, decisions No. 30, of 02.11.2022; no. 14, of 21.03.2014 of the Constitutional Court

cited in Decision No. 21 of 18.04.2023, (V-21/23), paragraph 91 of the Constitutional Court of Albania).

139. As a consequence, and taking into account, the importance of the principles originating from EU law, regarding the market economy, reflected in the SAA, below, and as far as it is relevant in the circumstances of the present case, the Court will elaborate the standards originating from the EU law, regarding the freedom of economic activity and free competition, including the relevant exceptions, according to the interpretation of the CJEU.

2. Free Market Economy according to the regulations of the European Union and the interpretation of the CJEU and the principles arising from the Reports of the Venice Commission and the Council of Europe

140. In the following, and as far as it is relevant to the circumstances of the present case, the Court will elaborate (i) the relevant principles according to EU regulations and the case law of the CJEU regarding the economy based on free market competition ; (ii) the relevant principles according to the case law of the ECtHR; (iii) the principles arising from the Opinions of the Venice Commission and the responses of the constitutional courts and/or their equivalents members of the Forum of the Venice Commission; and (iv) the relevant case law of the Constitutional Court of the Republic of Albania.

(i) The relevant principles according to the regulation of the European Union and the judicial practice of the European Court of Justice regarding the market economy based on free competition

141. The Court, as far as it is relevant in the circumstances of the present case, emphasizes the principles that characterize the free market at the EU level, including articles 34 (former article 28 of TEC) and 35 (former article 29 TEC) of the Treaty on the Functioning of the European Union (TFEU) and which prohibit unjustified restrictions on intra-EU trade with the aim of ensuring a coherent application of the principle of free movement of goods throughout the EU's internal market.

142. In addition, to emphasize the importance of free competition within the EU internal market, the Court also notes that Directive 2006/123/EC of 12 December 2006 on services in the internal market expresses as a principle that "*[a] competitive market in services is essential in order to promote economic growth and create jobs in the European Union*".

143. The concept of prohibition of restrictive measures on the market at the EU level has been further developed by the case law of the CJEU. Through this case law and as will be elaborated further below, it has been consistently emphasized, among other things, that "*all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions* [on trade] *and are, on that basis, prohibited by Article 28 EC*" (now Article 34 i TFEU) (see, *inter alia*, Case of CJEU C8-74 *Procureur du Roi v. Benoît and Gustave Dassonville* [1974], paragraph 5; and Case C-110/05 *Commission of the European Communities v Italian Republic* [2009], paragraph 33).

144. Having said that, beyond the essential principles of the free market within the EU, including those specified in Articles 34 (former Article 28 of the TEC) and 35 (former Article 29 of the TEC) of the TFEU, the Court recalls Article 36 of the TFEU which provides that derogations/exceptions from the principles of the free market, namely the guarantees established in articles 34 (former article 28 of TEC) and 35 (former article

29 of TEC) of the TFEU Articles 34 and 35 TFEU insofar as they are justified on one of the following grounds: "*public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property"*. Furthermore, the applicable EU regulation, namely Directive 2005/29/EC of 11 May 2005 regarding unfair business-to-consumer trade practices in the internal market, also emphasizes the importance of consumer protection, putting emphasis on the purpose of the aforementioned Directive to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection through the harmonization of laws, regulations and administrative acts of member states from unfair practices and which infringe and/or damage the economic interests of consumers.

145. Based on the aforementioned provisions as well as based on the relevant case law of the CJEU, it follows that the principles of the free market can be subject to certain restrictive measures, provided that they are (i) in accordance with the public interest; and (ii) in accordance with the principle of proportionality. Both of these conditions are elaborated through the case law of the CJEU in the context of restrictive measures in relation to the principle of free market and freedom of economic activity.

146. Regarding the first condition, namely the public interest, in principle, the case law of the CJEU refers to Article 36 (former Article 30 TEC) of the TFEU, based on which and according to the above clarifications, it can there are derogations/exceptions from the principles defined in articles 34 (former article 28 of TEC) and 35 (former article 29 of TEC) of the TFEU, respectively. Article 36 (former Article 30 of the TEC) of the TFEU, defines the exceptions from "*bans or restrictions on imports, exports or goods in transit regime*", provided that these exceptions are justified "*public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property"*, also emphasizing that *"such prohibitions or restrictions"* cannot constitute a means of arbitrary discrimination or disguised restriction on trade between member states.

147. The same principles are further elaborated, among others, in Regulation 2019/515 approved by the European Parliament and the Council of Ministers of the EU, on 19 March 2019 for "*mutual recognition of goods legally traded in another country member and the repeal of Regulation (European Commission) No. 764/2008*". This regulation, among other things, and as far as it is relevant to the circumstances of the present case, clarifies that (i) quantitative restrictions on imports and all measures having equivalent effect are prohibited between Member States. That prohibition covers any national measure which is capable of hindering, directly or indirectly, actually or potentially, intra-Union trade in goods; (ii) Member States can restrict the marketing of goods that have been lawfully marketed in another Member State, where such restrictions are justified on the grounds set out in Article 36 (former Article 30 of TEC) of the TFEU or on the basis of other overriding reasons of public interest, recognized by the case-law of the CJEU in relation to the free movement of goods, and where those restrictions are proportionate to the aim pursued; (iii) the concept of overriding reasons of public interest is a concept being developed by the ECtHR through its case law in relation to Articles 34, 35 and 36 of the TFEU, respectively, and based on this practice, insofar as restriction may are possible, any measure/administrative decision that defines exceptions to the free market principle must always be properly justified, be legitimate, appropriate and respect the principle of proportionality, and the competent authority must take the less restrictive decision .

148. These principles have been continuously refined and developed through the case law of the CJEU, which narrowly interprets the list of derogations in Article 36 (former Article 30 of the TEC) of the TFEU and which are related to non-economic interests. Beyond emphasizing the limited non-economic bases through which certain restrictive measures can be taken in the sense of the free market, the ECtHR also places constant emphasis on the principle of proportionality and the burden of proof for the justification of the measures adopted and which is shared between the relevant state and the European Commission. The concept of public interest, namely, non-economic bases/interests on which exceptionally there can be interference/restrictions on the principles of the free market in the EU, have been elaborated, among others, in the Judgments of this Court, including but not limited to in cases (i) C-120/78 *Reëe-Zentral AG v Bundesmonopolverëaltung für Branntëein* (Cassis de Dijon) [1979]; (ii) C-14/02 *ATRAL SA v. State of Belgium* [2003]; (iii) C-254/05 *Commission v Belgium* [2007]; (iv) C-421/09 *Humanplasma GmbH v. Republic of Austria* [2010]; (v) C-52/09, *Konkurrensverket v TeliaSonera Sverige AB* [2011]; (vi) C-456/10 *Asociación Nacional de Expendedores de Tabaco y Timbre (ANETT) v Administración del Estado* [2012]; and (vii) C-525/14 *Commission v Czech Republic* [2016].

149. Moreover, and relevant to the circumstances of the present case, is also the case C 148/15 *Deutsche Parkinson Vereinigung eV v. Zentrale zur Bekämpfung unlauteren Wettbewerbs eV*. [2016], through which, *inter alia*, the CJEU examined issues related to restriction/setting market price for certain medicinal products, namely whether a fixed price system for prescription-only medicinal products established by national law constitutes a measure with the same effect within the meaning of Article 34 (former Article 28 of the TEC) of the TFEU and if this measure can be justified based on Article 36 (former Article 30 of the TEC) of the TFEU on the basis of protecting people's health and life. The CJEU had pointed out that Article 36 (former Article 30 of the TEC) of the TFEU should be interpreted to mean that national legislation, such as that at issue in the main proceedings, which provides for a fixed price system for the sale by pharmacies of medicinal products only with a prescription for human use, cannot be justified on the grounds of protecting the health and life of people, according to the meaning of that article, as long as that legislation is not suitable for achieving the objectives pursued.

150. Whereas, with regard to the second condition, namely proportionality, in principle, the case law of the CJEU has consistently emphasized that any restrictive measure against the principles of the market economy, free trade and free movement of goods, must be "*appropriate for securing the attainment of the objective pursued and must not go beyond what is necessary in order to attain it*" (see: Case C-148/15 *Deutsche Parkinson Vereinigung* [2016], para. 34; Case C-333/14 *Scotch Whisky Association and Others* [2015], para. 33; C-421/09 *Humanplasma* [2010], para. 34; Case C-73/08 *Bressol and Others* [2010], para. 71; Case C-14/02 *ATRAL* [2003] ECR I-4431, para. 64; Case C-456/10 *ANETT* [2012], para. 45).

