THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Newsletter

July — December 2023

CONTENT:

Constitution of Kosovo - Chapter VIII

Constitutional Court

Article 112

[General Principles]

1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

2. The Constitutional Court is fully independent in the performance of its responsibilities.

Composition of the Constitutional Court

The Constitutional Court of the Republic of Kosovo is composed of 9 (nine) Judges.

The Judges of the Constitutional Court of the Republic of Kosovo are appointed in accordance with Article 114 [*Composition and Mandate of the Constitutional Court*] of the Constitution and Articles 6 and 7 of the Law on the Constitutional Court of the Republic of Kosovo.

Following the establishment of the Constitutional Court in 2009 and in accordance with the former Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution, 6 (six) out of 9 (nine) judges were appointed by the President of the Republic of Kosovo on the proposal of the Assembly.

Of the 6 (six) national judges 2 (two) judges served for a non-renewable term of 3 (three) years, 2 (two) judges served for a non-renewable term of 6 (six) years and 2 (two) judges served for a non-renewable term of 9 (nine) years.

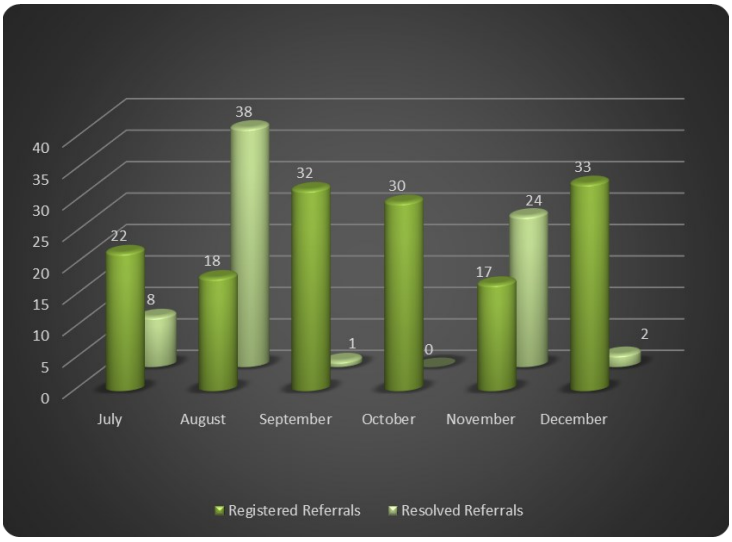
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

** The Court is currently composed of eight (8) judges.*

Status of cases

During the six-month period: 1 July – 31 December 2023, the Court has received 152 Referrals and has processed a total of 364 Referrals/Cases.
A total of 73 Referrals were decided or 20.05% of all available cases. During this period, 89 decisions were published on the Court's webpage.

The dynamics of received referrals by month (1 July - 31 December 2023)



The following are 16 judgments that the Court rendered during the six month period, 1 July - 31 December 2023:

- Judgment in Case KO159/21 and KO160/21, submitted by: Municipality of Prishtina. The filed referral requested the constitutional review of the "Report on the review of legality of Municipal act no. 020-558/17 of the Ministry of Local Government Administration of 12 July 2021"/ Constitutional review of the "Report on the review of legality of Municipal act no. 020-558/10 of the Ministry of Local Government Administration of 8 July 2021" .
- Judgment in Case KO 164/21, submitted by: Municipality of Prishtina. The filed referral requested the constitutional review of Article 6, paragraph 3, points 3.1 and 3.2 of Administrative Instruction (MEST) no. 151/2020 of the Ministry of Education, Science, Technology and Innovation of 22 December 2020.
- Judgment in Case KI 55/22, submitted by: Sasha Spasiq. The filed referral requested the constitutional review of Decision [2022:19820], of the Basic Court in Ferizaj of 17 May 2022 and Decision [PN1 no. 704/2022] of the Court of Appeals of Kosovo of 31 May 2022.
- Judgment in Case KO 207/22, submitted by: President of the Assembly of the Republic of Kosovo. The filed referral requested the Assessment of the proposed amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and submitted by the President of the Assembly of the Republic of Kosovo on 24 December 2022, by letter no. 08/3198/DO-1347/1.
- Judgment in Case KI 161/21, submitted by: Suzana Zogëjani Sekiraqa. The filed referral requested the constitutional review of Judgment [Pml. no. 310/2020] of the Supreme Court of Kosovo of 28 April 2021.
- Judgment in Case KI 129/22, submitted by: Sasa Milosavljevic. The filed referral requested the constitutional review of Decision [2022:19820] of the Basic Court in Ferizaj of 12 August 2022 and Decision [PN1 no. 1109/2022] of the Court of Appeals of Kosovo of 5 September 2022.
- Judgment in Case KI 122/21, submitted by: Lekë Bytyqi. The filed referral requested the constitutional review of the Supreme Court Ruling [CPP. No. 1/2021] of 10 March 2021.
- Judgment in Case KI 206/21, submitted by: Ukë Salihi. The filed referral requested the constitutional review of the Supreme Court Ruling [CPP. No. 1/2021] of 10 March 2021.
- Judgment in Case KO 134/21, submitted by: Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Decision [no. 08-V-036] of the Assembly of the Republic of Kosovo of 8 July 2021.
- Judgment in Case KO 216/22 and KO 220/22, submitted by: Isak Shabani and ten (10) other deputies of the Assembly of the Republic of Kosovo, and Arben Gashi and nine (9) other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Articles 9, 12, 46 and 99 of the Law No. 08/L-197 on Public Officials.
- Judgment in Case KI 164/23, submitted by: Mejrem Qehaja Rexha. The filed referral requested the constitutional review of the court proceedings in the Basic Court in Gjakova regarding the case

[C. no. 546/18], Judgment of 31 August 2023.

- Judgment in Case KI 21/23, submitted by: "Kelkos Energy" L.L.C. The filed referral requested the constitutional review of Judgment [ARJ. UZVP. No. 119/22] of the Supreme Court of Kosovo of 16 December 2022.
- Judgment in Case KI 90/23, submitted by: Shqipdon Fazilu. The filed referral requested the constitutional review of Judgment [ARJ.nr.114/2022] of 20 December 23 2022 of the Supreme Court of the Republic of Kosovo, related to Decision [AA.no.650/2022] of 1 September 2022 of the Court of Appeal and Decision [A.nr.1875 /22] of 2 August 2022 of the Basic Court in Pristina.
- Judgment in Case KO 177/23, submitted by: Municipality of Prizren. The filed referral requested the constitutional review of Article 5 of Law No. 08/L-224 on Amending and Supplementing Law No. 06/L-005 on Immovable Property Tax.
- Judgment in Case KO 173/22, submitted by: Arben Gashi and nine (9) other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market.
- Judgment in Case KI 74/22, submitted by: Zoran Đokić. The filed referral requested the constitutional review of Judgment [Pml. no. 19/2022] of the Supreme Court, of 15 February 2022.

Types of alleged violations

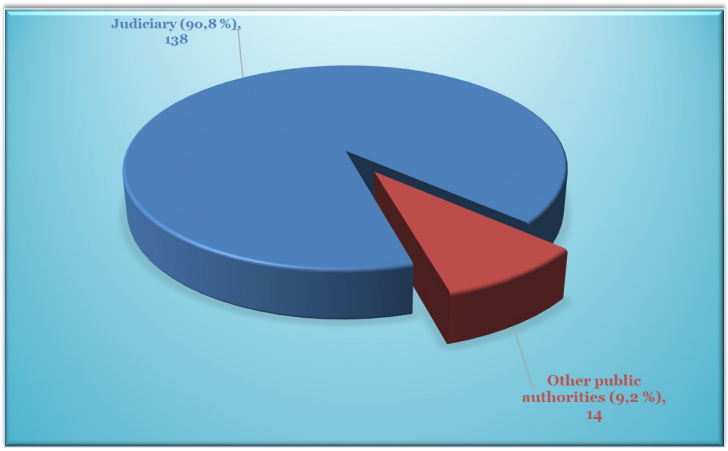
The types of alleged violations in the 152 referrals received during the six-month period, 1 July - 31 December 2023, are the following:

- Article 3 [Equality Before the Law] - 8 cases or 2,4%;
- Article 7 [Values] - 4 cases or 1,2%;
- Article 21 [General Principles] - 4 cases or 1,2%;
- Article 22 [Direct Applicability of International Agreements and Instruments] - 8 cases or 2,5%;
- Article 23 [Human Dignity] - 6 cases or 1,8%;
- Article 24 [Equality Before the Law] - 37 cases or 11,3%;
- Article 29 [Right to Liberty and Security] - 9 cases or 2,8%;
- Article 30 [Rights of the Accused] - 5 cases or 1,5%;
- Article 31 [Right to Fair and Impartial Trial], 108 cases or 31,4 %;
- Article 32 [Right to Legal Remedies] - 27 cases or 8,3%;
- Article 33 [The Principle of Legality and Proportionality in Criminal Cases] - 4 cases or 1,2%;
- Article 34 [Right not to be Tried Twice for the Same Criminal Act] - 3 cases or 0,3%;
- Article 46 [Protection of Property] - 30 cases or 9,2%;
- Article 49 [Right to Work and Exercise Profession] - 5 cases or 1,5%;
- Article 53 [Interpretation of Human Rights Provisions] - 8 cases or 2,4%;
- Article 54 [Judicial Protection of Rights] - 30 cases or 9%;
- Article 55 [Limitations on Fundamental Rights and Freedoms] - 4 cases or 1,2%;
- Article 56 [Fundamental Rights and Freedoms During a State of Emergency] - 2 cases or 0,6%;
- Article 119 [General Principles] - 3 cases or 0,9%;
- Other violations - 26 cases or 7,8%.

Alleged violators of rights

- 138 Referrals or 90,8% of Referrals refers to violations allegedly committed by court's decisions;
- 14 Referrals or 9,2% of Referrals refers to decisions of other public authorities;

Alleged violators of rights
(1 July - 31 December 2023)



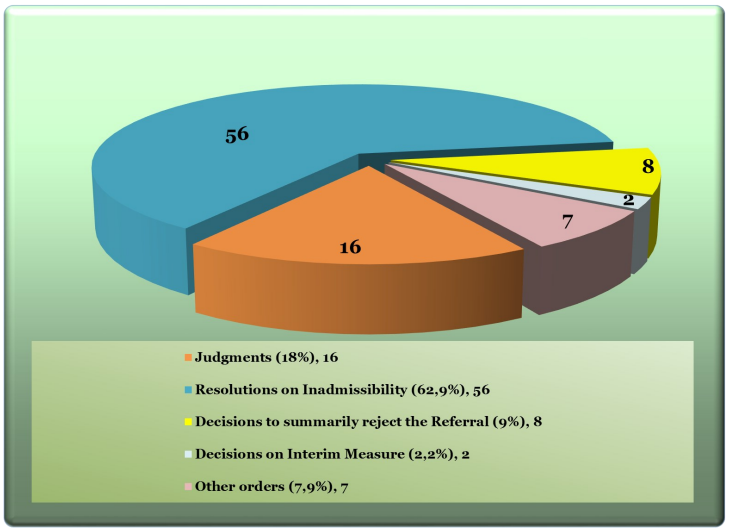
Sessions and Review Panels

During the six-month period: 1 July - 31 December 2023, the Constitutional Court held 21 plenary sessions and 94 Review Panels, in which the cases were resolved by decisions, resolutions and judgments. During this period, the Constitutional Court has published 89 decisions.

The structure of the published decisions is the following:

- 16 Judgments (18%);
- 56 Resolutions on Inadmissibility (62,9%);
- 8 Decisions to summarily reject the Referral (9,8%);
- 2 Decisions on Interim Measure (2,2%);
- 7 Other Orders (7,9%);

Structure of decisions
(1 July - 31 December 2023)

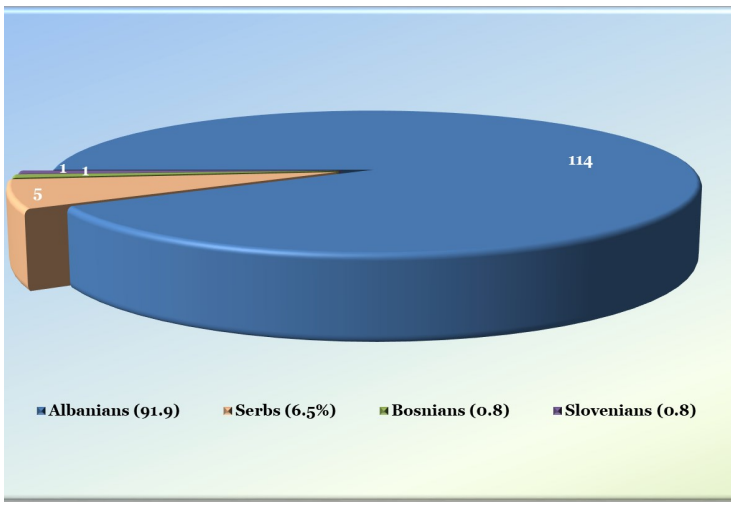


Access to the Court

The access of individuals to the Court is the following:

- 114 Referrals were filed by Albanians, or 91,9%;
- 8 Referrals were filed by Serbs, or 6,5%;
- 1 Referral was filed by Bosnians, or 0,8%;
- 1 Referral was filed by Slovenians, or 0,8%.

Ethnic structure of the Applicants
(1 July - 31 December 2023)



19 July 2023

The judges of the Constitutional Court and the Supreme Court of the Republic of Kosovo, as part of organizing joint professional workshops, participated in the next workshop organized with the support of the German Foundation for International Legal Cooperation (IRZ), held in Thessaloniki on 18-19 July 2023.

Following the opening remarks by the President of the Constitutional Court, Mrs. Gresa Caka-Nimani, the President of the Supreme Court, Mr. Fejzullah Rexhepi, and the representatives of IRZ, Mr. Frank Hupfeld, the two-day workshop continued with discussions by the participants on the topics: "Right of Access to Justice", "Right to Liberty and Security – Detention Cases", and "Right to Reasoned Decision", where the judges of the Constitutional Court, Mr. Safet Hoxha, Mr. Nexhmi Rexhepi, and Mr. Enver Peci, as well as the judges of the Supreme Court, Mr. Shukri Sylejmani, Mr. Ragip Namani, and Mr. Agim Maliqi, made their presentations.