(ii) Relevant principles according to the case law of the ECtHR

151. The Court will further elaborate on the relevant principles from the case law of the ECtHR, also emphasizing the fact that, in principle, the case law of the ECtHR is of limited importance for the case in question, since the ECHR, in principle, is more limited in regulating the freedom of economic activity in relation to the case law of the CJEU. Having said that, the general principles on the basis of which fundamental rights and freedoms cannot be limited, unless the "*interference*", namely the respective limitation, is "*prescribed by law*", pursues a "*legitimate aim*" and is "*proportional to the purpose pursued*", are applicable, in any circumstances in which fundamental rights and freedoms may be limited, including for legal entities as far as the same are applicable.

152. However, for those cases where the ECtHR has dealt with the market economy, the Court notes that an approach similar to that of the CJEU is followed by the case law of the ECtHR. This is reflected, among others, through the ECtHR case, *Coopérative des agriculteurs de la Mayenne and Coopérative laitière Maine-Anjou v. France* (application no. 16931/04, Decision of 10 October 2006), and which, among other things, deals with the economic implications of the interpretation of a right protected under the ECHR, namely Article 1 (Protection of property) of Protocol no. 1 of the ECHR which guarantees, among other things, the right of producers or buyers to the peaceful enjoyment of their property. In the circumstances of this case, the French state had imposed corresponding taxes on farm cooperatives in case of exceeding milk quotas. The respective applicants, namely the farm cooperatives, complained that they had been completely deprived of their property rights in relation to the production of milk in excess of the reference quantity and argued that this state intervention in the free economy was disproportionate to the objective of the public interest and it was not proportional. The ECtHR concluded that the relevant intervention through taxes was not contrary to the guarantees of Article 1 of Protocol no. 1 of the ECHR, taking into account that the latter (i) was "*prescribed by law*", namely by the Regulation of the Council of the European Community (EEC) no. 856/84 of 31 March 1984 on the organization of the market of milk and milk products; (ii) pursued a "*legitimate aim*"; and (iii) was "*proportional*" to the aim pursued.

(iii) Principles arising from the reports of the Venice Commission and the responses of the constitutional courts and/or their equivalents members of the Forum of the Venice Commission

153. The Court recalls that the Venice Commission, through its 1994 report on the legal basis of the economic system during the transition period from a planned economy to a market economy, identified the main elements of the legal basis of the economic system during the transition period from a planned economy in a market economy. Based on this report, and among others, emphasis is placed on the importance of "*formal recognition of the freedom of economic activity, […]*" and most importantly, *"the principle of free competition, which is based on economic freedom, and the principle of equality, which is related to competition between different individuals and between individuals and the state"*.

154. The aforementioned Venice Commission report also dealt with the respective roles of the constitution and legislation in the economic sphere. In this regard, the Venice Commission, among other things, emphasized that although *"[in the economic sphere] constitutions form the necessary basis of the legal and economic systems of states*", their role must remain "*modest as they are not suitable instruments for the detailed regulation of the principles governing market economies"*. In this way, according to the opinion of the Commission, "*[constitutions should not be used to establish detailed rules and regulations; this is best done by ordinary legislation]"*. Thus, in the view of the Venice Commission, any reference in the Constitution to the principle of state intervention in the economic sphere should be limited to *"an exception to the principle of economic freedom, justified by the general interest"*. Restrictive measures for economic freedom must be approved by the legislator and in accordance with the principle of proportionality. According to the report, the restrictions on economic freedom should be: (i) *"specific and limited and must be justified by the general interest or the need to maintain public order";* (ii) provided by law; and (iii) *"necessary, effective and proportional to the requirements and weight of the situation"*. The report further elaborates on the role of legislation in the economic sphere, stating that it should *"translate in detailed form the basic principles defined in the constitution"*. It also

provides that the law may enable the executive to *"draft detailed regulations"* based on the guidelines and policy principles defined in the relevant law.

155. Moreover, from the above-mentioned responses of the Venice Forum, it appears that among the states that have submitted their contribution, and which are elaborated in detail in paragraphs 95-111 of this Judgment, through the respective laws, the states have taken certain measures to stabilize the market, including intervention by setting prices, in case of special circumstances. However, it should be specified that among those, there are also states that have not taken any legislative measures to control market prices due to special circumstances such as Sweden, Denmark, Mexico, Ireland and Liechtenstein. Having said that, despite the fact that they may not have taken restrictive measures, some of them have relevant legislation that regulates this area. For example, Mexico has not taken action to control market prices due to price increases caused by special circumstances, but Article 28, third paragraph, of the Mexican Constitution gives the relevant Congress the authority to decide, among others, the basis for the maximum prices of materials or products that are considered necessary for the national economy or popular consumption. On the other hand, countries such as the Netherlands and the Republic of Moldova, have not taken legislative measures to control product market prices, but have taken compensatory measures for family economies.

156. The Court further notes that even for those states that took measures to control market prices due to special circumstances, include (i) the Republic of North Macedonia, which did not set maximum prices, but decided to limit the increase of prices by determining the amount of trade margin for some trading companies and individuals; (ii) the Czech Republic which established two types of market price controls, the first being the monitoring of fuel sales margins and the second, setting limits on energy prices; and (iii) the Republic of Croatia which adopted decisions based on the existing law on extraordinary price control measures and implemented direct price control measures for basic food products. Moreover, the Republic of Albania has acted similarly, but unlike the above cases, the relevant acts of public authorities have also been subject to constitutionality control by the Constitutional Court, namely in case no. 8 dated 22.02.2023 (V-8/23) and no. 21 dated 18.04.2023 (V-21/23). The Court will elaborate on the judicial practice of the latter in this context.

(iv) Relevant case law of the Constitutional Court of the Republic of Albania

157. In the case of Decision (V-8/23) of 22 February 2023, the Constitutional Court of Albania assessed the constitutionality of the laws (i) *"For the approval of the normative act, with the force of law, no. 7, dated 18.03.2022""On transparency and price monitoring for some basic food products and other related products as a result of the special situation created in the market";* and (ii) *no. 51/2022, dated 09.06.2022 "On the approval of the normative act, with the force of law, no. 9, dated 11.05.2022 "For an addition to normative act no. 7, dated 18.03.2022 of the Council of Ministers "On transparency and price monitoring for some basic food products and other related products as a result of the special situation created in the market",* submitted by the relevant deputies of the Assembly of Albania. The claims raised by the respective applicants in relation to Article 101 of the Constitution of Albania, were related to (i) the possibility that the contested laws result in the intervention of the state in the free market economy and economic activity contrary to the principles of the free economy; and (ii) the contested laws were in violation of the Stabilization and Association Agreement regarding competition rules.

158. In the circumstances of the present case, the Constitutional Court of Albania declared the contested acts contrary to the Constitution and annulled them, on the grounds that

they were not issued in compliance with the criteria of "*need and urgency*" defined in Article 101 of the Constitution, finding that (i) the Council of Ministers and the Assembly have not carried out an analysis of the concrete situation, which would justify the urgent need through normative acts with the force of law; and (ii) the latter have not provided adequate reasoning that would prove that the existing legal and institutional instruments are not sufficient for the realization of the goal aimed at protecting the consumer from abusive practices. Having said that, the Constitutional Court of Albania did not deal with the specific case from the perspective of economic freedom and compatibility with the SAA between the Republic of Albania and the EU.

159. Whereas, in the case of Decision (V-21/23) of 18 April 2023, the Constitutional Court of Albania had assessed the constitutionality of (i) Law no. 39/2022 "*For the approval of normative act no. 5, dated 12.03.2022 "For some additions to the law no. 8450, dated 24.02.1999 "On the processing, transportation and trading of oil, gas and their by-products";* and *(ii)* Law no. 42/2022 "*For the approval of normative act no. 8, dated 25.03.2022 "For some additions to the law no. 8450, dated 24.02.1999 "On the processing, transportation and trading of oil, gas and their by-products*" submitted by the relevant deputies of the Assembly of Albania. The claims raised by the respective applicants in relation to Article 101 of the Constitution were related to the non-fulfillment of the criteria of "*need and emergency*" from the normative acts with the power of the contested law, as defined by Article 101 of the Constitution; and (ii) the determination of the price of gas, oil and their by-products constituted a restriction of the freedom of economic activity; as well as (iii) the solutions established through the contested laws are contrary to the SAA.