Implementation of regular court decisions and those of the Constitutional Court of Kosovo, exchange of relevant information with the regular courts regarding cases pending before the Constitutional Court, and the possibilities for deepening mutual cooperation in facilitating administrative judicial procedures for the parties involved were also topics of discussion in the workshop.

The workshop was facilitated by Mr. Winfried Schubert, former judge and former President of the Constitutional Court of the Saxony-Anhalt region, as well as former President of the Higher Regional Court in Naumburg, Germany. With his presentations in each of the panels, he brought the perspective and experience of the regular judiciary and the constitutional judiciary of Germany.

6 October 2023

The Constitutional Court participated in the roundtable discussion together with the representatives of civil society organizations and local media, organized with the support of the United States Agency for International Development (USAID) in Kosovo, which was held on Friday, 6 October 2023, at the "Swiss Diamond" hotel in Prishtina.

After the opening remarks of the President of the Constitutional Court, Mrs. Gresa Caka – Nimani, and the Director of Democracy and Governance Office at USAID, Mr. Noel Bauer, the roundtable discussion was followed by the broadcast of a video-presentation regarding the decision-making process of the Constitutional Court, realized with the support of USAID. During the conversation, the representatives of civil society organizations and the media presented

their views regarding the cooperation with the Constitutional Court so far in terms of communication, handling of requests for access to official information, as well as correct interpretation, but also misinterpretation of the content of the Court's decisions in the public.

All participants considered positively the commitment of the Court to answer to the questions and requests of civil society organizations/media within the day or within 24 hours at the latest, as well as the fact that the Constitutional Court has so far approved every request of the parties for access to the relevant case file after the publication of the judgment.

At the end of the discussions, all parties underlined the importance of the event and expressed their willingness to participate in similar meetings in the future as well.

11 October 2023

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, received in a meeting the new Head of the EULEX Mission in Kosovo, Mr. Giovanni Pietro Barbano.

After welcoming him and wishing him success in his new position, President Caka-Nimani made a brief presentation regarding the Court's work so far, the

current challenges in its operation and the commitment made in building professional capacities and consolidating case law of the Constitutional Court.
The subject of the joint discussion was the recent developments in the constitutional judiciary of Kosovo and the necessity of consolidating the legal framework for the protection of human rights and freedoms based on European standards.
Mr. Barbano appreciated the work of the Constitutional Court so far and expressed his commitment to the further contribution of the EULEX Mission in strengthening the rule of law in the country.

23 October 2023

The Constitutional Court of the Republic of Kosovo celebrated its 14th anniversary of the Judicial Year with a solemn ceremony, which was organized in the "Emerald Hotel" in Prishtina.
The ceremony was attended by the highest state leaders, accredited representatives of diplomatic missions and international organizations in the country, as well as delegations of the highest level from: the Constitutional Court of Austria, Constitutional Court of Belgium, Constitutional Court of Bosnia and Herzegovina, Constitutional Court of Bulgaria, Supreme Court of Estonia, Constitutional Council of France, Supreme Court of the Netherlands, Supreme Court of Ireland, Constitutional Court of Croatia, Constitutional Court of Latvia, Constitutional Court of Lithuania, Constitutional Court of North Macedonia, Constitutional Court and Supreme Administrative Court of Portugal, Constitutional Court and Supreme Court of Albania, as well as the Constitutional Court of Turkey. Representatives of the Venice Commission and the European Court of Human Rights also participated in the ceremony of the 14th Judicial Year.
Participants of the ceremony were addressed by the President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, the federal judge and the main adviser of the United States in support of the drafting process of the Constitution of

of the Republic of Kosovo, Mr. John Tunheim and the President of the Constitutional Council of France and at the same time the former French Prime Minister, Mr. Laurent Fabius. Through a video address, the participants of this solemn ceremony were also addressed by the President of the Republic of Kosovo, Mrs. Vjosa Osmani – Sadriu.

24 October 2023

In celebration of the 14th anniversary of the work of the Constitutional Court, an international conference was held at the "Emerald Hotel" in Pristina on the topic: "*Contribution of the Constitutional Courts to the protection and strengthening of the fundamental values of democracy, the rule of law and fundamental human rights and freedoms*".

Each session was led by a judge of the Constitutional Court, in which the presidents and judges of the Supreme and Constitutional Courts of: Turkey, Albania, Latvia, Austria, Portugal, Ireland, Belgium, Bosnia and Herzegovina, Bulgaria, the Netherlands, Estonia, Lithuania, Croatia and North Macedonia, as well as representatives of the ECHR, the Venice Commission and academics and prominent international personalities in the field of constitutional

justice, were represented with their discussions and presentations.

27 October 2023

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, and the President of the Constitutional Court of the Republic of Bulgaria, Mrs. Pavlina Palova, along with the Presidents of the Constitutional Courts of the Republic of Albania, Turkey, North Macedonia and Montenegro, signed today in Sofia, Bulgaria, a Memorandum of Understanding, establishing the Balkan Constitutional Courts Forum.

The Constitutional Court of the Republic of Kosovo becomes for the first time a founding member of an international professional constitutional justice forum with equal rights.

In the capacity of Observer Members, the Constitutional Court of Bosnia and Herzegovina, the Constitutional Court of Croatia, the Council of State of Greece and the Constitutional Court of Romania are also part of the Balkan Constitutional Courts Forum, established with the support of the European Court of Human Rights and the European Court of Justice.

31 October 2023

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, received in a farewell meeting the current Ambassador of the Republic of Albania in Kosovo, Mr. Qemal Minxhozi. During the joint friendly meeting, having expressed her gratitude for the extraordinary contribution given throughout the years of his service in the strengthening and deepening of the mutual relations between the institutions of the Republic of Kosovo and the Republic of Albania, President Caka-Nimani thanked Ambassador Minxhozi for his contribution in cultivating and advancing the relations of cooperation between the constitutional courts of both countries.

Ambassador Minxhozi thanked the President Caka-Nimani for her warm welcome and appreciation, expressing his commitment to continue with his engagement on a personal level, in support of the Republic of Kosovo and its institutions in their journey towards Euro-Atlantic integrations.

10 November 2023

In the Constitutional Court of the Republic of Kosovo, an informative workshop was held with newly appointed judges, organized within the initial training program by the Academy of Justice of Kosovo.

The new judges were received at the meeting by the judge of the Constitutional Court, Mr. Nexhmi Rexhepi, who during his presentation first discussed the role and competencies that the Court enjoys in the legal system of the Republic of Kosovo, its organizational structure, as well as the parties authorized to submit referrals.

Judge Rexhepi further spoke in more detail about the procedures for dealing with cases, about the criteria for adjudicating a case in a reasonable time, about using the Court's judgments as a precedent for decision-making in similar cases, as well as about the possibilities that the regular courts through the mechanism of incidental control should refer to the Constitutional Court.

During the conversation, the new judges expressed their interest in being informed in more detail about the cases when the Court can review its case law, the difference between the control of legality and constitutionality of acts, as well as about different aspects of the referral procedure of requests through incidental control.

11 November 2023

Deputy President of the Constitutional Court of the Republic of Kosovo, Mr. Bajram Ljatifi, is on an official visit to Sarajevo, upon the invitation of the international non-governmental organizations "Civic Rights Defender" based in Stockholm, and the "AIRE Centre" based in London.

Deputy President Ljatifi has been invited to participate at the 10th Regional Rule of Law Forum for South East Europe, which is being organized this year on 10-11 November 2023, in the capital city of Bosnia and Herzegovina, on the topic of "Balancing Data Protection with Transparent Justice: The European Legal Framework".

The Regional Rule of Law Forum is one of the most significant events of the year for representatives of the judiciary, human rights lawyers, the legal community and non-governmental organizations in the Western Balkans. Its primary purpose is to promote and implement the European Convention on Human Rights (ECHR), encourage regional cooperation to strengthen the rule of law, and provide assistance in the integration process of the states of the region into the European Union.

27 November 2023

A delegation of the Constitutional Court of the Republic of Kosovo, headed by the President of the Court, Mrs. Gresa Caka-Nimani, stayed in an official visit to Tirana.

The visit of the delegation from the Constitutional Court of Kosovo to the Albanian capital was carried out at the invitation of the Constitutional Court of the

Republic of Albania, to attend the ceremony marking the 25th anniversary of the Constitution of the Republic of Albania and the international conference organized on this jubilee anniversary.

President Caka-Nimani was one of the keynote speakers at the international conference, which was attended by presidents and judges of European

constitutional courts, as well as the highest institutional representatives of the Albanian state.

8 December 2023

In the next activity "Open Court Day", organized in celebration of International Human Rights Day on Friday, 8 December 2023, dozens of students from law faculties and representatives of civil society organizations in Kosovo visited the Constitutional Court.

The first group of visitors consisting of students from the Faculty of Law of the University of Gjilan "Kadri Zeka", were received by the Constitutional Court Judges Safet Hoxha and Remzije Istrefi – Peci. During her presentation, Judge Istrefi – Peci spoke about the history of the establishment of the Constitutional Court, organization of its work to date, and the constitutional jurisdiction of the Court. Meanwhile, Judge Hoxha provided a brief elaboration on the importance of respecting fundamental rights and freedoms, and the International Human Rights Day.

Judge Radomir Laban received the second group of visitors, consisting of students from the Legal Clinic of the Free Legal Aid Center of the Kosovo Law Institute (KLI). Judge Radomir informed them about the activities of the Court hitherto, recent cases reviewed by the Court, including the right to life as a consequence of domestic violence, and dissenting and concurring opinions of judges.

The third group of visitors on the "Open Court Day"

comprised of students from the Educational Institution for Vocational Education "Hoxhë Kadri Prishtina", who were received by Deputy President of the Constitutional Court Bajram Ljatifi and Judge Nexhmi Rexhepi. While Deputy President Ljatifi briefed the students on key points related to the history of constitutional law in our country and international human rights, Judge Rexhepi presented the role and function of the Constitutional Court, the mandate of constitutional judges, and the human rights guaranteed by our Constitution.

The "Open Court Day" activity concluded with a visit from students of the Faculty of Law of the University of Mitrovica "Isa Boletini", who were welcomed by Judge Selvete Gërxhaliu – Krasniqi, who, among other things, informed the future jurists about the Constitutional Court's rapport with the regular judiciary and incidental control mechanisms, criteria for citizens and authorized parties to submit referrals, and the application of the case-law of the European Court of Human Rights in the decisions of the Constitutional Court.

13 December 2023

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka-Nimani, hosted in a meeting today the newly appointed Ambassador of the Republic of Albania to Kosovo, Mr. Petrit Malaj.
After congratulating him on his appointment and wishing him success in his new assignment, President Caka-Nimani informed Ambassador Malaj about the work to date and the current composition of the Court, as well as the recent developments in the constitutional judiciary of Kosovo.
She highly appreciated the institutional cooperation between the Republic of Kosovo and Albania, relations of cooperation, particularly with the Constitutional Court of Albania.

Ambassador Malaj thanked President Caka-Nimani for the hospitality and expressed his dedication to deepening mutual cooperation between the state institutions of both countries.

14 December 2023

Supported by the German Foundation for International Legal Cooperation (IRZ), in Prishtina took place a joint conference between the Constitutional Court and the Supreme Court of the Republic of Kosovo, and the Constitutional Court and the Supreme Court of the Republic of Albania, wherein judges from all four courts exchanged their mutual experiences regarding the control of legality and constitutionality in both countries.

The proceedings of the conference commenced with introductory remarks by the President of the Constitutional Court of Kosovo, Mrs. Gresa Caka - Nimani, the President of the Constitutional Court of Albania, Ms. Holta Zaçaj, the President of the Supreme Court of Albania, Mr. Sokol Sadushi, the President of the Supreme Court of Kosovo, Mr. Fejzullah Rexhepi, the Ambassador of Albania to Kosovo, Mr. Petrit Malaj, the representative of the German Embassy, Mr. Sebastian Leuschner, and the representative of IRZ, Mr. Frank Hupfeld.

The conference continued its proceedings under the moderation of the President of the Supreme Court of Kosovo, Mr. Fejzullah Rexhepi, with discussions on the issue of borders and jurisdiction of regular courts in matters of constitutionality and the jurisdictions of constitutional courts in matters of legality. Presentations were made by Mr. Sokol Sadushi, President of the Supreme Court of Albania, Mr. Agim Maliqi, judge of the Supreme Court of Kosovo, Ms. Elsa Toska, judge of the Constitutional Court of Albania, Mr. Bajram Ljatifi, Deputy President of the Constitutional Court of Kosovo, and Ms. Gabriele

Britz, former judge of the Federal Constitutional Court of Germany.

The second section of the conference, under the moderation of the Judge of the Constitutional Court of Kosovo, Mrs. Remzije Istrefi-Peci, continued its proceedings regarding the assessment of the constitutionality and legality of decisions of the judicial, legislative, and executive powers. Presentations were made by Mr. Asim Vokshi, judge of the Supreme Court of Albania, Mr. Zenel Leku, judge of the Supreme Court of Kosovo, Ms. Marsida Xhaferllari, judge of the Constitutional Court of Albania, Mr. Nexhmi Rexhepi, judge of the Constitutional Court of Kosovo, and Ms. Gabriele Britz.

19 December 2023

Officials of the Constitutional Court of the Republic of Kosovo participated in the two-day workshop on the standards of the Istanbul Convention and their reference in the case-law of the European Court of Human Rights (ECtHR), organized with the support of the Council of Europe Office in Prishtina, on 18 – 19 December 2023.

The workshop provided an important discussion platform on the applicability of the provisions of the Istanbul Convention at the national level and the need to align the domestic legislative framework with its standards, taking best international practices and important cases from the ECtHR case-law as example.

The workshop, held as part of the Council of Europe project "Aligning laws and policies with the Istanbul Convention", aimed to strengthen the professional capacities of officials of the Constitutional Court to implement the standards of the Istanbul Convention and their reference in the Court's judgments.

20 December 2023

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani and judges of the Constitutional Court:

Ms. Remzije Istrefi—Peci, Mr. Nexhmi Rexhepi and Mr. Enver Peci, participated in a joint workshop with the judges of the basic courts of Prishtina, Mitrovica, Ferizaj and Gjilan, which was organized with the support of the Council of Europe Office in "Hotel Venus" in Prishtina.

The topic of the joint discussion between the constitutional judges and the judges of the four basic courts was, among others, the interaction of judicial and constitutional jurisdiction to guarantee the rule of law, and the proper administration of justice in the context of the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the European Convention on Human Rights.