160. Unlike the circumstances of the previous case for the Decision (V-8/23) of 22 February 2023, the Constitutional Court in this case had assessed that the contested acts are in compliance with Article 101 of the Constitution of the Republic of Albania, in the context of fulfilling the conditions of "*need and emergency*".

161. However, the Constitutional Court of Albania, in this case, also addressed the aspects of freedom of economic activity and compatibility with the SAA between the Republic of Albania and the EU, partially accepting the request, and repealing Article 21/10, point 2, second sentence, of Law no. 39/2022 "*For the approval of normative act no. 5, dated 12.03.2022 "For some additions to the law no. 8450, dated 24.02.1999 "On the processing, transportation and trading of oil, gas and their by-products*", as incompatible with the Constitution of the Republic of Albania.

162. The Constitutional Court of Albania in this case, in principle and among other things, had concluded that (i) the relevant intervention of the state, namely the restriction of rights related to the freedom of economic activity, were "*prescribed by law*"; (ii) the contested acts follow a "*legitimate aim*", namely that of the public interest that protects citizens from possible abuses of hydrocarbon prices; and (iii) the contested acts are "*proportionate*", because "*the measures selected to control the hydrocarbon market are reasonable and appropriate, therefore they do not make the restriction of the constitutional freedom of economic activity arbitrary*". However, in the case of the norm declared incompatible with the Constitution, namely Article 21/10, point 2, second sentence of the contested law, the Constitutional Court of the Republic of Albania had assessed that the relevant provision did not meet the criterion of "prescribed by law" in the substantive aspect because the latter was not sufficiently clear and predictable and consequently the corresponding norm "*does not provide sufficient guarantees to avoid the possibilities for abuse and arbitrariness of public authorities*" (see, among others, paragraph 62 of the relevant Judgment). Whereas, as regards the compatibility of the contested acts with the SAA, the Constitutional Court of Albania concluded that the contested acts are not contrary to the Constitution and

the principle of respect for the hierarchy of normative acts, among other things, because "*the applicant's claims are not raised for the abuse of a dominant position, by one or more companies, or the granting of state aid that distorts or threatens to distort competition*".

III. Application of the aforementioned principles in the constitutional review of the contested Law

163. The Court first recalls that the contested Law, based on its Article 1 (Purpose), defines the purpose of the law to regulate interim protective measures for the supply of essential products to consumers, at the time of presentation of special cases of destabilization in the market and the way of their implementation. Furthermore, the same law, in its Article 2 (Scope), specifies that it applies to authorities and economic operators that sell essential products to eliminate the effects of price increases and the lack of essential products in the market. Destabilization of the market, as a criterion on the basis of which the contested Law is applied, in its paragraph 3 (Definitions), is defined as *"situations caused by force majeure, uncontrolled circumstances which cause speculations in the market resulting with immediate increase in prices and emphasized absence of essential products*".

164. The definition established in Article 3 of the contested Law is further supplemented by Article 6 (Causes and duration of safeguard measure) of the contested Law and which defines the causes and duration of safeguard measures. Regarding the causes and which may result in the determination of safeguard measures, Article 6 of the contested Law defines four circumstances, namely (i) sudden or continuous lack of essential products; (ii) sudden or immediate rise in prices of essential products; (iii) non-adjustment of local prices with large price movements in the world market; and (iv) unjustifiable difference of local prices from prices in neighbouring countries. Whereas, regarding the duration of safeguard measures, Article 6 of the contested Law specifies that they are temporarily imposed and removed when the reasons for which they were determined cease. Having said that, this provision related to the timeliness of the imposition of measures is also fulfilled by paragraph 4 of Article 8 (Decision-making) of the contested Law, according to which the relevant Commission meets at least once a month to re-assess the recommended interim measures.

165. The definitions related to essential products, interim safeguard measures and the calculation of the margin, are defined in articles 4 (Essential Products), 5 (Interim measures) and 7 (Calculation of the margin) of the contested Law, respectively. The latter in principle, determine (i) the list of essential products that can be subject to the imposition of interim safeguard measures and the possibility of adding other consumer products to this list and related to the determination of which, the Government before taking the relevant decision must be consulted with the SAA Council; and (ii) the category of safeguard measures, including those related to the determination of the commercial margin and the method of calculating the same.

166. In the context of interim safeguard measures, Article 5 of the contested Law defines the following measures: (i) limiting the quantity sold to the consumer within the specified period; (ii) prohibiting the removal of product from sale; (iii) determining the trade margin for wholesale and retail sales; (iv) setting the maximum allowed price; (v) obliging economic operator to maintain certain part of the product stock; (vi) . obliging economic operator to supply and offer for sale essential products as before the imposition of protective measures; and (vii) prohibiting, restricting export. According to paragraph 3 of Article 5 of the contested Law, safeguard measures are determined in proportion to the need for consumer protection and taking into account the burden on the economic operator. On the other hand, Article 7 defines the method of calculating

the margin, specifying that (i) the purchase price of imported products means the sum of the costs of the purchase price of the product, the cost of transportation calculated according to the legislation in force, customs duties and the cost of customs clearance, which includes the cost of the customs terminal and shipping, the cost of measuring the security of the product, as well as the other invoiced cost related to the customs clearance of the product; while (ii) the purchase price of local products means the sum of production costs and expenses, calculated according to the legislation in force.

167. Articles 8 (Decision-making) and 9 (Supervision and sanctions) of the contested Law, determine the manner of decision-making in relation to interim safeguard measures and supervision and corresponding sanctions, respectively. In relation to the first issue, namely decision-making, it is specified that the Minister has the power to establish protective measures, while the Prime Minister can revoke, cancel or change the Minister's decision.

168. The Court also notes that for the purposes of decision-making regarding the imposition of safeguard measures, the contested Law defines two mechanisms, namely (i) a Commission which is composed of representatives from the Ministry of Trade, the Ministry of Finance, the Ministry of Agriculture, Kosovo Customs, the Tax Administration of Kosovo, the Food and Veterinary Agency and the Market Inspectorate and which has the competence to recommend to the Minister the definition and/or change of safeguard measures; and (ii) the possibility of consulting the Minister with the Consumer Protection Council, the Competition Authority, the Kosovo Chamber of Commerce, as well as public authorities and other responsible organizations. Based on the content of Article 8 of the contested Law, which is related to decision-making, the recommendations and/or advice of the mechanisms mentioned above, do not oblige the Minister and/or the Prime Minister, and who, as explained above, can revoke, cancel or change the Minister's decision in this context.

169. However, the Court notes that the contested Law also establishes two mechanisms through which consultation and/or notification of the SAA Council is necessary. The first, and as noted above, is defined in paragraph 2 of Article 4 of the Law, and according to which, for other essential consumer products for living, before making a decision, the Government consults in advance with the SAA Council. While the second one is defined in paragraph 8 of Article 8 of the contested Law and is related to the obligation to notify the SAA Council before taking decisions on safeguard measures. These two provisions are also fulfilled through paragraph 7 of Article 8 of the contested Law, according to which, any decision taken under the contested Law must be in accordance with the bilateral protection commitments that Kosovo has undertaken within the framework of the SAA and other international agreements.

170. Finally, Article 9 of the contested Law establishes supervision and sanctions, and according to which, the supervision of the implementation of this law is done by the Market Inspectorate and the market inspectors at the municipal level, in cooperation with the Customs and Tax Administration. The latter further, determines the respective punishments with a fine, respectively for anyone who does not apply the protective measures determined by the decision of the Minister, for each essential product that sells or keeps in violation of the protective measures, is punished with a fine as follows (i) of a thousand (1,000) to twenty thousand (20,000) euros, as a legal entity; (ii) from five hundred (500) to five thousand (5,000) euros, as a natural person running an individual business; and (iii) from five hundred (500) to two thousand (2,000) euros, as a responsible person of the legal entity. Moreover, in addition to the above-mentioned penalties, in case of repetition of violations, the market inspectorate has the power to pronounce the protective measure by which the relevant economic operator is prohibited from trading for a duration of up to thirty (30) days. Based on Article 9 of

the contested Law, (i) the appeal is allowed against the decision regarding the sanction within eight (8) days from the day of acceptance the same; and (ii) This article does not exclude the application of penal provisions from other laws.

171. In the context of the goals and provisions of the contested Law, the Court first recalls, as it elaborated in the general principles of this Judgment that based on Article 7 of the Constitution, the market economy is a value of the Republic of Kosovo. Moreover, based on Article 10 of the Constitution, the market economy with free competition is the basis of the economic regulation of the Republic of Kosovo. Further, and based on Article 119 of the Constitution, among other things, it is the duty of the state authorities to ensure a favorable legal environment for the market economy, the freedom of economic activity and the security of public and private property.

172. Furthermore, based on Article 119 of the Constitution, and insofar as it is relevant to the circumstances of the present case, any action that restricts free competition through the establishment or abuse of a dominant position, or practices that limit competition is prohibited. Such a ban is so important in the context of the values built by the market economy, which the Constitution specifies that exceptions may be possible, only if they are defined "*explicitly by law"*. Furthermore, in order to ensure that public authorities, including the Government, do not interfere in the free market economy, the Constitution clearly states that the Republic of Kosovo shall establish independent bodies for the regulation of the market when the market itself cannot sufficiently protect the public interest.

173. Having said that, as explained in the general principles of this Judgment, intervention in the free market economy is possible in exceptional circumstances, including destabilization of the market and included with the purpose of consumer protection, provided that any intervention of such, to be *"prescribed law"*, to '*pursue a legitimate aim"* and to be *"proportional to the aim pursued"*.

174. In this context, the Court initially refers to EU law, the case law of the CJEU, as well as the SAA. In the context of the latter, the Court first recalls that through Law No. 05/L - 069, the Assembly had ratified the Stabilization and Association Agreement between the Republic of Kosovo, on the one hand, and the EU and the European Atomic Energy Community, on the other. The latter was published 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 superiority over the laws of the Republic of Kosovo. This Agreement contains two provisions, namely Article 43 (Clause on Safeguard Measures) and 44 (Clause of Inadequacy), and according to which, in principle, appropriate protective measures may be possible, in case of imports that may cause serious damage to the relevant industry or serious disturbances in any sector of the economy, under the specific terms defined in Article 43 of the SAA. Furthermore, according to Article 44 of the SAA, the relevant measures can be taken even when, in principle, there is a serious insufficiency or a risk for food items and/or other essential products, according to the conditions and criteria defined in this article.

175. Having said this, the Court notes that despite the fact that the two aforementioned provisions, under specific conditions and criteria, enable the imposition of restrictive measures, the latter are specified in the context of imports and exports between Kosovo and the EU, and therefore do not necessarily constitute the basis on which the Republic of Kosovo can determine protective measures in special circumstances of market destabilization, interfering with the economic freedom of economic operators, namely

natural and legal persons and who, based on Article 21 of the Constitution, enjoy the same fundamental rights and freedoms as natural persons, insofar as the same are applicable. The Court has already clarified that the rights of economic operators, namely natural/legal persons, can be limited only based on the conditions and criteria defined in Article 55 of the Constitution.

176. Having said this, the Court also recalls Article 47 (Authorized Restrictions) of the SAA, and which, although again in the context of the relations of the Republic of Kosovo with the EU, defines the possibility of prohibitions or restrictions on imports, exports or transit goods justified on the basis of (i) public morality; (ii) public policy or public safety; (iii) protection of health and life of people, animals or plants; (iv) protection of artistic, historical or archaeological treasures; or (v) protection of intellectual, industrial and commercial property; or (vi) of rules relating to gold and silver, provided that such prohibitions or restrictions shall not constitute arbitrary discrimination or indirect restraint on trade between the parties.

177. This provision originates from article 36 of the TFEU and which determines the possible exception, from articles 34 and 35 of the TFEU respectively and based on which quantitative restrictions on imports and exports and all other measures with the same effect are prohibited among member states. Based on Article 36 of the TFEU and as elaborated in detail in the general principles of this Judgment, the case law of the CJEU, but also of the ECtHR in the context of the interpretation of the ECHR, have determined that interventions in the free market are possible, provided that they have followed one of the legitimate goals established in Article 36 of the TFEU and are proportional to the aim pursued.

178. Based on these principles but also the respective constitutional regulations, the member states of the Venice Forum have taken or not taken such measures, through which the free market has been interfered in the special circumstances of market destabilization. In those cases where such measures have been taken and their constitutionality has been contested, they have passed or not the constitutional review test, depending on the provisions of the contested laws and/or decisions. In principle, and in the context of the common denominator derived from the decisions of the CJEU, ECtHR and Constitutional Courts, it is not disputed that such measures can pursue a legitimate aim as long as they are defined by law, however, it is disputed whether they are proportional. As the case law of the CJEU expressly states, such interventions in the freedom of the market economy must be expressly necessary and cannot under any circumstances constitute arbitrary discrimination or indirect restriction on free trade.

179. Based on the clarifications above, the Court emphasizes that, in principle, intervention in the free market economy by public authorities may be possible, insofar as (i) such interventions are *"prescribed by law";* (ii) pursue a *"legitimate aim";* and (iii) are *"proportional"* to the aim pursued, both in the context of the constitutional principles of the freedom of the market economy and in the context of the protection of the fundamental rights and freedoms of economic operators, namely natural/legal persons.

180. Moreover, the Court further recalls that the applicable laws of the Republic of Kosovo in the field of internal and external trade, contain provisions on the basis of which, interference in the free market through the imposition of restrictive measures is possible in special circumstances and explicitly defined in the applicable laws.

181. More precisely, Law No. 08/L-021 on Foreign Trade, among others, established the general principles that regulate the foreign trade of the Republic of Kosovo, in compliance with international best practices, World Trade Organization agreements and EU legislation. Among other things, and relevant to the circumstances of the

present case, this Law, in its Article 6 (Unfair practices in international trade), contains regulations on unfair practices in international trade, determining, among other things, that *"authorities shall take measures to protect domestic producers from the effects of unfair international trade practices in accordance with the provisions of this Law and other legislation into force*". Furthermore, the same in Article 9 (Prohibition of quantitative restrictions) thereof, while establishing the prohibition of quantitative restrictions, also sets out specific exceptions where such restriction does not apply, namely (i) in circumstances necessary to prevent critical shortages of food products or other essential products or to mitigate the effects of such shortages in the Republic of Kosovo; and (ii) the need for the implementation of regulations or standards related to the classification, categorization or trading of goods in international trade and/or for the implementation of international obligations of the Republic of Kosovo. In addition, the same law in its Article 11 (Prohibited goods) also defines the possibility of prohibiting the importation or exportation of specific goods through law or by sub-legal act.

182. Similarly, Law No. 06/L-040 on Safeguard Measures on Imports, among others: (i) in its Article 1 (Purpose), among other things, determines that a safeguard measure can be applied to a product only if it is determined according to the provisions of this law, that such product has been imported in such increased quantities, absolute or relative to domestic production, and/or with those terms or conditions that cause or threaten to cause serious injury to the domestic industry that produces similar or competing products; (ii) by its Article 2 (Scope), does not exclude the adoption or implementation of the prohibitions and/or quantitative restrictions provided, does not exclude the implementation of the protective rules included in the agreements concluded between the Republic of Kosovo and third countries, through which the protective measures are determined; (iii) in its article 4 (Safeguard measures and terms of their application), determines that the safeguard measures are temporary and they can be applied to an imported product after an investigation that results that the import of the product in the Republic of Kosovo is imported in such large quantities and under such terms as to cause or threaten to cause serious injury to the producers of similar products; and (iv) in Article 5 (Ministry and the Commission) thereof, determines that the Ministry of Trade and Industry and the Commission of nine (9) members appointed by the Minister of the Ministry of Trade, are the competent bodies for the implementation of this Law.

183. Based on the above, in principle, it results that the legislation in force of the Republic of Kosovo contains provisions and definitions for the regulation of safeguard measures or temporary restrictive measures both in the context of domestic foreign trade. Such an approach is in accordance with the case of the ECtHR and the CJEU, according to which, in principle, the undertaking of restrictive measures, namely interim safeguard measures, is not contrary to the principles of the free market economy, insofar as the same are *"prescribed by law", "pursue a legitimate aim"* and are entirely *"proportional"* to the aim pursued.