The role of regular courts in the interpretation of the Constitution, the legal basis and the case law of the Constitutional Court in relation to incidental control, the divergence of the case law of regular courts and the right to a reasoned court decision, as well adjudication of cases within a reasonable time, were some of the topics the constitutional judges addressed in their presentations.

The workshop held is a continuation of professional consultative meetings between constitutional judges and regular court judges, intending to improve the administration of justice and strengthen the rule of law in the country.

Judgment
KI 161/21
Applicant
Suzana Zogëjani Sekiraqa

Request for constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo [Pml. no. 310/2020] of 28 April 2021

The Court decided by a majority of votes that (i) the Referral is admissible for review on merits and (ii) held that the Judgment [Pml. no. 310/2020] of 28 April 2021 of the Supreme Court in conjunction with the Judgment [PAKR. no. 133/2020] of 3 July 2020 of the Court of Appeals and the Judgment [PKR. no. 37/2019] of 24 January 2020 of the Basic Court of Prishtina are not in compliance with paragraph 1 and 4 of Article 31 [Right to Fair and Impartial Trial] of the Constitution and item d) of paragraph 3 of Article 6 (Right to a fair trial) of the European Convention on Human Rights.

The Judgment clarifies that the circumstances of the present case, which are elaborated in detail in the published Judgment, are related to the sentence of the Applicant to twenty-five (25) years of imprisonment for the murder of her husband, namely the deceased A.S., in 2018. More precisely, by the Judgment [PKR. no. 37/2019] of 24 January 2020 of the Basic Court of Prishtina, the Applicant was found guilty of committing the criminal offense of "Aggravated Murder" as it is established in items 1.3 and 1.4 of paragraph 1 of Article 179 (Aggravated Murder) of the Criminal Code of the Republic of Kosovo.

The Judgment further clarifies that the circumstances that preceded the conduct of the criminal proceedings against the Applicant, , namely the fact that the Applicant from 2007 to 2018, initially to the competent institutions of the Republic of Kosovo and after that to the authorities of the Republic of France reported that she was a victim of .domestic violence; (ii) from 2010 to 2018, at various periods of time, she and her children were offered shelter by the French authorities; (iii)In 2018 the Court of Lyon in the Republic of France found guilty and sentenced for domestic violence now the deceased A.S. and he was later released on bail; whereas (iv) on 21 September 2018, A.S. was deprived of life by the Applicant, who following this along with her children, returned to the Republic of Kosovo, where she reported to the Embassy of the Republic of France in the Republic of Kosovo and on 4 October 2018the latter was arrested by the competent authorities of the Republic of Kosovo. This criminal proceedings in the circumstances of the present case ended with the issuance of the challenged Judgment [Pml. no. 310/2020] of 28 April 2021 of the Supreme Court.

The Applicant in the proceedings before the regular courts did not challenge the act which she was charged with, however, in the course of the criminal proceedings against her, she has consistently and among others, requested (i) relevant psychiatric examination; (ii) confrontation with the witnesses whose testimonies were obtained by the French authorities, but during the conduct of the criminal proceedings were only read during the main trial and the Applicant did not have the opportunity to confront them at any stage of the criminal procedure; (iii) taking into account the testimonies, including those of the French authorities regarding the fact that she was a victim of domestic violence; and challenged (iv) the questioning of her son, namely the minor, X.X, as a witness during the proceedings in the Basic Court, without professional support, namely without the presence of a psychologist. The requests and/or claims of the Applicant were rejected by the regular courts. As a result, the Applicant raises the same claims before the Court, challenging the relevant Judgments of the regular courts, with the allegations that the latter were rendered in violation of the procedural guarantees established by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights, with emphasis on the violation of the principle of equality of arms.

In the context of the Applicant's claims, the Court (i) first elaborated on the general principles regarding the principle of equality of arms based on its case law and that of the European Court of Human Rights, including the relevant principles stemming from the Council of Europe Convention on Preventing and

Combating Violence against Women and Domestic Violence (Istanbul Convention) and the Convention on the Rights of the Child, directly applicable in the legal order of the Republic of Kosovo and with precedence over the applicable laws, and following this (ii) applied the latter to the specific circumstances of the present case. According to the detailed clarifications in the published Judgment, the Court, among other things, initially emphasized that based on constitutional guarantees, anyone accused of a criminal offense has the right to ask questions of witnesses and to request the mandatory appearance of witnesses, experts and other persons, who can clarify the facts, the guarantees which are further specified in the applicable laws of the Republic of Kosovo. In the circumstances of the present case and in the context of the constitutional principle of equality of arms, the Court, among other things, emphasized that in the court proceedings before the regular courts in this criminal process, the prosecution and the defense were not treated equally, among other things , taking into account that (i) the Applicant and/or her defense, at any stage of the criminal procedure, did not have the opportunity of confronting the witnesses or the testimonies of the latter, whose statements were read in the judicial process but which, based on the reasoning of the regular courts, contrary to the constitutional guarantees and the case law of the European Court of Human Rights, no procedural action was taken so that the Applicant could have been provided with such an opportunity; (ii) the requests of the Applicant and/or her defense to present the evidence, including those of the French authorities, based on which it would be proven that she was a victim of domestic violence, were rejected by all court instances; and (iii) in the specific circumstances of the present case, the continuous refusal of the regular courts to perform the psychiatric examination of the Applicant is contrary to the guarantees defined in the context of the specific circumstances of the case through the case law of the European Court of Human Rights, among others, in the Judgment Gaggl v. Austria, moreover, taking into account the fact that the reasoning of the Basic Court itself uses prejudicial language against the Applicant.

Additionally, and importantly, the Judgment elaborates on the applicable principles and standards, including through international instruments, in cases where minors testify in court proceedings. Referring to Article 50 [Rights of Children] of the Constitution, Article 3 of the Convention on the Rights of the Child, obligations stemming from Article 18 (General obligations) of the Istanbul Convention and the case law of the European Court on Human Rights, the court emphasized the fact that all public authorities, including courts, have the obligation to protect the best interests of the child in criminal proceedings, and that in the circumstances of the present case, the courts failed to fulfill this obligation, taking into account, among other things, the fact that the minor X.X. was the only eyewitness in the circumstances of the present case, in a context in which he testified in a criminal case related to the murder of his father and for which his mother was accused, and that he was interrogated without professional support, namely without the presence of a psychologist and/or adequate professional. The Court emphasized that in terms of the positive obligations defined by the Constitution and international instruments, including the relevant case law of the European Court of Human Rights, the best interest of the child should be the first and most important consideration for all public authorities, including the justice system.

Based on the above, the Court concluded that the relevant judgments of the regular courts were rendered in violation of the principle of equality of arms and therefore, contrary to the procedural guarantees embodied in paragraphs 1 and 4 of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with item d) of paragraph 3 of Article 6 (Right to a fair trial) of the European Convention on Human rights. As a result, the Court declared the latter invalid and remanded the relevant criminal case to the Basic Court in Prishtina for retrial.

In the end, the Court emphasized the fact that the effects of this Judgment are only related to the findings in terms of the procedural guarantees embodied in the aforementioned articles of the Constitution and the European Convention on Human Rights, regarding the violation of the principle of equality of arms in context of the conducted criminal proceedings and that the latter does not in any way prejudice the guilt or the course of the criminal proceedings in the retrial, including but not limited to the way of handling the indictment brought against the Applicant related to the criminal offense of aggravated murder for which she is accused and the relevant decision-making regarding the extension of detention, the issues which are within the full competence of the Basic Court in Prishtina, as stipulated by the relevant provisions of the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo. This Judgment will also be supplemented with a dissenting opinion.

Judgment

KO 134/21

Applicant

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

Request for constitutional review of Decision [no. 08-V-036] of the Assembly of the Republic of Kosovo of 8 July 2021

The Referral for the constitutional review of the aforementioned Decision of the Assembly was submitted to the Court by ten (10) deputies of the Assembly, based on the authorizations established in paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo. The Judgment clarifies that, as all interested parties have been notified, after the submission of this Referral and until December 2022 when the following judge of the Constitutional Court was decreed, the latter did not have a decision-making quorum regarding the Referral KO134/21.

In the case KO134/21, the Court unanimously decided to (i) declare the Referral admissible; and (ii) reject the request for interim measure regarding the effects of the challenged Decision. Whereas, with five (5) votes for and two (2) votes against, the Court has decided to hold that (i) the Decision [no. 08-V-036] of 8 July 2021 of the Assembly of the Republic of Kosovo on the dismissal of all members of RTK's Board is not in compliance with paragraph 1 of Article 7 [Values] and paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution; and (ii) the aforementioned finding, namely the Court's Judgment, has no retroactive effect and does not affect the acquired rights of third parties.

The Court's Judgment initially clarifies that the circumstances of the present case are related to the dismissal of all members of the board of the public broadcaster by the Assembly of the Republic of Kosovo, namely RTK's Board, on 8 July 2021. As clarified in detail in the Judgment, the collective dismissal of RTK's Board, whose members were elected in 2018 and 2020, respectively, was preceded by the review of RTK's Annual Report for 2020 in the Committee for Public Administration, Local Government, Media and Regional Development and in the Committee for Budget, Labor and Transfer and who, after examining the latter, recommended the Assembly to (i) reject the approval of RTK's Annual Report for 2020; and (ii) on the basis of "professional incapability", to dismiss all the members of RTK's Board. The Assembly of the Republic of Kosovo, in the same session, namely that of 8 July 2021, rejected the approval of RTK's Annual Report and dismissed all the members of RTK's Board. The Applicants before the Court challenge the constitutionality of the challenged Decision of the Assembly, arguing, among other things, that it was rendered in violation of (i) the competence of the Assembly for the supervision of RTK under paragraph 9 of Article 65 [Competences of the Assembly] of the Constitution and the respective provisions of the Law no. 04/L-046 on the Radio Television of Kosovo, including Articles 4 [Form of Government and Separation of Power] and 7 [Values] of the Constitution, respectively; and (ii) the specified fundamental rights and freedoms of RTK's Board members. The Applicants' allegations are supported by the comments submitted to the Court by RTK and are opposed by the parliamentary group of the Vetëvendosje Movement.

The Judgment emphasizes the fact that the aforementioned circumstances and allegations in this case before the Court, among other things, have raised issues related to (i) the constitutional competence of the Assembly of the Republic of Kosovo to oversee the work of public institutions, including RTK, which, based on the Constitution and laws, report to the Assembly, and the relevant restrictions based on the Law on RTK approved by the Assembly; (ii) the independence and autonomy of the public broadcaster not only based on the Law on RTK, but also pursuant to relevant international instruments, including those directly applicable in the constitutional order of the Republic of Kosovo, on the one hand, and the obligation of the public broadcaster for transparency and accountability towards the supervising authority and the public, on the other hand; and (iii) the positive obligations of the state, in this case the Assembly, to exercise the competence of supervision based on the

principles stemming from the Constitution, the European Convention on Human Rights and other international instruments, including the Recommendations of the Committee of Ministers of the Council of Europe, to guarantee the independence of public broadcasters and the freedom and pluralism of the media, taking into account their essential role and contribution in a society based on the rule of law and democratic values.

In the context of the issues above, the Judgment first elaborates (i) the general principles that originate from the case law of the European Court of Human Rights in the context of Article 10 (Freedom of expression) of the European Convention on Human Rights; and (ii) the answers received by the Constitutional Courts and/or the corresponding equivalent members of the Forum of the Venice Commission regarding the status/independence but also the method of dismissal of the members of the boards/supervisory structures of the public broadcasters. The Judgment further elaborates the principles that originate, among others, from (i) the Recommendation no. R (96) 10 of the Committee of Ministers to Member States of the Council of Europe on the guarantee of the independence of public service broadcasting, including its Annex and Explanatory Memorandum; (ii) the Declaration of the Committee of Ministers of the Council of Europe to Member States on the guarantee of the independence of public service broadcasting; (iii) Recommendation CM/Rec (2012) 1 of the Committee of Ministers to Member States of the Council of Europe on public service media governance; (iv) the Parliamentary Assembly Resolution 1636 (2008): Indicators for Media in a Democracy; (v) Relevant opinions of the Venice Commission, including Opinion CDL-AD(2005)017 on the compatibility of the "Gasparri" and "Frattini" laws of Italy with the standards of the Venice Commission in the field of freedom of expression and pluralism of the media, and Opinion CDL- AD(2015)015 on the media legislation of Hungary; (vi) the Report of the European Broadcasting Union "Public service media under Article 10 of the European Convention on Human Rights"; and (vii) the Report of the European Broadcasting Union "Legal Focus: Governance Principles for Public Service Media".

In the context of the principles arising from the analysis of the constitutional principles, including the aforementioned documents, the Judgment initially clarifies that the Assembly exercises the relevant function based on the competencies established in, among others, Article 4 [Form of Government and Separation of Power] and 65 [Competencies of the Assembly] of the Constitution, including the competence to (i) approve laws, resolutions and other general acts; and (ii) to oversee the work of the Government and other public institutions, which, based on the Constitution and laws, report to the Assembly. Both competencies constitute the essence of the constitutional function of the Assembly. Having said this, based, among other things, on Articles 65 [Competencies of the Assembly] and 74 [Exercise of Function] of the Constitution, in the context of the constitutional competence of supervision, the Assembly is conditioned to exercise this function in compliance with (i) constitutional provisions, including those defined by Articles 3 [Equality Before the Law], 4 [Form of Government and Separation of Power] and 7 [Values] of the Constitution, respectively; and (ii) within the limits and authorizations defined in the laws approved by the Assembly itself in relation to the public institutions that report to/are supervised by the Assembly. In the context of exercising the supervisory function related to the public broadcaster and taking into account the essential importance of media freedom and pluralism in a constitutional order founded on democratic values, beyond the limitations set by the Law on RTK approved by the Assembly, the constitutional values defined by Article 7 [Values], Article 40 [Freedom of Expression] and Article 42 [Freedom of Media] of the Constitution, do have a special importance.