184. In the context of the contested Law, the Court recalls that it aims to regulate interim measures of supply of essential products to consumers, at the time of appearance of special cases of destabilization in the market and is applied to economic operators in order to eliminating the effects of price increases and the lack of essential products in the market, according to the provisions of Article 1 and Article 2 thereof. The latter, in its article 4, determines the exact list of essential products that can be subject to interim safeguard measures as established in Article 5 of the contested Law. Other essential products that may be subject to these measures can be determined by the Government's decision, only after consultation with the SAA Council, while their imposition is possible only if the circumstances defined in Article 6 of the contested Law are met regarding the causes and duration of safeguard measures and can only be set in proportion to the

need for consumer protection and taking into account the burden on the economic operator, thus enabling the assessment of proportionality in the determination of interim safeguard measures for economic operators. The Court also notes that paragraph 7 of Article 8 of the contested Law, establishes that any decision taken under this Law must be in accordance with the bilateral protection commitments that Kosovo has taken within the framework of the SAA and other international agreements.

185. However, the imposition of interim safeguard measures may result in limiting the fundamental rights and freedoms of economic operators. The assessment of whether the relevant rights and freedoms may have been disproportionately limited through the imposition of interim safeguard measures specified in Article 5 of the contested Law, is subject to the right to exercise the legal remedy and judicial protection of the rights guaranteed by Articles 32 and 54 of the Constitution, respectively. Therefore, the constitutional review of the contested Law does not imply the legality and constitutionality of the interim safeguard measures determined by the contested Law and which may be subject to the review of legality by regular courts and constitutionality by the Constitutional Court according to the provisions of paragraph 7 of Article 113 of the Constitution.

186. Having said this, and emphasizing that the Republic of Kosovo, based on articles 7, 10 and 119 of its Constitution, among others, (i) values the free market economy and it is the basis of its economic regulation; (ii) has the constitutional obligation to ensure a favorable legal environment for the market economy, freedom of economic activity and security of public and private property; and (iii) also the obligation to ensure that all actions that restrict free competition through the establishment or abuse of a dominant position, or practices that restrict competition, are prohibited, except when these are explicitly permitted by law, based in the case law of the ECtHR and the CJEU intervention in the market economy may be possible, as long as the three conditions explained above are met, respectively *"prescribed by law", "legitimate purpose"* and "*proportionality*".

187. As a result, and in principle, the Court assesses that the purpose of the contested Law is not in contradiction to the principles of the free market economy specified in articles 7, 10 and paragraph 3 of Article 119 of the Constitution. The latter enables the intervention of the state through the adoption of the Law to determine safeguard measures even in the context of special cases of destabilization in the market, as long as the formal and substantial criteria of *"prescribed by law*" are met in pursuit of a legitimate goal in proportional way.

188. Therefore, the Court assesses that Article 1 (Purpose), Article 2 (Scope), 3 (Definitions), paragraphs 1, 3 and 5 of Article 4 (Essential Products), paragraphs 1 and 3 of Article 5 (Interim Safeguard Measures), Article 6 (Causes and Duration of Safeguard Measures), Article 7 (Calculation of Margin), Article 8 paragraphs 7 and 8 (Decision-making), and paragraphs 1, 3, 4, 5 and 6 of Article 9 (Supervision and sanctions) of the contested Law, are not contrary to paragraph 1 of Article 7, Article 10 and paragraph 3 of Article 119 of the Constitution.

189. Having said that, taking into account the allegations of the Applicants and the counter-arguments of the interested parties to their referral, the Court must also assess the issues related to (i) the decision-making mechanisms regarding the imposition of interim safeguard measures; and (ii) the compatibility of the contested Law with the principle of legal certainty, as an essential part of the principle of the rule of law specified through paragraph 1 of Article 7 of the Constitution.

(i) decision-making mechanisms regarding the imposition of interim safeguard measures

190. The Court initially recalls three relevant constitutional provisions in the circumstances of the present case. First, paragraph 1 of Article 119 of the Constitution, based on which the Republic of Kosovo provides a favorable legal environment for the market economy, freedom of economic activity and security of public and private property. Secondly, paragraph 3 of Article 119 of the Constitution, based on which actions that limit free competition through the establishment or abuse of a dominant position, or practices that limit competition, are prohibited, except when these are explicitly permitted by law. Thirdly, paragraph 5 of Article 119 of the Constitution, according to which the Republic of Kosovo will establish independent bodies for the regulation of the market when the market itself cannot sufficiently protect the public interest. The latter, as far as it is relevant in the circumstances of the present case, also includes consumer protection which is guaranteed in accordance with the law according to paragraph 7 of Article 119 of the Constitution and also constitutes a basis on which there may be proportional restrictions in the context of the market economy based on the case law of the CJEU.

191. The Court notes that while paragraph 3 of Article 119 of the Constitution allows certain exceptions through the law in the context of actions that limit free competition through the establishment or abuse of a dominant position or practices that limit competition, paragraph 5 of the same article precisely determines that when the market itself cannot sufficiently protect the public interest, the Republic of Kosovo will establish independent bodies for its regulation.

192. The Court recalls that in the context of paragraph 3 of Article 119 of the Constitution, among other things, Law No. 08/L-056 on Protection of Competition was adopted. The latter, based on its Article 1 (Purpose), determines the rules and measures for the protection of free and effective competition in the market, the competencies and organization of the Competition Authority of the Republic of Kosovo, as well as the procedures for the implementation of this law. Moreover, based on its Article 2 (Scope), it is specified that the same applies to all forms of prevention, limitation or distortion of competition by enterprises in the territory of the Republic of Kosovo or outside the territory, if their actions have an effect on the market of the Republic of Kosovo. Also, as long as it does not prevent them from performing the tasks assigned to them by law or for which they were established, this law applies to enterprises that exercise economic activity and that according to the law (i) perform services of general economic interest; (ii) have the character of a revenue generating monopoly; and (iii) have exclusive rights. For the purposes of its implementation, the latter establishes the Competition Authority as an independent agency, which reports for its work to the Assembly of the Republic of Kosovo. The Competition Authority, according to the provisions of the aforementioned Law, ensures the prevention, limitation or distortion of competition by economic operators/legal entities, namely all enterprises in the territory of the Republic of Kosovo or outside the territory, if their actions have an effect on the market of the Republic of Kosovo.

193. On the other hand, paragraph 5 of Article 119 of the Constitution precisely defines the possibility of intervention of public authorities in the regulation of the market, when the market itself cannot sufficiently protect the public interest, through the establishment of independent bodies. In the context of this provision, the Court first emphasizes that while the versions in the Albanian and Serbian languages are compatible, the version in the English language is not in full harmony with the two aforementioned versions. More precisely, while (i) the English language version refers to the establishment of independent market regulators [the Republic of Kosovo shall establish independent market regulators where the market alone cannot sufficiently protect the public interest]; (ii) the versions in the Albanian and Serbian languages, respectively, refer to

the establishment of independent bodies for the regulation of the market [Republika e Kosovës do të themelojë organe të pavarura për rregullimin e tregut atëherë kur vetë tregu nuk mundet që në masë të mjaftueshme të mbrojë interesin publik/Republika Kosovo će osnovati nezavisne organe za regulisanje tržišta, onda kada samo tržište ne može dovoljno da zaštiti javni interes], then when the latter cannot protect the public interest to a sufficient extent.

194. Further and in the context of paragraph 5 of Article 119 of the Constitution, the Court points out that the Assembly has adopted laws based on which a particular aspect of the market is regulated, as is, among others, the case with Law no. 05/L-084 on the Energy Regulator, through which the Office of the Energy Regulator is established with the status of an independent agency, whose board members are elected, dismissed and report to the Assembly of the Republic of Kosovo. In relation to the latter, the Court also points out that Law no. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies, in Article 14 (Regulatory Agency) defines Regulatory Agencies as agencies that regulate and supervise the activity of operators of a certain market with the aim of protecting consumers and ensuring free competition.

195. The Court notes that the purpose of the norm, respectively paragraph 5 of Article 119 of the Constitution, is comprehensive and conveys the intention of the constitution-maker, that when the market cannot sufficiently protect the public interest, including the interest of the consumer, the Republic of Kosovo will establish independent bodies for market regulation. Such a solution is also in accordance with Article 7 and 10 of the Constitution, respectively, regarding the free market economy. Moreover, this provision is the only one in Article 119 and which refers to the public interest. The latter, based on the case law of the CJEU, as explained above, also includes consumer protection. Consequently, paragraph 5 of Article 119 of the Constitution clearly defines the Republic of Kosovo's obligation to establish independent bodies for the regulation of the market in protection of the public interest, when the market itself cannot do such a thing, including in circumstances determined by Article 6 of the contested Law, respectively in case of: (i) sudden or continuous lack of essential products; (ii) sudden or immediate increase in prices of essential products; (iii) non-adjustment of local prices with large price movements in the world market; and (iv) the unjustifiable difference of local prices from prices in neighboring countries, circumstances which the market may not necessarily regulate itself without the intervention of public authorities.

196. Taking into account (i) that the circumstances which the contested Law aims to regulate, namely those in which the market itself cannot regulate , namely it cannot sufficiently protect the public interest, including the interest of the consumer; and (ii) the constitutional obligation that in such circumstances the Republic of Kosovo establishes independent bodies for the regulation of the market, the Court must assess whether the provisions of the contested Law regarding decision-making related to the imposition of interim protective measures can be qualified as decision-making independent and/or independent decision-making body in protecting of the public interest, for the purposes of paragraph 5 of Article 119 of the Constitution.

197. In this context, the Court recalls that based on Article 8 (Decision-making) of the contested Law, it is the relevant Minister, respectively the Minister of MIET, who takes the decisions regarding the imposition of interim safeguard measures defined in Article 5 of the contested Law, while based on paragraph 9 of Article 8 of the contested Law, the Prime Minister has the power to revoke, annul or change the Minister's decision. The decision-making of the Minister and/or the Prime Minister, in the imposition of interim safeguard measures is full and exclusive and only subject to (i) the possibility of consultation/recommendations by the Commission established by the Minister based on paragraph 2 of Article 8 of the contested Law; and (ii) the possibility of consultation

of the Minister with the Consumer Protection Council, the Competition Authority, the Chamber of Commerce of Kosovo, as well as public authorities and other responsible organizations based on paragraph 6 of Article 8 of the contested Law. As explained above, based on the content of Article 8 of the contested Law, which is related to decision-making, the recommendations and/or advice of the mechanisms mentioned above, do not oblige the Minister and/or the Prime Minister, who may be able to revoke, annul or change the decisions of the Minister in this context. Moreover, while the Law defines a role for the SAA Council, the latter is only consulted and/or notified (i) before the Government's decision-making on the extension of the list of essential consumer products for living according to the provisions of paragraph 2 of Article 4 of the contested Law; and (ii) before taking decisions on interim safeguard measures according to the provisions of paragraph 8 of Article 8 of the contested Law.

198. The Court also notes that based on articles 92 [General Principles], 93 [Competencies of the Government] and 94 [Competencies of the Prime Minister], it is not disputed that, among other things, the Government (i) implements the laws and other acts adopted by the Assembly of Kosovo and performs other activities within the responsibilities defined by this Constitution and by law; (ii) makes decisions in accordance with this Constitution and laws, proposes draft laws and amendments to existing laws and other acts, as well as may give its opinion on draft laws that are not proposed by it; (iii) takes decisions and issues legal acts or regulations, necessary for the implementation of laws; while the Prime Minister, among other things, (i) ensures that all Ministries act in accordance with government policies; (ii) ensures the implementation of laws and established policies of the Government; and (iii) performs other tasks, defined by the Constitution and by law.

199. However, the competencies of the Government and the relevant decision-making should also be interpreted in the context of other constitutional provisions, and relevant to the circumstances of the present case, are (i) Articles 7 and 10 of the Constitution, respectively and according to which the market economy with free competition is the basis of economic regulation and the value of the Republic of Kosovo; and (ii) Article 119 of the Constitution, and which, in circumstances in which the market cannot protect the public interest by itself, clearly requires the Republic of Kosovo to establish independent bodies for the regulation of the market.

200. Based on the aforementioned provisions of the contested Law, the regulation of the market for the purposes of public interest through interference in the economic freedom of economic operators through the imposition of interim protective measures, has been defined as the competence of the Minister, who by decision grants the protective measures in in accordance with Article 5 of the contested Law, respectively the Prime Minister of the Republic of Kosovo, who can revoke, cancel or change the Minister's decision.

201. The Court, according to the clarifications given in the general principles of this Judgment, has emphasized that a number of member states of the Venice Commission have imposed restrictive measures to regulate the market as a result of its destabilization. Furthermore, the Court based on the comparative analysis of several member states of the Council of Europe, including Albania, Croatia, Montenegro, North Macedonia, and Bosnia and Herzegovina, notes that the authority with the competence to impose restrictive measures under the relevant laws may also include the mechanisms of the executive power, having said that, none of the Constitutions of the above-mentioned states define the constitutional obligation that the regulation of the market in such circumstances is done through the establishment of an independent body. In principle, the measures in the above-mentioned countries, including according to the responses submitted through the Venice Commission Forum, are implemented

by existing government bodies (for example, the relevant trade ministries), independent market regulators (such as competition authorities) or by *ad hoc* committees set up for this effect.

202. The latter is the case in the Republic of Albania, in which, despite the fact that, unlike the Republic of Kosovo, the Constitution of Albania does not specify the obligation to establish independent bodies when the market cannot sufficiently protect the public interest, taking into account the general principles of the free market economy, for the purposes of special situations and the imposition of protective measures, including the setting of the ceiling price and the calculation of the margin, has established the relevant Transparency Boards composed of thirteen (13) members, including the representation of relevant ministries, independent institutions and relevant trading companies.

203. The Court recalls that the Constitutional Court of Albania has reviewed two cases related to the intervention of public authorities in the free market economy in special circumstances of market destabilization. More precisely, in the case of Decision (V-8/23) of 22 February 2023, the Constitutional Court of Albania had assessed the constitutionality of the laws (i) *"On the approval of the normative act, with the force of Law, no. 7, dated 18.03.2022 "On transparency and price monitoring for some essential food products and other related products as a result of the special situation created in the market"*; and (ii) no. 51/2022, dated 09.06.2022 *"On the approval of the normative act, with the force of law, no. 9, dated 11.05.2022 "For an addition to normative act no. 7, dated 18.03.2022 of the Council of Ministers "On transparency and price monitoring for some basic food products and other related products as a result of the special situation created in the market"*, and which the Constitutional Court of Albania declared contrary to the Constitution; and in the case of Decision (V-21/23) of 18 April 2023, the Constitutional Court of Albania reviewed the constitutionality of (i) Law no. 39/2022 *"For the approval of normative act no. 5, dated 12.03.2022 "For some additions to the law no. 8450, dated 24.02.1999 "On the processing, transportation and trading of oil, gas and their by-products"*; and (ii) Law no. 42/2022 "*For the approval of normative act no. 8, dated 25.03.2022 "For some additions to the law no. 8450, dated 24.02.1999 "On the processing, transportation and trading of oil, gas and their by-products"*, and in connection with which, the Constitutional Court declared normative act no. 5, partially contrary to the Constitution.

204. Based on the clarifications above, and taking into account that (i) based on Article 7 and 10 of the Constitution, the market economy is a value and the basis of the economic regulation of the Republic of Kosovo; (ii) the Constitution of the Republic of Kosovo, in paragraph 5 of its Article 119, precisely determines that the Republic of Kosovo will establish independent bodies for the regulation of the market when the market itself cannot sufficiently protect the public interest; (iii) that the circumstances defined in Article 6 of the contested Law exactly coincide with circumstances in which the market itself cannot sufficiently protect the public interest, including consumer protection, and therefore based on paragraph 5 of Article 119 of the Constitution request the establishment of independent bodies for market regulation; while (iv) as long as the contested Law provides for the establishment of a Commission with advisory competencies, the full decision-making for the imposition of interim safeguard measures against economic operators related to essential products in special cases of destabilization in the market is defined as the competence of the Minister and the Prime Minister, the Court must find that the provisions of Article 8 of the contested Law regarding the decision-making of interim safeguard measures do not coincide with the constitutional standard of independent decision-making regarding the regulation of the market when the market itself cannot sufficiently protect the public interest.