The latter, in principle and as far as it is relevant in the circumstances of the present case, establish guarantees for (i) freedom and pluralism of the media; and (ii) freedom of expression, including the right to express, disseminate and receive information, opinions and other messages without being hindered by anyone. These provisions are related to Article 10 (Freedom of expression) of the European Convention on Human Rights and which, based on the interpretation established in the case law of the European Court of Human Rights and elaborated in the Judgment, extends the guarantees and the relevant protection also related to the independence of public broadcasters, with an emphasis on the positive obligation of the state to protect them from the arbitrary and/or disproportionate actions of the state itself, in accordance with the relevant legitimate purpose, always with an emphasis on the essential role and contribution of public broadcasters and media in democratic societies. Based on the above, the Judgment emphasizes that the guarantees for the independence and autonomy of the public

broadcaster, namely RTK stem from the constitutional guarantees and the applicable international instruments on the freedom of expression and media freedom, as per the interpretation of the European Court of Human Rights, as well as from Articles 40 [Freedom of Expression] and 42 [Freedom of Media] of the Constitution and the Law on RTK itself, based on which, among other things, (i) RTK has "the status of an independent public institution of particular importance"; and (ii) the Assembly has the obligation to "ensure its institutional autonomy". Moreover, the same law, among other things, and as far as it is relevant to the circumstances of the present case, defines (i) the limitations of the Assembly's supervision over RTK and the circumstances in which this supervision can be exercised; and (ii) the manner of appointing and dismissing RTK's Board members, provisions that are interpreted in the light of guarantees and stem from the Constitution and/or the principles of international instruments in the field of media freedom and pluralism, including public broadcasters.

The Judgment clarifies that based on the provisions of the Law on RTK, (i) the manner of election and appointment of members of RTK's Board is determined in such a way as to ensure membership on staggered terms, that not all members of the Board have acquired and/or exercise their respective mandates at the same time, this being in accordance with the standards stemming from international instruments, and with the aim that RTK's Board has a pluralist composition and is not necessarily elected by the same parliamentary majority in the Assembly; while (ii) the dismissal of RTK's Board members by the Assembly is possible, according to the procedure and grounds specified in this law, including "professional incapability", the basis on which all of RTK's Board members were dismissed in the present case. Having said that, the Judgment also clarifies that one of the essential guarantees regarding the independence of the supervisory structures/boards of public broadcasters, based on the relevant international instruments, including the responses of the Constitutional Courts and/or their equivalent members of the Venice Commission Forum, is the dismissal of their members based on a defined legal basis and procedure. In the circumstances of the dismissal of the members of RTK's Board by the challenged Decision of the Assembly, according to the clarifications given in the Judgment, it is disputed whether there was a legal basis for (i) the dismissal of all members of RTK's Board, based on (ii) the finding of "professional incapability" of the Board in its entirety, as a result of the review and refusal to approve RTK's Annual Report for 2020.

In this context, the Judgment clarifies that (i) based on the Law on RTK, RTK's Board members are appointed and act in their personal capacity, as determined through Recommendation no. R (96)10 of the Committee of Ministers regarding the rights and obligations of members of boards/supervisory structures of public broadcasters; (ii) the Law on RTK does not define a legal basis for the dismissal of RTK's Board in its entirety, while the contributions submitted by the Forum of the Venice Commission specify that the collective dismissals of the boards/ supervisory structures of the public broadcaster by the supervisory authorities is possible only when such possibility is specifically defined by the applicable law; and (iii) the Law on RTK stipulates that RTK submits "the annual public, debate report and the opinion of the RTK Board on the public debate report", to the Assembly of the Republic of Kosovo, "for orientation purposes", and unlike other cases in which the legislator specifically defines the approval competence of the Assembly regarding certain acts of RTK's Board, this is not the case with the Annual Report.

The Judgment in this context emphasizes the recommendations of the European Broadcasting Union, according to which the supervisory authorities should not have the power to approve the annual reports and, moreover, the possible determination of the legislator that the dismissal of the members of the boards/management structures of the public broadcasters be possible also based on the annual report, among other things, "opens the door to undue political interference, it undermines the role of the supervisory body, it may lead to self-censorship with regard to editorial content".

Based on the above and other elaborations in the Judgment, the Court finds that in the dismissal of all members of RTK's Board, namely the collective dismissal of the board of the public broadcaster for "professional incapability" ascertained through the review of RTK's Annual Report for the year 2020, the Assembly acted without a legal basis in the context of the dismissal of the Board in its entirety, as a result of the rejection of the relevant Annual Report and consequently, contrary to the provisions of the Law on RTK. Consequently, in issuing the challenged Decision, the Assembly has exceeded the limits of the supervisory competence defined in paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution and, moreover, has violated the

the independence of the public broadcaster, whose role is essential for the freedom and pluralism of the media in a democratic society, contrary to the values defined in paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo.

The Judgment also clarifies that in the assessment of similar constitutional issues in the context of the exercise of the Assembly's oversight function in relation to the institutions that report to the latter on the basis of the law, when the applicable law has enabled the dismissal of the respective boards in their entirety and consequently the Assembly has acted in accordance with such legal authorizations, such as the case of the Court KO139/21 regarding the dismissal of the members of the Board of the Railway Regulatory Authority, the Court has not found a constitutional violation. Having said that, the constitutional legitimization of a decision of the Assembly to dismiss the members of the board of the public broadcaster exceeding the legal authorizations, would constitute a dangerous precedent for the interference of the state with the independence and autonomy of the public broadcaster, including the freedom and pluralism of the media in the Republic of Kosovo.

The Judgment also emphasizes that the principle of independence and autonomy of public broadcasters and consequently, the obligation of the supervisory authority to respect the latter is balanced with the principle of transparency and accountability of the public broadcaster, and consequently, the corresponding obligation towards the supervisory authority, namely the Assembly and the public. The members of the boards of the public broadcaster, namely the members of RTK's Board, are subject to the obligations pursuant to the Law on RTK and all applicable laws of the Republic of Kosovo, including the principles of full accountability and transparency towards the supervisory authority, in the manner defined by law and applicable international instruments. The finding of the Court in relation to the challenged Decision emphasizes these principles, including the importance of the public broadcaster, but also the positive obligations of the state, namely the Republic of Kosovo, to protect and guarantee the freedom and pluralism of the media and all the guarantees that originate from the constitutional rights defined in the context of freedom of expression and of the media, including as interpreted by the case law of the European Court of Human Rights, and stipulated by applicable international instruments in the constitutional order of the Republic of Kosovo.

The Judgment, finally, clarifies that this finding of the Court does not have the retroactive effect and based on the principle of legal certainty, it does not affect the acquired rights of third parties, namely new members of RTK's Board, whose election by the Assembly has not been disputed before the Court.

Moreover, the Judgment, referring to the case law of the Court, clarifies that the Court does not have the competence to grant the relevant compensation when it finds a constitutional violation, but that such a clarification does not prejudice the rights of the dismissed members of RTK's Board by the challenged Decision of the Assembly, to follow the relevant procedures before the regular courts.

This Judgment is also supplemented with a dissenting opinion.

Judgment

KO 216/22 & KO 220/22

Applicant

Isak Shabani and ten (10) other deputies and Arben Gashi and nine (9) other deputies of the Assembly of the Republic of Kosovo

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

The Constitutional Court of the Republic of Kosovo has decided on the joint referrals, in case KO 216/22, with Applicants: Isak Shabani and ten (10) other deputies and KO 220/22, with Applicants: Arben Gashi and nine (9) other deputies of the Assembly of the Republic of Kosovo, submitted to the Constitutional Court based on the provisions of paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution 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.

The Court, (i) unanimously decided to declare the Referrals admissible; and (ii) with seven (7) votes for and one (1) against, to hold that the procedure followed for the adoption of the Contested Law is not in violation of Article 77 [Committees] and 78 [Committee on Rights and Interests of Communities] of the Constitution of the Republic of Kosovo.

Whereas, concerning the content of the Contested Law, the Court unanimously held that (i) the requirement of "suitability " stipulated in paragraphs 2 and 5 of Article 9 (General requirements for admission of public officials) of the Contested Law is not in compliance with paragraph 1 of Article 3 [Equality before the Law] and paragraph 1 of Article 7 [Values] of the Constitution; (ii) the wording "as well as supervise their implementation" of item 1.1 of paragraph 1 and paragraph 2 of Article 12 (Government of the Republic of Kosovo) and sub-paragraphs 1.1, 1.2, 1.5 and 1.9 of paragraph 1 and paragraphs 3, 4 and 5 of Article 13 (Ministry responsible for public administration) of the Contested Law are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 2 of Article 101 [Civil Service] of the Constitution; (iii) the wording "according to this Law" of paragraph 3 of Article 27 (The right to information about the employment relationship and the right to appeal) of the Contested Law is not in compliance with Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution; (iv) paragraph 6 of Article 27 (The right to information about the employment relationship and the right to appeal) and paragraphs 3 and 4 of Article 88 (The right to appeal of a public service employee) of the Contested Law are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution; (v) paragraph 6 of Article 67 (Waiting list) of the Contested Law is not in compliance with paragraph 1 of Article 3 [Equality before the Law] and paragraph 1 of Article 7 [Values] of the Constitution; (vi) paragraphs 1, 2, 3, 4, 5, 6 and 7 of Article 99 (Transitional provisions) of the Contested Law are not in compliance with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with paragraph 1 of Article 1 (Protection of Property) of Protocol No. 1 of the European Convention on Human Rights; (vii) paragraph 2 of Article 104 (Repeal) of the Contested Law is not in compliance with paragraph 1 of Article 3 [Equality before the Law], paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution; whereas (viii) with seven (7) votes for and one (1) against, it held that Article 46 (Appointment and mandate of lower and middle management positions) of the Contested Law is not contrary to paragraph 2 of Article 19 [Applicability of International Law] and Article 101 [Civil Service] of the Constitution.

Based on the aforementioned conclusions, the Court also decided (i) to declare that pursuant to Article 43 (Deadlines) of the Law on the Constitutional Court, the Contested Law is sent to the President of the Republic of Kosovo for promulgation without the provisions declared as being in violation of the Constitution, and in accordance with the specifications set forth in the Judgment of the Court; (ii) in accordance with paragraph 1 of Article 116 [Legal Effect of Decisions] of the Constitution, to order the Assembly of the Republic of Kosovo to take the necessary actions for supplementation and amendment of: (a) paragraph 6 of Article 67 (Waiting list); (b) paragraph 6 of Article 27 (The right to information about the employment relationship and the right to appeal) and paragraphs 3 and 4 of Article 88 (The right to appeal of a public service employee), and Article 6 (A civil servant with special status) of the Contested Law in accordance with the Constitution and this Judgment, within six (6) months from the entry into force of this Judgment; and (iii) to stipulate that the Judgment enters into force upon its publication in the Official Gazette of the Republic of Kosovo.

The Judgment first clarifies that the Applicants, in essence, allege that (i) the procedure followed for the adoption of the Contested Law is in violation of Articles 77 and 78 of the Constitution; and (ii) Articles 9 (General requirements for admission of public officials), 12 (Government of the Republic of Kosovo), 46 (Appointment and mandate of lower and middle management positions) and 99 (Transitional provisions) of the Contested Law are contrary, among others, to Articles 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], 7 [Values], 16 [Supremacy of the Constitution], 19 [Applicability of International Law], 46 [Protection of Property], and 101 [Civil Service] of the Constitution. In essence, the Applicants claim that the Contested Law (i) violates the constitutional principles related to the civil service/public administration, with

emphasis on the independence of independent constitutional institutions through the interference and supervision by the executive power; and (ii) violates the fundamental rights and freedoms of public officials, with emphasis, in the low and middle management category, through the transformation of the positions of this category of officials from permanent mandate positions to temporary ones, including with retroactive effect to their acquired rights, resulting among other things, even in instability and political interference in the public administration, contrary to the obligations of the Republic of Kosovo regarding the reform in the public administration through the ratification of the Stabilization and Association Agreement. The Applicants' allegations, in principle, are also supported by the Ombudsperson, while they are opposed by the Prime Minister of the Republic of Kosovo and the Parliamentary Group of VETËVENDOSJE! Movement. All arguments and counter-arguments of the parties before the Court are reflected in detail in the Court's Judgment.

The Judgment further clarifies that the Court (i) has limited the constitutional review of the Contested Law to the scope of the provisions challenged by the Applicants and those related to them; and (ii) in this assessment, among other things, it elaborated and applied the general principles established by the Court, with emphasis on the Judgment of the Court KO203/19, regarding the assessment of Law no. 06/L-114 on Public Officials, the case law of the European Court of Human Rights (ECtHR), the relevant Opinions and Reports of the Venice Commission, including the contribution of the constitutional courts and/or equivalent member of the Forum of the Venice Commission; and the fundamental principles of the Organization for Economic Co-operation and Development (OECD/SIGMA) for public administration.

In the Court's Judgment, the aforementioned principles were applied in the examination of each assessed article of the Contested Law. Having said that, and for the purposes of this summary, the Court will clarify the main findings regarding the Contested Law, namely: (i) the procedure followed by the Assembly for the adoption of the Contested Law; (ii) the independence of independent constitutional institutions in relation to the oversight competence of the Government; (iii) the determination of limited mandates related to low and medium-level management positions in the public administration; (iv) the effect of the limitation of mandates of the public officials who currently exercise management functions of low and medium level in the public administration; (v) the rights and obligations of public officials who are placed on the "Waiting Lists" of the public administration; (vi) "suitability" as a criterion for admission to the position of public official in the public administration; and (vii) the constitutional guarantees and rights to effective legal remedies and the judicial protection of rights of the officials/employees of the public administration.

- *the procedure followed by the Assembly for the adoption of the Contested Law*

The Judgment initially clarifies that the Applicants allege that the procedure followed for the adoption of the contested Law is contrary to Articles 77 and 78 of the Constitution and the Rules of Procedure of the Assembly, putting emphasis, among others, on the fact that the latter was approved in the Assembly without having been reviewed in the permanent committees, namely "it was approved without being examined at all in the Permanent Committee on Budget, Labor and Transfer and the Committee on the Rights and Interests of Communities and Returns".

In assessing this allegation, the Judgment initially clarifies that the Contested Law was examined in the Assembly according to Decision [No. 08-V-449] of the Assembly of 15 December 2022, rendered based on Article 123 (Avoidance of the Rules of Procedure) of the Rules of Procedure of the Assembly on avoiding procedural deadlines. Through that decision, it has been requested from the permanent committees to submit the relevant comments to the functional Committee on Public Administration, Local Government, Media and Regional Development, within the deadline determined by this Decision. Also, based on the case file, it results that the Committee on the Rights and Interests of Communities submitted the relevant contribution on time, while this is not the case with the Committee on Budget, Labor and Transfers. In the abovementioned context and taking into consideration, (i) the content of Article 77 of the Constitution, as far as it is relevant to the circumstances of the case, which specifies the competence of the Assembly to appoint permanent and functional committees, whereas it delegates the determination of the respective procedures in the level of the Rules of Procedure of the Assembly; and (ii) the content of Article 78 of the Constitution with respect to the Committee on Rights and Interests of Communities, the only committee the procedure relating to which is specified in the Constitution, and

which specifies that after the request of the member of the Presidency of the Assembly and the decision-making of the aforementioned committee, the latter has a deadline of up to two (2) weeks to make recommendations relating to the proposed law, however since in the circumstances of the case at hand, this commission, has submitted the respective comments in the functional committee, then the Court must declare that the procedure relating to the issuance of the Contested Law, has not been argued to be in contradiction with the aforementioned articles of the Constitution.