205. Therefore, the Court assesses that paragraphs 2 and 4 of Article 4 (Essential Products), paragraph 2 of Article 5 (Interim Safeguard Measures), paragraphs 1, 2, 3, 4, 5, 6 and 9 of Article 8 (Decision-making) and paragraph 2 of Article 9 (Supervision and sanctions) of the contested Law, are not in compliance with paragraph 1 of Article 7, Article 10 and paragraph 5 of Article 119 of the Constitution.

(iv)the compatibility of the contested Law with the principle of legal certainty

206. Moreover, and in the context of legal certainty, the Court also recalls two relevant laws of the Republic of Kosovo, and which are related to the scope, including the decision-making method regarding the imposition of interim protective measures. These two laws are (i) Law no. 03/L-244 on State Reserves Goods; and (ii) Law no. 2004/18 on Internal Trade related to Law no. 04/L-005 on Amending and Supplementing Law no. 2004/18 on Internal Trade.

207. The first, namely the Law on State Reserves Goods, in its Article 2 (Scope), provides that state reserves of goods are created to intervene operatively for the protection of the population, the economy in case of market disorder, the defense of the country, in situations of a state of emergency, a state of civil emergency, terrorist actions, military actions in a state of war, which bring immediate and serious damage to the life, health of the population, living things, property, cultural heritage, the environment as well as for the provision of humanitarian aid, in accordance with the norms of international law. Based on this scope, the latter is also applied to intervene *"operatively for the protection of the population, the economy in case of market disorder*".

208. In addition, and based on Article 12 (Composition of state reserve goods) thereof, state reserves of goods, among others, consist of basic agricultural products, including livestock meat and industrial food products. The basic agricultural products referred to in this provision also include the essential products defined in Article 4 of the contested Law. The Court notes that *"in case of market disorder"*, responsible for intervening in the market to protect the population and/or the consumer, is MIET by two different laws, namely the Law on State Reserves and the contested Law, and based on these two laws, it remains at MIET discretion whether to intervene in the market through the possibilities specified by the Law on State Reserves or interim protective measures specified in Article 5 of the contested Law, with emphasis on two measures that place the burden of market regulation on economic operators and not the public authority, namely points 1.5 and 1.6 of this Article. According to the latter, the Minister can determine the obligation of the economic operator to maintain the specified part of the stock of the specified product or the obligation to supply and offer for sale the essential products as before the imposition of the protective measures under the threat of the specified sanctions in Article 9 of the contested Law.

209. However, the Court also refers to Article 14 (Utilization of state reserves) of the Law on State Reserves, according to which state reserves of goods are used for supply needs in cases of (i) war or direct risk from war; (ii) of large-scale natural disasters and technical-technological and ecological catastrophes; and (iii) providing emergency aid to other affected states, thus excluding cases of market destabilization/disorder, despite the fact that the aforementioned Law refers to the same in its Article 2.

210. Having said that, and beyond the fact that the relationship between the contested Law and the Law on State Reserves, does not necessarily clearly define the division of the burden between the legal/natural person, namely the economic operator and the public authority, namely the state in cases of market disorder, is the Law on Internal Trade, which requires special attention.

211. First, MIET itself refers to this law in the response submitted to the Court, arguing the compliance with the Constitution of the contested Law, emphasizing, among other things, that the protective measures included in the contested Law are *"provided by law from 2004"* and *that "the content of Law 08/L-179 is borrowed from existing legislation, that articles 42 and 43 of Law no. 2004/18 on internal trade provides for restrictions on the performance of trade activities in special cases, precisely for the purpose of consumer protection"*. Having said this, and secondly, the contested Law in its Article 10 (Entry into force), determines that the contested Law enters into force on the day it is published in the Official Gazette of the Republic of Kosovo and does not repeal and/or amend articles 42, 43 and 59 of the Law on Internal Trade. Furthermore, and thirdly, the aforementioned provisions of the Law on Internal Trade define interim protective measures and parallel sanctions for legal entities/individuals/economic operators in circumstances of market destabilization/disorder, including other decision-making in the context of determining these measures.

212. More precisely, based on Article 42 of the Law on Internal Trade, the Government, by a special act, may temporarily restrict the exercise of trade activity in cases of (i) elementary and natural disasters, when disruptions occur or may occur in market, disruptions in the supply of the population or disruptions in the region, which endanger the health and safety of citizens; (ii) significant disruptions in the internal market, such as the lack of reproductive goods for production, processing and to ensure the livelihood of citizens; and (iii) when the supply of raw materials or material of strategic importance is endangered. The aforementioned circumstances coincide with the scope of articles 1, 2 and 6 of the contested Law.

213. Moreover, Article 43 of the Law on Internal Trade, determines the competence of the Government to determine interim protective measures, just as Article 5 of the contested Law determines the competence of the Minister/Prime Minister to determine the latter. The measures defined in Article 43 of the Law on Internal Trade, include (i) restriction of trade or restriction of certain goods or special requirements for trade with certain goods, this measure is equivalent to the protective measures defined in points 1.1, 1.2 and 1.7 of Article 5 of the contested Law; (ii) the restriction of the export of certain goods or the special conditions for export for certain goods, this measure is equivalent to the protective measures defined in points 1.6 and 1.7 of Article 5 of the contested Law; (iii) prohibiting the trader from selling certain goods, this measure is equivalent to the protective measures defined in points 1.2, 1.5 and 1.7 of Article 5 of the contested Law; (iv) the trader's obligation to supply and sell the specified type and quantity of the goods as well as the sale of the goods to certain customers according to the defined order of priority, this measure is equivalent to the protective measures defined in point 1.6 of Article 5 of the contested Law; and (v) the obligation of some traders to preserve the certain type and quantity of goods, this measure is equivalent to the protective measures defined in point 1.5 of Article 5 of the contested Law. On the other hand, unlike the Law on Internal Trade, the contested Law also defines (i) the interim protective measure of the determination of the commercial margin for wholesale and retail sales and setting the maximum price allowed in points 1.3 and 1.4 of the Article 5 of the contested Law; and (ii) the way of calculating the margin in Article 7 of the contested Law.

214. On the other hand, as long as the Law on Internal Trade, and which has not been subjected to the constitutional review by the Constitutional Court, unlike the contested Law, does not define the list of essential products, and does not contain the guarantee defined in paragraph 7 of Article 8 of the contested Law, namely the obligation that any decision taken must be in accordance with the bilateral protection commitments that Kosovo has taken within the framework of the SAA and other international agreements, the latter is the Law in force in Republic of Kosovo and enables the Government to

undertake all the measures defined in it in parallel with the measures established in the contested Law.

215. In addition, administrative sanctions under Article 59 of the Law on Internal Trade and sanctions under Article 9 of the contested Law, in case of non-compliance with the restrictions imposed on the exercise of trade activity by economic operators established by Article 43 of the Law for Internal Trade and/or Article 5 of the contested Law, are also applicable in parallel. Economic operators, namely legal entities, can be fined in the amount of 5,000 to 15,000 euro for not respecting the restrictions placed on the exercise of trade activities in articles 42 and 43 of the Law on Internal Trade, while the same fines, can be imposed also for non-compliance with the interim protective measures defined in Article 5 of the contested Law, and which based on Article 9 of the same Law, include (i) from one thousand (1,000) to twenty thousand (20,000) euros, as legal person; (ii) from five hundred (500) to five thousand (5,000) euros, as a natural person exercising individual business; and (iii) from five hundred (500) to two thousand (2,000) euros, as a responsible person of the legal entity, for each essential product that sells or keeps in violation of the protective measures.

216. In the aforementioned context, namely two different applicable laws and which, in circumstances of market destabilization, enable intervention in the state's market economy through interim protective measures and respective similar but also different sanctions, including through different decision-making mechanisms, the Court recalls that the rule of law is a value of the Republic of Kosovo established in Articles 3 and 7 of the Constitution, respectively. One of the most essential principles of the rule of law is the principle of legal certainty. The latter requires, among other things, that the rules are clear and precise, and aim to ensure that legal situations and relationships remain predictable.