Having said this, and in the context of the use of Article 123 of the Rules, namely the avoidance from procedural deadlines by the Assembly throughout the law-making process, the Court highlights two issues (i) the Assembly's own designation, through the adoption of Articles 85 (Accelerated procedure for reading of draft laws) and 86 (Urgent procedure for reading of a draft law) of the its Rules of Procedure, that only draft laws relating to national security, public health, budgetary and financial issues or the issuance of measures for states of emergency according to Article 131 [State of Emergency] of the Constitution, are subject to the expedited and/or urgent draft law review procedures, whereas the Contested Law clearly does not belong to these categories; and (ii) the designation of the Assembly, that through Article 123 of the Rules of Procedure to enable the avoidance of the procedural deadlines specified with the Rules of Procedure, with a lower majority than the one required for its approval, namely two-thirds (2/3) of all deputies, according to Article 76 [Rules of Procedure] of the Constitution. In the aforementioned context, the Judgment clarifies that the compliance of Article 123 of the Rules of Procedure with the Constitution has not been contested before the Court, however, it recalls that the exercise of the legislative power is the primary and most essential function of the Assembly of the Republic of Kosovo, as established in Articles 4 [Form of Government and Separation of Power], 63 [General Principles] and 65 [Competencies of the Assembly] of the Constitution, and that according to Article 74 [Exercise of Function] of the Constitution, the representatives of the people are obliged to exercise this function in accordance with the Constitution, laws and rules of procedure of the Assembly.

- *regarding the independence of independent constitutional institutions in relation to the supervision competence of the Government*

In the context of the Applicants' allegations of violation of the independence of independent constitutional institutions through Article 12 of the Contested Law, the Judgment first clarifies that the latter must be interpreted in conjunction with its Article 13 (Ministry responsible for public administration) which specifies the manner of application of Article 12, and in conjunction with its Article 104 (Repeal) which repeals any provision of other laws that is in conflict with the Contested Law. The Judgment in this respect, among others, clarifies that (i) according to Article 12 of the Contested Law the Government of the Republic of Kosovo shall adopt and coordinate general state policies for the employment of public officials, as well as "supervise their implementation"; (ii) according to Article 13 of the Contested Law, the Ministry responsible for public administration, namely the Ministry of Internal Affairs, among others, is responsible for the supervision of the implementation of policies and legislation on public officials in the state administration institutions, receives from the institutions of the Republic of Kosovo, any necessary information in the area of labor relations and is the only state institution that has the competence to provide explanations regarding the provisions of the Contested Law; while (iii) according to Article 104 of the Contested Law, upon its entry into force, "any other provisions in contradiction with this Law shall be repealed". In assessing the constitutionality of the aforementioned provisions of the Contested Law, the Judgment, elaborating on the constitutional principles of the separation and balancing of power and those established in its consolidated case law in the context of independent constitutional institutions, including regarding the Independent Oversight Board for the Civil Service of Kosovo, emphasizes two essential issues: (i) the independence of independent constitutional institutions established in the Constitution, including Independent Agencies established by the Assembly according to the provisions of Article 142 [Independent Agencies] of the Constitution; and (ii) the constitutional function of the Independent Oversight Board for the Civil Service of Kosovo according to the provisions of Article 101 [Civil Service] of the Constitution.

Regarding the first issue, the Judgment clarifies that based on the Contested Law, the same applies to the employees of the institutions defined in chapters IV, V, VII, VIII and XII of the Constitution, pertaining to the Assembly, the Presidency, the Justice System, the Constitutional Court and the Independent Institutions

determined by the Constitution, to the extent that it "does not infringe on their functional and organizational independence guaranteed by the Constitution". Moreover, the Contested Law categorizes the officials of the aforementioned institutions as "civil servants with a special status", whose employment relationship is regulated by law and special acts, under the condition of the scope allowed by the Contested Law itself, but also under the protection of the principle of constitutionally guaranteed independence. According to the clarifications given in the Judgment, in principle, such regulation does not contradict the constitutional principles of balancing and separation of power established in Article 4 of the Constitution and the respective principles elaborated by the Judgments of the Court. Having said that, according to the clarifications given in the Judgment, this is not the case regarding the category of Independent Agencies, defined in Article 142 of the Constitution, and to which the Contested Law does not guarantee the necessary constitutional independence and autonomy, especially considering that based on Article 104 of the Contested Law, also all provisions of the laws approved by the Assembly that relate to Independent Agencies which are in contradiction with the Contested Law will be repealed. The Judgment further clarifies that while according to the case-law of the Court, the Independent Agencies established under Article 142 of the Constitution do not necessarily enjoy the same level of constitutional independence as the institutions specifically listed in Chapter XII of the Constitution, nevertheless, based on the latter, it is clear that they are not subject to the control and oversight of the executive power, but to the oversight of the Assembly based on the respective laws that the latter adopts according to Article 142 of the Constitution.

The Judgment also emphasizes that the Contested Law defines the status of "A civil servant with special status" for a part of the executive power itself, including the employees of the Ministry responsible for public administration, namely the Ministry of Internal Affairs, while the exemption from this status of the employees of Independent Agencies defined in Article 142 of the Constitution, does not appear to have pursued a legitimate goal and/or to be proportional.

In addition, and in relation to the second issue, the Judgment emphasizes that the oversight competence related to the observance of the rules and principles that regulate the civil service through Article 101 of the Constitution, has been assigned to the Independent Oversight Board for the Civil Service of Kosovo. The constitutional independence and function of this institution has been elaborated by the Court in a number of Judgments, based on which, among other things, it has been clarified that precisely with the aim of ensuring an impartial, independent and professional civil service and/or public administration, the Constitution has defined a constitutional institution that is special and independent from the executive power with the competence to oversight the rules and principles that regulate the civil service of the Republic of Kosovo. The Judgment, further, clarifies that (i) the oversight competence of the Independent Oversight Board, defined by the Constitution, cannot be violated nor appropriated through the effect of norms that rank lower in the hierarchy of norms, namely through a law; moreover, (ii) the oversight competencies of the Government, specified in Articles 12 and 13 of the Contested Law, are clearly also competencies of the Independent Oversight Board based on Law No. 06/L-048 on the Independent Oversight Board, and which are infringed upon also through the Contested Law, according to which, any provision contrary to it, will be repealed upon its entry into force. The Judgment clarifies that the joint reading of Articles 12, 13 and 104 of the Contested Law, whereby the Independent Oversight Board is essentially stripped of its constitutional functions, and which are appropriated by the Government, results to be in contradiction with Articles 4 and 101 of the Constitution, respectively.

- *regarding the determination of limited term mandates for low and middle-level management positions in the public administration – the effect on rights after the entry into force of the Contested Law*

In the context of the Applicants' allegations of violation of the constitutional principles regarding the civil service, among other things, as a result of the definition of limited term mandates related to the low and middle-level management positions in the public administration, the Judgment first clarifies that according to Article 46 of the Contested Law, the category of low and middle-level management positions in the public administration, will be subject to limited term mandates, namely four (4) year mandates, with the possibility of extension for the same mandate duration under the conditions defined by law. The Court, elaborating and taking into account the basic constitutional principles regarding the rule of law, legal certainty, and the hierarchy of norms, as

well as the contribution of the constitutional courts and/or the respective equivalents of the member states of the Venice Commission Forum, focused its assessment, in the context of the constitutionality of the aforementioned Article, in principle, (i) on the constitutional characteristics of the civil service based on Article 101 of the Constitution; and (ii) the obligations arising from the Stabilization Association Agreement in the context of the civil service/state administration, which, as an international agreement ratified by the Assembly of the Republic, based on paragraph 2 of Article 19 [Applicability of International Law] of the Constitution, has superiority over the laws in the legal order of the Republic of Kosovo.

In the aforementioned context, the Judgment clarifies that Article 101 of the Constitution, beyond (i) setting the criterion that the civil service must reflect the diversity of the people of Kosovo and take into consideration the principle of gender equality; and (ii) the determination that the Independent Oversight Board for the Civil Service, which ensures the implementation of civil service norms, should be established, does not further specify the issue of categorization of public officials and/or the duration or limitations concerning their respective mandates. The Judgment also, among others, clarifies that through the Stabilization Association Agreement ratified by the Assembly in 2015, the Republic of Kosovo has undertaken the obligation to reform the state administration in cooperation with the European Union, according to the provisions of Article 120 (Public Administration) of the aforementioned agreement, which, among other things, also refers to career development in the public service, but does not define obligations and/or specifics in the context of the categorization of public officials and/or the duration of their respective mandates. Moreover and in the context of the fundamental rights and freedoms and of the principle of legal certainty, the Judgement emphasizes that all public officials that are selected/ appointed to low and middle-level management positions in the public administration in the future, namely after the entry into force of the Contested Law, will in advance have the necessary clarity and foreseeability in the context of the obligations they undertake and the rights they acquire, including the limited term mandates in the public administration.

Having said that, the Judgment also clarifies that based on the documents submitted to the Court by the Applicants, it results that the Opinion of the Legal Office of the European Union and SIGMA, among others, had pointed out the shortcomings of the reform in the public administration. Moreover, based on the contributions submitted to the Court through the Forum of the Venice Commission, it results that while the public administrations of the respective states, exceptionally define positions with limited mandates, in principle, none of them has undertaken a reform according to which, the positions with permanent mandates have been transformed into positions with temporary mandates, affecting the acquired rights of the officials of the respective state administrations.

However, the Judgment emphasizes that based on the Constitution, the Assembly exercises legislative power, while the Constitutional Court is responsible for the final interpretation of the Constitution. Taking into account the relevant competencies defined by the Constitution and the principle of separation and balancing of power, based on the case law of the Court, the latter is limited only to assessing the compatibility of the contested act with the Constitution, and as long as the same has not been infringed upon, it does not also assess the adequacy of public policies determined by the executive and/or legislative power and which are reflected in the laws adopted by the people's representatives in the Assembly. As a consequence and taking into account that (i) Article 101 of the Constitution and Article 120 of the Stabilization Association Agreement, do not contain specific obligations in the context of the categorization and/or mandates of public officials in the state administration; and that (ii) this provision affects public officials selected/appointed in low and middle-level management positions after the entry into force of the Contested Law, the Court, finds that Article 46 of the Contested Law is not in conflict with the aforementioned provisions of the Constitution.

- *regarding the effect of the limitation of mandates for officials who currently exercise low and middle-level management functions in the public administration – the effect on rights acquired before the entry into force of the Contested Law*

In the context of the Applicants' allegations regarding the retroactive effects of the Contested Law concerning the officials who currently hold low and middle-level management positions with indefinite term mandates, acquired based on the existing laws on civil service/ public officials, and as a consequence the violation of their constitutional rights, the Judgment initially clarifies that Article 99 of the Contested Law, among other things, stipulates that, at the latest one (1) year from the entry into force, all low and middle-level management positions will be subject to open and

public competition. The Contested Law stipulates that the public officials who currently hold these positions have the right to apply in these competitions and in case of non-selection, (i) they will be systemized to professional positions for which they meet the conditions, and for the next four (4) years, will benefit from a transitional salary according to the provisions of the law; or (ii) will be placed on the "Waiting List" and could be dismissed from the civil service if they cannot be placed in professional positions.

The Judgment clarifies that this category of state administration officials have been appointed to low and/or middle-level management positions based on the laws in force on civil service and/or public officials, on the basis of which they have undertaken obligations and/or acquired rights, including "legitimate expectations that may result in assets" based on the respective contracts with an indefinite term, whose method of modification and/or termination is clearly specified in the respective applicable laws. As a result, the constitutional review of Article 99 of the Contested Law also includes the obligation to assess the compatibility with fundamental rights and freedoms guaranteed by the Constitution with emphasis on Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol No. 1 of the ECHR.

In the context of the rights guaranteed by the aforementioned articles, after elaborating on the general principles regarding the principle of legal certainty and acquired rights, including based on the case law of the ECtHR, the Judgment clarifies that these rights are not absolute and may be subject to limitations/interference based on Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, only insofar as the respective limitation/interference is (i) "prescribed by law"; (ii) "pursues a legitimate aim; and (iii) is "reasonably proportionate to the aim sought to be achieved".

The Judgment further clarifies that in the circumstances of Article 99 of the Contested Law, it is not disputed that there is a limitation/interference with the fundamental rights and freedoms of the current officials of the state administration who exercise low and middle-level managerial duties, among others, because the implementation of this article may result not only in the loss of the functions they exercise, but also in loss of the employment relationship, because based on the provisions of the Contested Law, (i) the above-mentioned category of officials, if not re-elected to the positions they have won based on the law in force, can be organized in professional positions with a lower salary or placed on the "Waiting List", which can result in their dismissal from civil service; (ii) any refusal to be systemized in the offered professional position or even refusal to be placed on the "Waiting List", results in dismissal from the civil service; furthermore, (iii) the latter do not have access to any legal remedies to challenge the acts of the public authority in the context of the implementation of Article 99 of the Contested Law. Having said that, and applying the principles stemming from the case law of the Court and the ECtHR, the Judgment clarifies that it is not disputed that the limitation/interference with acquired rights (i) is "prescribed by law", namely by the Contested Law; and (ii) pursues the "legitimate aim" of reforming the state administration based on the principles of efficiency, meritocracy, inclusiveness and accountability, but it is disputable whether this limitation/interference with the respective fundamental rights and freedoms is "proportional in relation to the pursued aim".

The Judgment, after applying the principles stemming from the relevant case-law of the ECtHR, emphasized that the solution stipulated by Article 99 of the Contested Law, does not present a "fair balance" between the stated goal of public interest and fundamental rights and freedoms, and consequently, is not proportional, among others, because (i) the same goal could have been achieved through less restrictive/interfering mechanisms with fundamental rights and freedoms through the implementation of the existing provisions of the Law in force on Public Officials, including also the detailed provisions of the Contested Law that are related, among others, to the performance evaluation and/or disciplinary measures, including in case of non-fulfillment of work tasks; (ii) the existing category of state administration officials who hold low or middle-level management positions, in violation of the constitutional rights to effective legal remedy and judicial protection of the rights established in Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution, respectively, have been completely denied the right to appeal regarding placement in the relevant professional position, placement in the "Waiting List" or dismissal from civil service; and that (iii) based on the principle of legal certainty and prohibition of retroactive effect, according to the answers received by the constitutional courts and/or the corresponding equivalent members of the Venice Commission Forum, it results that such a reform of the public administration has either not been

undertaken or has not passed the constitutionality assessment test, with the exception of the explanations provided by the Constitutional Court of Austria concerning the respective reform, which was implemented gradually and without affecting the officials who has permanent mandates/contracts, enabling them to choose between the career or position system, with respective benefits in the event they voluntarily accepted to transition to the position system in the public administration. Consequently, the Judgement states that Article 99 of the Contested Law is not in compliance with Article 46 of the Constitution in conjunction with Article 1 Protocol No. 1 of the ECHR.

- *regarding the rights and obligations of officials placed on the "Waiting Lists" in the public administration*

The Judgment also clarifies that Articles 46 and 99 of the Contested Law refer to its Article 67 (Waiting List) in relation to the "Waiting List". While the Judgment has clarified that Article 46 of the Contested Law, including the concept of the "Waiting List" is a decision of the Assembly which, except for the effect defined in Article 99 of the Contested Law, is not contrary to the Constitution, the Court notes that the provisions of Article 67 of the Contested Law, however, raise issues of fundamental rights and freedoms of the relevant officials placed in this List. This is, among others, because the Contested Law, in the context of the "Waiting List" only determines the obligations of the relevant officials, without also determining their rights, but delegating the latter to be determined by the sub-legal act of the Ministry responsible for public administration. More precisely and according to the clarifications provided in the Judgment, Article 67 of the Contested Law, among other things, determines that during the period of up to nine (9) months of waiting before being systemized in a professional position and/or dismissal from civil service, the relevant officials (i) have the obligation to not have another employment relationship or otherwise, they lose the rights that may originate from the "Waiting List"; while (ii) their rights, including the salary and/or its level, are not guaranteed by the Contested Law, but according to the latter, will be determined by a sub-legal act. The Judgment clarifies that such a ratio between rights and obligations is not proportional, and, moreover, contrary to the criteria of "clarity" and "predictability" concerning the applicable law, embedded in the principle of legal certainty according to the interpretation of the case law of the ECtHR, of the Court and the relevant Venice Commission opinions.

- *as to "suitability " as a criterion to be admitted to the position of public official in the public administration*

In the context of the Applicants' allegation regarding the criterion of "suitability " on the basis of which public officials in the state administration can be admitted, and which, according to the allegation, violates the principle of legal certainty and, among other things, has the consequence of political interference with the recruitment policies in the public administration, the Judgment initially clarifies that Article 9 of the Contested Law, among other things, defines the general criteria for the admission of public officials, also adding the criterion of "suitability" for appointment to specific positions of public officials, the specification/definition of which, according to the relevant article, is delegated at the level of the sub-legal act approved by the Government with the proposal of the Ministry responsible for public administration. In assessing the constitutionality of this provision, the Judgment elaborates (i) the general principles stemming from the case law of the ECtHR, the case law of the Court and the Rule of Law Checklist of the Venice Commission regarding the principle of legal certainty embodied in the concept of rule of law guaranteed by Articles 3 and 7 of the Constitution, respectively; and (ii) the contributions of the constitutional courts and/or equivalents of member states of the Venice Commission Forum.

The Judgment, among other things, clarifies that among the criteria defined by paragraph 1 of Article 9 of the Contested Law, are also "to be fit in the health aspect to carry out the respective duty" and "have the education, professional work experience and/or skills required for the relevant position, category, class or group", leaving the public authority a wide discretion of evaluation in the admission to duty of the public official. Having said that, these criteria, including the objective ones specified in the same paragraph, can prevail in their entirety, through a criterion of "suitability" specified by a sub-legal act on the basis of which the discretion of the public authority is disproportionate to the principle of "clarity" and "predictability" necessary in the context of the applicable law, including concerning the procedure of application and the following right to use the legal remedy of the candidates, in a state administration, which according to the Contested Law, among other things, is designated to be guided by the principle of legality, merit, transparency, professionalism, party's impartiality and non-discrimination. As a result, and

taking into account the detailed principles related to legal certainty, including the obligation that the relevant provisions of the law are "clear, accessible and predictable", the Court has assessed that the definition of the criterion of "suitability" is incompatible with the constitutional guarantees according to the clarifications given in the enacting clause of the Judgment.

- *regarding the constitutional rights to legal remedy and judicial protection of rights of the public officials in the state administration*

The Judgment emphasizes the fact that the right to a legal remedy and the right to judicial protection of rights defined in articles 32 and 54 of the Constitution in conjunction with article 13 (Right to an effective remedy) of the ECHR are among the most important fundamental rights of individuals, included in the context of the principle of access to justice provided by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR. The Judgment, among other things, clarifies that these rights have been violated in their entirety in the context of Article 99 of the Contested Law. Having said that, the Judgment also emphasizes the fact that Article 27 (The right to information about the employment relationship and the right to appeal) of the Contested Law in conjunction with its Article 88 (The right to appeal of a public service employee) also raise serious constitutional issues in the context of the aforementioned rights. This is primarily because while the rights of the civil servant to submit a complaint to the Independent Oversight Board and then to the competent court have been established, these rights have been conditioned only "in the cases provided for by this law". The Judgment, based on the case law of the ECtHR, clarifies that the right to an effective legal remedy against any act of public authority that may have violated the fundamental rights and freedoms of the individual defined by law and/or the Constitution, in principle, cannot be limited. Secondly, the Judgment also clarifies that based on articles 27 and 88 of the Contested Law, the public servant's right to appeal, namely legal remedy, to the Labor Inspectorate, and thereafter to the competent court, has been established. The Judgment emphasizes that such a legal definition is in full contradiction with the Law on Labor and the Law on Labor Inspectorate itself, which does not provide the latter with the competence to solve disputes from the employment relationship, and moreover with the principle of separation and balancing of powers defined in Article 4 of the Constitution, among other things because (i) The Labor Inspectorate, based on the law on its establishment, is an executive authority established by the Ministry of Labor and Social Welfare and is therefore an integral part of the executive power; and (ii) in the legal order of the Republic of Kosovo, which is based on the values and principles of the separation and balancing of powers, it is the judicial power and not the executive power that has the competence to decide with respect to disputes relating to rights and obligations, including those arising from the employment relationship.

All these principles have already been clarified by the Judgment in case KO27/21, published on 16 December 2022, by the Constitutional Court of the Republic of Kosovo.

Judgment

KO 177/23

Applicant

Municipality of Prizren

Request for constitutional review of "Article 5 of Law No. 08/L-224 on Amending and Supplementing Law No. 06/L-005 on Immovable Property Tax

The Referral for the constitutional review of article 5 of the aforementioned Law was submitted to the Court by the Municipality of Prizren, based on the authorizations provided by paragraph 4 of article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo.

The Court has decided that (i) the Referral is admissible; (ii) article 5 of the contested Law is not in contradiction with paragraph 2 of article 12 [Local Government], paragraph 1 of article 123 [General Principles] and paragraphs 2 and 5 of article 124 [Local Self-Government Organization and Operation] of the Constitution; (iii) to repeal the Decision on Interim Measure of 1 September 2023, since the Court

has already decided on the merits of the case; as well that (iv) the remaining fifteen (15) day deadline from the thirty (30) day deadline established in paragraph 2 of article 11/B (The amount of property tax amnesty for immovable property) of article 5 of the contested Law, begins to run from the day this Judgment enters into force.

The Judgment of the Court initially clarifies that based on paragraph 4 of article 113 [Jurisdiction and Authorized Parties] of the Constitution, the municipality is authorized to challenge the constitutionality of the laws of the Assembly or the acts of the Government, which infringe upon their responsibilities or diminish their revenues, in case the respective municipality is affected by the respective law or act. Based on this provision, the Applicant, namely the Municipality of Prizren, requested the constitutional review of article 5 of Law no. 08/L-224 on Amending and Supplementing Law no. 06/L-005 on Immovable Property Tax. This article stipulates that (i) every taxpayer who is obliged to pay immovable property tax for the tax year 2023 qualifies for the tax amnesty; (ii) the amount of property tax amnesty for all taxpayers is allowed up to the amount of the property tax invoice for 2023, but not more than one hundred (100) euro; (iii) the decision on the property tax amnesty is issued by the municipal assembly of each municipality no later than thirty (30) days after the entry into force of this Law; (iv) in case the taxpayer has paid the property tax invoice for the year 2023, the amnestied amount is calculated as an advance payment for the following year; (v) the implementation of this provision remains the responsibility of each municipality responsible for management of the property tax process for immovable properties located within the territory of the municipality; and that (iv) the responsible Ministry for finance issues decisions that may be necessary for the implementation of this provision.

The Applicant claimed before the Court that the aforementioned provision infringes the municipal responsibilities and diminishes the revenues of the municipality contrary to (i) the constitutional guarantees established in paragraph 2 of article 12 [Local Government], paragraphs 1 and 3 of article 123 [General Principles] and paragraphs 2, 3 and 5 of article 124 [Local Self-Government Organization and Operation] of the Constitution; (ii) the European Charter of Local Self-Government; and (iii) Law no. 03/L-040 on Local Self-Government, Law no. 03/ L-049 on Local Government Finance and Law no. 06/ L-005 on Immovable Property Tax, in essence and among others, because it interferes with the exercise of the municipality's own competences in relation to revenues from immovable property tax and affects the municipal budget up to the value of three (3) million euros, whereas at the local government level in the Republic of Kosovo, up to the value of twenty-seven (27) million euros, according to the referenced data of the Association of Municipalities of Kosovo.

The Applicant also requested the Court to issue an interim measure suspending the effects of the contested Law until a decision on the merits is issued regarding the assessment of the constitutionality of article 5 of the contested Law. Regarding the latter, on 1 September 2023, the Court decided to (i) approve the request for an interim measure, with duration until 30 November 2023; and (ii) suspend the implementation of article 5 of Law no. 08/L-224 on Amending and Supplementing Law no./L-005 on Immovable Property Tax and the implementation of the decisions issued on the basis of this article, until the aforementioned deadline.

In addressing the Applicant's allegations, the Judgment first elaborates on the general principles related to local self-government according to the Constitution, the European Charter of Local Self-Government and the applicable laws of the Republic of Kosovo, as well as the case-law of the Constitutional Court.

In this context, the Judgment, based on articles 12 [Local Government], 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution, the European Charter of Local Self -Government as well as the relevant applicable laws, among others, emphasizes that it is not disputed that based on Law no. 03/L-040 on Local Self-Government, Law no. 03/L-049 on Local Government Finance and Law no. 06/L-005 on Immovable Property Tax, the issues related to the immovable property tax are under the exclusive competence of the municipalities and that they have the power to decide, assign, collect and spend the revenues deriving from the immovable property tax according to the provisions of the applicable law. The latter, based on the provisions of the Constitution, determines the limits of the separation of powers between the central and local government. According to the clarifications given in the Judgment, the contested Law, (i) determines the legal basis according to which the immovable property tax can be amnestied for the tax year 2023, specifying the maximum level of the amnesty of this tax and the

corresponding time limit within which the decision can be rendered for the amnesty of the immovable property tax; and (ii) determines that the competence for such decision-making lies with the respective municipal assemblies. In the interpretation of the contested provisions in their entirety and in the context of the guarantees defined by the Constitution related to the local self-government, the Judgment clarifies that the contested Law does not oblige the relevant municipal assemblies but provides for the legal basis according to which it enables them to decide in relation to the amnesty of the immovable property tax according to the provisions of the contested Law. As such, the latter does not infringe upon the municipal responsibilities or diminish the municipality's revenues contrary to constitutional guarantees and applicable legislation in the context of the exercise of the municipality's powers to assign, collect and spend the tax on immovable property within the territory of their municipality.

Further, the Judgment also states that based on paragraph 2 of article 123 [General Principles] of the Constitution, "local self-government is exercised by representative bodies elected through general elections" and that as a result, the members of the municipal assemblies are not subject to any binding mandate during decision-making in the exercise of their powers established by law. The implementation of article 5 of the challenged Law, regarding the possibility of decision-making on the immovable property tax amnesty according to the limitations and time limits specified therein, is at the full discretion and competence of the respective municipal assemblies.

Finally, the Judgment clarifies that (i) taking into account the fact that the challenged Law entered into force on 16 August 2023, whereas the thirty (30) day deadline established in paragraph 2 of article 11/B (The amount of property tax amnesty for immovable property) of the contested Law was suspended on 1 September 2023 with the imposition of an interim measure by the Court, which suspended the implementation of article 5 of the challenged Law until its decision on merits; (ii) the remaining part of the fifteen (15) day deadline specified in the above-mentioned article, begins to run from the day this Judgment enters into force, namely with its publication in the Official Gazette of the Republic of Kosovo, in which case the Decision on Interim Measure is also repealed.

The Judgment further clarifies that in the case of exercise of the discretion foreseen by article 5 of the challenged Law by the municipal assemblies regarding the amnesty of the immovable property tax for the tax year 2023, article 5 of the challenged Law itself determines the solution for citizens who have already paid the immovable property tax for the year 2023, specifying in paragraph 6 of article 11/B (The amount of property tax amnesty for immovable property) thereof, that "in case the taxpayer has paid the property tax invoice for the year 2023, the amnesty amount is calculated as an advance payment for the following year".

Judgment

KO 173/22

Applicant

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

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

The Court decided (i) unanimously to declare the Referral admissible; (ii) to hold, 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 the 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 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 invalid, with seven (7) votes for and one (1) against, in its entirety, the Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market; and (iv) to reject, unanimously, the request for the interim measure.