217. Based on the case law of the ECtHR, but also of the Court, predictability first of all requires that the legal norm be formulated with sufficient precision and clarity, so as to enable individuals and legal entities to regulate their behavior in accordance with it. Individuals and other legal entities need to know exactly how and how much they are affected by a certain legal norm and how a new legal norm changes their previous status or condition foreseen by another legal norm. Public authorities, when drafting laws, must also take into account these basic principles of the rule of law - as an important part of the constitutional system of the Republic of Kosovo (see, among others, the Court's Judgment in case KO219/19, Applicant *the Ombudsperson*, Constitutional review of Law No. 06/L-111 on Salaries in the Public Sector, Judgment of 30 June 2020, paragraph 218-219).

218. Moreover, based on the case law of the ECtHR and that of the Court, the latter emphasizes that the principle of legal certainty, which is embodied in all articles of the ECHR, requires that the rights and the obligations are *"prescribed by law"*. However, *"prescribed by law*" in addition to requiring that the measure undertaken must have a formal legal basis in the relevant legislation, also requires that the relevant provisions of the law also meet the substantial criterion, namely to be *"clear, accessible and predictable"* (see, in this context, ECtHR cases, *Beyeler v. Italy,* no. 33202/96, Judgment of 5 January 2000, paragraph 109; *Hentrich v. France,* no. 1361/88, Judgment of 22 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 of 8 July 1986, paragraph 110).

219. The Court further notes that according to the Rule of Law Checklist of the Venice Commission, *"the foreseeability of the law"* is an essential part of the principle of legal certainty. In this context, *"foreseeability"* means, among others, that the law must be

formulated with sufficient precision and clarity to enable legal entities to regulate their behavior in accordance with the law (see, among others, the Rule of Law Checklist of the Venice Commission, CDL-Ad(2016)007, Strasbourg, 18 March 2016, paragraphs 58 and 59; Judgment of the Court in the cases Judgment of the Court in cases KO100/22 and KO101/22, KO100/22, with Applicant: *Abelard Tahiri and ten (10) other deputies and KO101/22, with Applicants: Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo,* Constitutional review of Law No. 08/L-136 on Amending and Supplementing Law No. 06/L-056 on the Prosecutorial Council of Kosovo, Judgment of 24 March 2023, paragraphs 347-350, and the Court's Judgment in cases KO216/22 and KO222/22, with Applicants*: Isak Shabani and 10 (ten) other deputies and KO220/22, with Applicant: 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, Judgment of 2 August 2023, paragraphs 227-230).

220. The existence of two parallel laws, namely articles 42, 43 and 59 of the Law on Internal Trade and the contested Law, and which (i) regulate the intervention of the state in the free economy in circumstances of market destabilization and/or disruption through the imposition of interim safeguard measures on economic operators, interfering with their rights and freedoms, including through decision-making mechanisms regulated in different ways; and (ii) enable the imposition of parallel restrictive measures for economic operators including relevant sanctions, does not serve the principle of legal certainty, and prevents legal/natural persons, namely economic operators, to regulate their behavior in accordance with the applicable law within the a market economy with free competition that is the basis of the economic regulation and value of the Republic of Kosovo. Moreover, such an approach is also contrary to the provisions of paragraph 1 of Article 119 of the Constitution, and according to which, the Republic of Kosovo provides a favorable legal environment for the market economy, freedom of economic activity and security of public and private property.

221. Therefore, the Court also considers that Article 10 (Entry into force) of the contested Law is not in compliance with the principle of legal certainty and the rule of law, guaranteed by paragraph 1 of Article 7 of the Constitution and paragraph 1 of Article 119 of Constitution.

222. In the end, the Court recalls that the Applicants' referrals were submitted to the Court based on paragraph 5 of Article 113 of the Constitution. This category of referrals has a suspensive effect because based on Article 43 (Deadline) of the Law on the Constitutional Court, such a law can be sent to the President of the Republic of Kosovo for promulgation only after the decision of the Court and in accordance with the modalities established in the final decision of the Court on the contested case.

223. The Court will further emphasize that in the Court's case law se regarding the category of Referrals under paragraph 5 of Article 113 of the Constitution, in case of finding that certain provisions of the contested law are not compatible with the Constitution, the Court, (i) declared invalid only the provisions deemed in contradiction to the Constitution, while the rest of the law has been sent to the President for promulgation in accordance with the modalities of the Court's judgment, as is the case with the Court's Judgments in case KO01/17, with the Applicant *Aida Dërguti and 23 deputies of others of the Assembly of the Republic of Kosovo* regarding the constitutional review of the Law on amending and supplementing the Law no. 04/L-261 on the War Veterans of the Kosovo Liberation Army or the case KO108/13, with the Applicant Albulena Haxhiu and 12 other deputies of the Assembly of the Republic of Kosovo regarding the constitutional review of the Law no. 04/L-209 on Amnesty or case KO 216/22, Applicant: *Isak Shabani and ten (10) other deputies and* KO 220/22, Applicant: *Arben Gashi and nine*

(9) other deputies of the Assembly of the Republic of Kosovo regarding 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 Law No. 08/L-197 on Public Officials; or (ii) in case of assessment that the provisions declared as contrary to the Constitution are of fundamental importance for the law in question and as a consequence, its promulgation or entry into force would render it unenforceable, has annulled the relevant law in its entirety, as is the case with the Court's Judgment in case 126 KO43/19 Applicants *Albulena Haxhiu, Driton Selmanaj and thirty (30) other deputies of the Assembly of the Republic of Kosovo*, regarding the 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 and in cases KO100/22 and KO101/22 (cited above) regarding Law No. 08/L-136 on Amending and Supplementing Law no. 06/L-056 on Kosovo Prosecutorial Council.

224. In the circumstances of the present case, the Court has found that essential provisions of the contested Law, including those that violate the essential principle of legal certainty, are not in compliance with the Constitution. As a result and taking into account that the rest of the contested Law would be difficult to apply after declaring the aforementioned provisions invalid, the Court considers that the contested Law should be declared invalid, in its entirety.

The request for interim measure

225. The Court recalls that the Applicants have requested the Court to impose an interim measure, in order to prevent the implementation of the contested Law, until the final decision on the respective requests is taken.

226. 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 laws that are contested pursuant to paragraph 5 of Article 113 of the Constitution, stating 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*".

227. Based on the abovementioned provision, on 17 November 2022, the Court requested from the President of the Assembly, the President and the Secretary of the Assembly to take into consideration the requirements of paragraph 2 of Article 43 of the Law.

228. Therefore, taking into account that based on paragraph 2 of Article 43 of the Law, the contested Law pursuant to paragraph 5 of Article 113 of the Constitution cannot be decreed, enter into force, or produce legal effects before the decision is rendered by the Court, as well as in accordance with Article 27 (Interim Measures)] of the Law and Rule 47 (Suspensive Effect of Referrals) of the Rules of Procedure, the request for an interim measure is without object of review and, as such, is rejected (see, *mutatis mutandis*, Judgment of the Court in cases KO100/22 and KO101/22, KO100/22, *with Applicant: Abelard Tahiri and ten (10) other deputies and KO101/22 with Applicant: Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo,* (cited above), paragraph 411, and Judgment in cases KO216/22 and KO222/22, with Applicants*: Isak Shabani and 10 (ten) other deputies and KO220/22, with Applicant: Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo,* (cited above), paragraph 405).

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 pursuant to Rules 45, 48 (1) (a) and 72 of the Rules of Procedure, on 8 November 2023

DECIDES

I. TO DECLARE, unanimously, the Referral admissible;

II. TO HOLD, with seven (7) votes for and one (1) against that, paragraphs 2 and 4 of Article 4 (Essential Products), paragraph 2 of Article 5 (Interim measures), paragraphs 1, 2, 3, 4, 5, 6 and 9 of Article 8 (Decision-making) and paragraph 2 of Article 9 (Supervision and sanctions) of Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, are not in compliance with paragraph 1 of Article 7 [Values], Article 10 [Economy] and paragraph 5 of Article 119 [General Principles] of the Constitution of the Republic of Kosovo;

III. TO HOLD, with seven (7) votes for and one (1) against that, that Article 10 (Entry into force) of Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market is not in compliance with paragraph 1 of Article 7 [Values] and paragraph 1 of Article 119 [General Principles] of the Constitution of the Republic of Kosovo;

IV. TO DECLARE, with seven (7) votes for and one (1) against, invalid, in its entirety, Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market;

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

VI. TO NOTIFY this Judgment to the Parties;

VII. 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**

Remzije Istrefi-Peci Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.