The Judgment first clarifies that the contested Law regulates the imposition of interim protective measures for the supply of essential products to consumers, at the time of the appearance of special circumstances of destabilization in the market and the manner of their application to authorities and economic operators in order to eliminate the effects of price increases as well as the lack of essential products in the market. The contested Law, among others, also determines the causes within which the interim protective measures can be imposed. The latter include (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 the economic operator to maintain certain part of the product stock; (vi) obliging the economic operator to supply and offer for sale essential products as before the imposition of protective measures; and (vii) prohibiting, restricting export. According to the provisions of the contested Law, among others, the measures can be imposed in proportion to the need for consumer protection and must be in accordance with the bilateral commitments of the Stabilization and Association Agreement between the Republic of Kosovo and the European Union. The contested Law, also and among others, determines the establishment of a commission that provides recommendations to the respective Minister regarding the imposition and duration of interim protective measures and enables the latter to consult with relevant public authorities in this context, including the Council of the SAA, whereas it assigns to the Prime Minister the competence to revoke, annul or change any decision of the Minister for the imposition of interim protective measures against economic operators, namely legal legal/natural persons in circumstances of market destabilization.

The applicants, in essence, claimed that the contested Law constitutes interference with the free market economy guaranteed by articles 7 [Values], 10 [Economy] and 119 [General Principles] of the Constitution. In this context, among others, they emphasize that based on the Constitution, the free-market economy is a value of the Republic of Kosovo and that the latter is obliged to provide a favorable legal environment for the market economy, freedom of economic activity and security of public and private property, including the establishment of all the necessary institutional and legal mechanisms to guarantee that in Kosovo there is an open market, "where supply and demand contain the pattern of circulation of goods, work, knowledge and capital in economy" and where private economic operators are protected by a legal system that is sufficient in order to operate freely in the internal market. The applicants, among others, further emphasized that the state must refrain from interfering into the market economy, through any measure that restricts the freedom of economic operators that trade essential products, also emphasizing that (i) according to the Constitution, the state can establish independent organs to regulate the market, when the latter cannot sufficiently protect the public interest; and (ii) the obligation of economic operators, by the decisions of the Government, 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 Reserve Goods.

The applicants' allegations are opposed by the Ministry of Industry, Entrepreneurship and Trade and by the Parliamentary Group of Vetëvendosje! Movement. The latter, among others, argue that the contested Law (i) is not contrary to the constitutional principles of the free market economy, because the Constitution enables action, namely the interference of the state through 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 the consumer protection in special circumstances of market destabilization, and also the measures determined through the contested Law, are proportional to the pursued aim; and (ii) is not contrary to the obligations of the Republic of Kosovo arising from the Stabilization Association Agreement.

The Court, in assessing the constitutionality of the contested Law, first elaborated (i) the basic principles of the free market economy according to the Constitution and the legislation in force of the Republic of Kosovo; (ii) the relevant principles arising from international instruments pertaining to the free market economy and the circumstances in which the respective state interference may be compatible with the freedom of the market economy as defined through the applicable European Union regulations and the case-law of the Court of Justice of the

The Judgment, in light of the arguments and counter-arguments presented, among others, examines and assesses (i) whether the interim protective measures established through the contested Law constitute interference with the free market economy; (ii) whether the decision-making mechanisms regarding the imposition of interim protective measures established in the contested Law are in compliance with the Constitution; and (iii) whether the contested Law is in compliance with the principle of legal certainty, namely the rule of law as an essential value of the Republic of Kosovo.

(i) whether the contested Law violates the constitutional principles of free market economy

The Judgment emphasizes the fact that (i) based on article 7 [Values] of the Constitution, the market economy is a value of the Republic of Kosovo; (ii) based on article 10 [Economy] of the Constitution, the market economy with free competition is the basis of the economic regulation of the Republic of Kosovo; and (iii) based on article 119 [General Principles] of the Constitution, among others, it is the duty of the state authorities to ensure a favorable legal environment for the market economy, freedom of economic activity and security of public and private property, and also to protect the consumer in accordance with the law.

The Judgment further clarifies that (i) actions/ measures that restrict free competition through the establishment or abuse of a dominant position or practices that limit competition are prohibited, except when these are "explicitly" allowed by law; whereas (ii) the Republic of Kosovo shall establish independent organs for the regulation of the market when the market itself cannot sufficiently protect the public interest. Moreover, the Judgment emphasizes that the economic operators to whom the interim protective measures specified by the contested Law are applied to, are also legal entities and, based on article 21 [General Principles] of the Constitution, all rights and fundamental freedoms specified in Chapter II [Fundamental Rights and Freedoms] of the Constitution are valid to them to the extend applicable and therefore, may be limited only according to the provisions of article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, respectively insofar as the relevant limitation is "prescribed by law", "pursues a legitimate aim" and is "proportionate to the aim pursued". According to the clarifications given in the Judgment and as far as it is relevant in the circumstances of the present case, the Assembly of the Republic of Kosovo has the right but also the duty to adopt the appropriate legislation to ensure the favorable legal environment for the market economy but also the protection of the consumer, including the possibility to (i) "explicitly allow" the exemptions from free competition; and (ii) establish independent organs for the regulations of the market when the market itself cannot sufficiently protect the public interest. Obligations in the context of the free market economy also originate from the Stabilization and Association Agreement, which, based on articles 16 [Supremacy of the Constitution] and 19 [Applicability of International Law] of the Constitution, is part of the domestic legal system and has superiority over the laws of the Republic of Kosovo.

In principle, and in the context of the common denominator stemming from the decisions of the Court of Justice of the European Union, the European Court of Human Rights and the contribution of the Constitutional Courts and/or the corresponding equivalents members of the Venice Commission Forum, it is not disputed that interim protective measures in the context of import, export, including circumstances of market destabilization, may be possible, as long as the latter are "prescribed by law", follow a "legitimate aim" and are strictly "proportional". According to the case-law of the Court of Justice of the European Union, such interferences with the freedom of the market economy must be expressly necessary and cannot under any circumstance constitute an arbitrary discrimination and/or an indirect restriction on free trade. Moreover, according to the detailed elaboration in the Judgment, the applicable legislation in the Republic of Kosovo also contains provisions and definitions for the regulation/imposition of interim protective measures or interim restrictive measures both in the context of internal and external trade.

In the context of the contested Law, the Judgment clarifies that, in principle, the purpose and scope of the contested Law, including the definition of the list of essential products and interim protective measures that can be imposed on economic operators, in special circumstances of market destabilization, insofar as they pursue a legitimate aim and are strictly proportionate to the aim pursued, do not constitute arbitrary interference with the free market economy. In addition, interim protective measures against economic operators, namely legal entities/natural persons, are also subject to the right to use legal remedies and judicial protection of the rights of economic operators guaranteed by articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights]

of the Constitution, and therefore, the legal framework that enables the interference of the state with the free market economy in special circumstances of market destabilization, does not necessarily imply the legality and constitutionality of the respective interim protective measures, which may be subject to the assessment of legality by regular courts and constitutionality by the Constitutional Court according to the provisions of paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution.

Therefore and based on the clarifications given in the Judgment, the Court concludes that article 1 (Purpose), article 2 (Scope), article 3 (Definitions), paragraphs 1, 3 and 5 of article 4 (Essential Products), paragraphs 1 and 3 of article 5 (Interim measures), article 6 (Causes and duration of safeguard measures), article 7 (Calculation of the margin), paragraphs 7 and 8 of article 8 (Decision-making) and paragraphs 1, 3, 4, 5 and 6 of article 9 (Supervision and sanctions) of the contested Law, are not in contradiction to paragraph 1 of article 7 [Values], article 10 [Economy] and paragraph 3 of article 119 [General Principles] of the Constitution.

Having said that, the content of the contested Law includes two constitutional issues, namely (i) the constitutional obligation of the Republic of Kosovo defined based on paragraph 5 of article 119 [General Principles] of the Constitution, according to which, when the market itself cannot sufficiently protect the public interest, the Republic of Kosovo shall establish "independent organs" for the regulation of the market; and (ii) the principle of legal certainty, an essential part of the rule of law embodied in the constitutional order of the Republic of Kosovo according to paragraph 1 of article 7 [Values] of the Constitution, the findings in relation to which, are summarized in what follows:

(ii) whether the decision-making mechanisms regarding the imposition of interim protective measures are in compliance with constitutional guarantees

The Judgment clarifies that the Constitution of the Republic of Kosovo, in paragraph 5 of its article 119 [General Principles], clearly defines the obligation of the state to establish "independent organs" for the regulation of the market in protection of the public interest, when the market itself cannot achieve this. According to the clarifications provided in the Judgment, the circumstances established in the contested Law, in which the freedom of economic activity of economic operators can be restricted by the respective interim protective measures, 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) the unjustifiable difference of local prices from prices in neighboring countries, include circumstances in which the market can not necessarily regulate itself without the interference of public authorities and which, based on the Constitution of the Republic of Kosovo, should be "independent organs".

The Judgment also clarifies that the Law no. 06/L-113 on Organization and Functioning of State Administration and Independent Agencies, for the purpose of regulating and supervising the activity of the operators of a certain market with the aim of protecting consumers and ensuring free competition, refers to the independent regulatory agencies/bodies. Such a solution is also in accordance with the determination of the free market economy as an essential value of the constitutional order of the Republic of Kosovo according to articles 7 [Values] and 10 [Economy] of the Constitution.

Based on the contribution of the Venice Commission Forum and the comparative analysis elaborated in the Judgment, depending on the relevant constitutional orders, states have set different mechanisms for the implementation of restrictive/protective measures in circumstances of market destabilization, including the executive power/branch, regulators/independent organs or even special commissions. The independence of decision-making mechanisms in the context of the restriction of the freedom of economic activity of economic operators in the circumstances of market destabilization, has also been specified in the acts that have been subject to the constitutional review of the Constitutional Court of the Republic of Albania, despite the fact that unlike the Constitution of Kosovo, the one of Albania does not contain the constitutional obligation to establish "independent organs" for this purpose. By two relevant Judgments, the Constitutional Court of Albania repealed the contested acts in its entirety and in part as contrary to the Constitution.

In the circumstances of the contested Law, while it foresees (i) the establishment of a Commission which recommends to the Minister the undertaking/ imposition and duration of interim protective measures; (ii) the possibility of the consultation of the Minister with the relevant public authorities for the purpose of imposing interim protective measures; and

(iii) the role of the SAA Council, which is only consulted and/or notified before taking decisions on interim protective measures, none of these mechanisms oblige the respective Minister, whose decision-making in imposing the interim protective measures on the economic operators, namely legal entities/natural persons, is full and exclusive, while moreover, the Prime Minister can revoke, cancel or change any decision of the Minister in this context.

According to the clarifications given in the Judgment, while the constitutional competencies of the Government and/or the Prime Minister in issuing decisions in implementation of the laws of the Republic of Kosovo, including in the context of economic development, are clear, taking into account that paragraph 5 of article 119 [General Principles] of the Constitution, precisely determines that the Republic of Kosovo shall establish "independent organs" for the regulation of the market when the market itself cannot sufficiently protect the public interest, and which based on the case-law of the Court of Justice of the European Union, also includes the consumer protection, the competence of the Minister and/or the Prime Minister to impose interim protective measures which restrict the freedom of economic activity of economic operators in the Republic of Kosovo, does 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.

Therefore, the Court found 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 the contested Law, 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.

(iii) whether the contested Law is in compliance with the principle of legal certainty

The Judgment clarifies that the contested Law establishes that the latter enters into force upon its publication in the Official Gazette of the Republic of Kosovo. Having said that, the circumstances regulated by the latter, namely the interference of the state with the free market economy through the imposition of interim protective measures in circumstances of market destabilization, are regulated by at least two other laws applicable in the Republic of Kosovo, respectively (i) Law no. 03/L-244 on State Reserve Goods; and (ii) Law no. 2004/18 on Internal Trade in conjunction with Law no. 04/L-005 on Amending and Supplementing Law no. 2004/18 on Internal Trade. The contested Law neither amends nor repeals the relevant provisions of either of the two aforementioned laws.

According to the elaborations of the Judgment, in such circumstances, (i) "in case of destabilization in the market" responsible for interfering in the market to protect the population and/or the consumer, is the Ministry of Industry, Entrepreneurship and Trade, through two different laws, respectively the Law on State Reserve and the challenged Law, while they do not clearly define the division of the burden between the legal entity/natural person, namely the economic operator and the public authority, namely the state in cases of destabilization/disorder of the market, leaving such a determination at the full discretion of the aforementioned Ministry; furthermore (ii) the Law on Internal Trade, also provides for interim protective measures and sanctions for legal entities/natural persons/economic operators in the circumstances of market destabilization/disorder, and which remain applicable in parallel with the interim protective measures established in the contested Law.

The circumstances under which for the purpose of regulating the market in cases of its destabilization, two different applicable laws would be in force, namely the respective provisions of the Law on Internal Trade and the contest Law, which provide for the possibility of state interference with the free market economy, through parallel mechanisms, measures and sanctions, do not serve the principle of legal certainty and prevent the legal entities/natural persons, namely the economic operators, to regulate their behavior in accordance with the applicable laws within a market economy with free competition, which is the basis of economic regulation and a constitutional value of the Republic of Kosovo. The Judgment emphasizes the fact that, one of the most essential principles of the rule of law as a value of the Republic of Kosovo, is the principle of legal certainty and the latter, based on case-law of the European Court on Human Rights, the Court of Justice of the European Union, but also of the Court, requires, among others, that the applicable rules/laws are clear and precise and aim to ensure that legal situations and relationships remain predictable and that for this purpose, the legal norm must be formulated with sufficient precision and clarity. 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. Therefore, the Court also found 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 [Values] of the Constitution and paragraph 1 of article 119 [General Principles] of the Constitution.

Finally, the Judgment clarifies that the applicants' Referral was submitted to the Court based on paragraph 5 of article 113 [Jurisdiction and Authorized Parties] of the Constitution and that this category of referrals has a suspensive character, respectively 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. In the context of its case-law, as elaborated in the Judgment, the Court notes that taking into account the nature of the provisions of the contested Law declared contrary to the Constitution and the fact that the rest of the contested Law would be difficult to apply after the declaration of the aforementioned provisions as invalid, the contested Law, in the service of the principle of legal certainty, should be declared invalid in its entirety.

ECtHR – Important decisions (1 July – 31 December 2023)

* Disproportionate interference with the freedom of expression of a judge penalised for disclosing prematurely the reasons for her dissenting opinion (18/07/2023)

In its Chamber judgment in the case of **Manole v. the Republic of Moldova** (*application no. 26360/19*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the applicant's dismissal from her duties as judge for having informed the press of the reasons for her dissenting opinion – the existence of which was already known – prior to publication of the full text of the decision rendered by the Court of Appeal in a case that she had heard. The Court specified that judges' duty of discretion required them not to disclose the reasons for a decision before those reasons were available to the public. However, it reiterated that the procedural safeguards and the nature and severity of the penalty imposed were further criteria to be examined when assessing the proportionality of an interference with the exercise of freedom of expression as guaranteed by Article 10 of the Convention. With regard to the procedural safeguards, the Court expressed reservations concerning the choice left to the National Judicial and Legal Service Commission (CSM) as to the type of administrative procedure to use in the applicant's case. It also noted that the Supreme Court had not addressed the applicant's ground of appeal concerning failure to comply with the provisions of Law no. 947/1996 on the CSM. That legislation referred, in the context of possible administrative sanctions for a breach of the prohibition on disclosing information, to the disciplinary procedure which incorporated procedural safeguards. As to the sanction imposed, the Court observed that the applicant's dismissal had been the only sanction that could be applied at the material time. It was a very heavy penalty which had put a permanent end to her career after 18 years of successful service. The Court also noted that at the time the Supreme Court examined the applicant's appeal, Law no. 544/1995 (on the status of judges), on the basis of which the sanction had been imposed on the applicant, had recently been amended so that breaches of the prohibition on the disclosure of information by judges were no longer even punishable on that legal basis. At the same time, Law no. 178/2014 (on judges' disciplinary liability), which the applicant considered should apply in her case, provided for a range of sanctions for infringements of that prohibition. In the Court's view, it was clear from those legislative changes that the legislature had even then considered that breaches of the prohibition on the disclosure of information by judges were to be examined in the light of the full range of sanctions available in the sphere of judges' disciplinary liability. Consequently, it considered that the domestic authorities could not be said to have applied the relevant standards derived from the Court's case-law concerning Article 10 of the Convention and that, in any event, the sanction imposed on the applicant did not appear necessary in a democratic society.

* Serbian courts went too far in their criticism of broadcasting company's reporting on swine-flu-vaccine controversy (05/09/2023)

In its Chamber judgment in the case of **Radio Broadcasting Company B92 AD v. Serbia** (*application no. 67369/16*) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned civil proceedings brought against the applicant broadcasting company by a former assistant health minister for its reporting in 2011 that she had been suspected of abuse of office, amid an ongoing controversy over the procurement of swine flu vaccines. The Court found that the Serbian courts had acknowledged that the information published by the applicant company had contributed to a public debate and that someone in the assistant health minister's position should have shown a greater degree of tolerance. The courts had gone too far, however, in their criticism of the applicant company's fact-checking. The company had based its reporting on a note obtained from police officers about the investigation into the controversy, and there had been no doubts over the note's credibility. The language used in the reporting had been accurate and not exaggerated, and all the parties had been contacted to obtain their version of events. The Court found that, overall, the applicant company had acted in good faith and with the diligence expected of responsible journalism.

* Legislation lowering retirement age to 60 for female judges in violation of Convention (24/10/2023)

In its Chamber judgment in the case of **Pająk and Others v. Poland** (*applications nos. 25226/18, 25805/18, 8378/19 and 43949/19*), the European

Court of Human Rights held, by a majority (5 votes to 2), that there had been: a **violation of Article 6 § 1 (right of access to a court)** of the European Convention on Human Rights in respect of all applicants, and a **violation of Article 14 (prohibition of discrimination)** taken in conjunction with Article 8 (right to respect for private life) in respect of the three applicants who had lodged complaints under those provisions.

The case concerned four judges who complained about legislative amendments that had lowered the retirement age for judges from 67 to 60 for women, and to 65 for men, and had made the continuation of a judge's duties after reaching retirement age conditional upon authorisation by the Minister of Justice and by the National Council of the Judiciary ("the NCJ"). The Court took the view that judges should enjoy protection from arbitrary decisions by the legislative and executive powers and that only oversight by an independent judicial body of the legality of a disputed measure was able to render such protection effective. In the present case, it found that the decisions taken in respect of each applicant by the Minister of Justice and by the NCJ had constituted arbitrary and unlawful interference, in the sphere of judicial independence and protection from removal from judicial office, on the part of the representative of executive authority and the body subordinated to that authority. It concluded that the applicants' right of access to a court had thereby been impaired in its very essence. The Court also found that the legislation complained of had clearly introduced a difference in treatment, on the ground of sex, as to the mandatory retirement age for members of the same profession. It noted that the applicants' working life had ceased five years earlier than that of male judges in similar circumstances, and that their compulsory early retirement had had obvious negative repercussions on their careers and their prospects in terms of professional and personal development.

* No safeguards for National Property Fund official randomly affected by telephone-tapping measures (26/10/2023)

In its Chamber judgment in the case of **Plechlo v. Slovakia** (*application no. 18593/19*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned the tapping and recording of some of Mr Plechlo's telephone conversations in 2006 in the context of a criminal investigation into suspected corruption within the National Property Fund – the country's privatisation agency. At the time, Mr Plechlo was a top-ranking official of the NPF; the criminal investigation had not however directly concerned him. Subsequently, in 2016 some of the intercepted material was included in the file of another criminal investigation into mismanagement of assets and in which Mr Plechlo was one of the primary suspects. This investigation took place in the broader context of investigations into suspicion of high level corruption involving the NPF, following records posted anonymously on the Internet claiming to originate from a surveillance operation, code-named "Gorilla", carried out in 2005-06 by the Slovak Intelligence Service. The Court found that Mr Plechlo, as somebody randomly affected by telephone-tapping measures in 2006, had not benefited from the requisite safeguards with regard to the recording, storage and continued retention of the intercept material. The interference with his right to respect for his private life and correspondence had not been accompanied by adequate and effective guarantees against abuse.

* Violation in injunction on Bild nightclub-arrest video in Bremen (31/10/2023)

In its Chamber judgment in the case of **Bild GmbH & Co. KG v. Germany** (*application no. 9602/18*) the European Court of Human Rights held, unanimously, that there had been: a violation **of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned a court ruling ordering bild.de, a major news website, to take down CCTV footage of a police arrest at a nightclub in Bremen unless it blurred the face of one of the police officers involved. The Court found in particular that the reasoning of the German courts as regards the second and any future use of the footage had been insufficient, and that the reasoning could lead to an unacceptable ban on any future publication, without the consent of the individuals concerned, of unedited images of police officers performing their duties.

* Significant delays in prosecution of former Minister of Defence in 2008 Gërdec ammunition-decommissioning facility explosion (07/11/2023)

In its Chamber judgment in the case of **Durdaj and Others v. Albania** (*applications nos. 63543/09, 46707/13, 46714/13 and 12720/14*) the European Court of Human Rights held, unanimously, that there had been: a **violation of the procedural aspect of Article 2 (right to life)** of the European

Court of Human Rights held, unanimously, that there had been: a **violation of the procedural aspect of Article 2 (right to life)** of the European Convention on Human Rights.

The case concerned an explosion, on 15 March 2008, at a facility in Gërdec set up by the State authorities for dismantling decommissioned and obsolete weapons, machinery and equipment of the armed forces. In total, 26 people died (including the seven-year-old son of two of the applicants in this case) and over 300 were injured (including 15 applicants). The Court found that the applicants had been deprived of the possibility to participate effectively in the criminal trial. Moreover, the criminal proceedings against the former Minister of Defence, F.M., for abuse of office are still pending, thus leaving the applicants without a final conclusion as to his responsibility more than 14 years after the explosion. The national prosecuting authorities had provided no convincing explanations for their failure to resume the investigation immediately after F.M.'s re-election as MP, thus raising serious questions as to their willingness and diligence to pursue the matter and creating a potential for impunity. While the Court was not taking a stance as to his criminal responsibility, it considered that the applicants as well as the general public had the right to know not only the circumstances in which the Gerdec tragedy had taken place, but also the exact role the former Minister of Defence had played in it.

* Jurisprudential creation of new time-limit for applying to administrative courts did not unduly interfere with right of access to a court, but immediate application to ongoing proceedings was in breach of Article 6 § 1 (09/11/2023)

In its Chamber judgment in the case of **Legros and Others v. France** (*applications nos. 72173/17 and 17 others*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 6 § 1 (right of access to a court)** of the European Convention on Human Rights, and a **violation of Article 1 of Protocol No. 1 (protection of property)** in the case of Mr Legros (application no. 72173/17).

The Court ruled on complaints from 18 individuals concerning the immediate application to ongoing proceedings of a new time-limit for lodging claims in the administrative courts, as enshrined by the Conseil d'État in its Czabaj decision of 13 July 2016 (Judicial Assembly, no. 387763). In that decision the Conseil d'État had laid down the principle that, where an administrative decision failed to notify the procedures and time-limits for an appeal against it, it was only possible to challenge that decision, in the absence of specific statutory or regulatory time-limits, within a "reasonable time", which would not exceed, as a general rule, one year from the time that the person concerned was notified or became aware of the decision, unless special circumstances were demonstrated by the applicant. First, the Court took the view that the creation of a new admissibility requirement through judicial interpretation, on grounds that justified the departure from the case-law that had resulted in the creation of a "reasonable time" within which any application had to be lodged with the administrative courts, did not unduly interfere with the right of access to a court as secured by Article 6 § 1 of the Convention, even though it was liable to affect the very essence of the right of appeal. Secondly, the Court considered that the immediate application to ongoing proceedings of this new rule on the time-limit for applying to the administrative courts, which, for the applicants, had been both unforeseeable in principle and unassailable in practice, had restricted their access to a court to such an extent that the very essence of that right had been impaired. There had therefore been a violation of Article 6 § 1 of the Convention. As to application no. 72173/17, as a result of the applicant's having been the victim of a violation of Article 6 § 1 of the Convention, the Court found that the restriction in question had not struck the fair balance required by Article 1 of Protocol No. 1 and that there had therefore been a violation of that Article.

* Albanian authorities should identify and punish those responsible for shooting of applicants' relative during 2011 protest in front of PM's office (14/11/2023)

In its Chamber judgment in the case of **Nika v. Albania** (*application no. 1049/17*) the European Court of Human Rights held, unanimously, that there had been: **two violations of Article 2 (right to life and investigation)** of the European Convention on Human Rights.

The case concerned the death of the applicants' husband and father after he had been shot in the head in 2011 during a demonstration in front of the Albanian Prime Minister's office. The protest had resulted in violent confrontations between demonstrators and the authorities. The applicants alleged in particular that the commander-in-chief of the National Guard, in charge of protecting the Prime Minister's office, had ordered his men to open fire on the protestors. The Court found that the question of possible command responsibility had not been answered in the ensuing investigation, which had focused on individual responsibility of the National

Guard officers and not on the sequence or nature of any orders given by those in their chain of command. There had also been a series of other shortcomings in the investigation, including the deletion of video recordings of the incident and no follow up of key lines of enquiry such as bullet marks found at human height on the iron fence surrounding the Prime Minister's office. Such deficiencies raised doubts as to whether the authorities had been attempting to divert or inappropriately interfere with the investigation. It also found shortcomings in the then legal framework governing the use of firearms in the context of crowd-control operations and serious defects in the planning and control of the protest. The authorities had not shown that the use of lethal force by the National Guard officers that had resulted in the death of the applicant's relative had been absolutely necessary. Indeed, the Albanian Government itself accepted that the use of force had been excessive. Lastly, it held under Article 46 (binding force and implementation) that the authorities should continue to try to elucidate the circumstances of the death of the applicants' relative and to identify and punish those responsible.

* An association's application concerning anti-Covid measures banning public events in Switzerland in 2020 is inadmissible (27/11/2023)

The case of **Communauté genevoise d'action syndicale (CGAS) v. Switzerland** (*application no. 21881/20*) concerned measures in force from 17 March to 30 May 2020, which were adopted by the Swiss Government to counter the coronavirus 2019 disease ("COVID -19"). Relying on Article 11 (freedom of assembly and association) of the Convention, the applicant association complained about the blanket ban on public events which had resulted from "Ordinance COVID-19 no. 2", in the version in force during the above-mentioned period.

In its Grand Chamber judgment the European Court of Human Rights held that the application was inadmissible within the meaning of Article 35 of the Convention.

- Unanimously, the Court considered that the complaint concerning trade-union freedom fell outside the scope of the case as submitted to the Grand Chamber and that, in any event, it was inadmissible for failure to comply with the six-month deadline (Article 35 of the Convention as in force at the relevant time). This new complaint had been raised for the first time in the context of the proceedings before the Grand Chamber; it ought to have been lodged, at the latest, within six months of 30 May 2020, the date on which Ordinance COVID-19 no. 2 had ceased to apply.

- By a majority (12 votes to 5), the Court considered that the complaint concerning freedom of peaceful assembly was inadmissible for failure to exhaust the domestic remedies. The Court noted that the applicant association had failed to take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system. The Court stated, in particular, that an application for a preliminary ruling on constitutionality, lodged in the context of an ordinary appeal against a decision implementing federal ordinances, was a remedy which was directly accessible to litigants and made it possible, where appropriate, to have the impugned provision declared unconstitutional. There had been no particular circumstance which would have released the applicant association from the obligation to exhaust the above remedy. Reiterating its subsidiary role, the Court specified that, in the unprecedented and highly sensitive context of the COVID-19 pandemic, it was all the more important that the national authorities had first been given the opportunity to strike a balance between competing private and public interests or between different rights protected by the Convention, taking into consideration local needs and conditions and the public-health situation as it had existed at the relevant time.

* Supreme Court was impartial in case on conspiracy to influence war-crimes appeal (28/11/2023)

In its Chamber judgment in the case of **Tadić v. Croatia** (*application no. 25551/18*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 6 §§ 1 and 2 (right to a fair trial)** of the European Convention on Human Rights.

The case concerned criminal proceedings in which Mr Tadić had been found guilty of conspiring – through payments of money – to influence the Supreme Court to give a decision favourable to a well-known politician who was being tried for a war crime. The Court found in particular that the Supreme Court President's involvement in the trial against Mr Tadić had not harmed the objective impartiality of that court. He had had very little real influence to impose his will on other judges, and in any case there had been no issue as to how the Supreme Court had upheld the first-instance judgment. The Court found furthermore that the appellate judgment had not been influenced by media publications. It had been given by professional, Supreme Court judges on the basis of the

case file and dealing with the first-instance courts' identification of facts and application of law.

*** Trafficking victim has right to seek compensation from trafficker (28/11/2023)**

In its Chamber judgment in the case of **Krachunova v. Bulgaria** (*application no. 18269/18*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 4 (prohibition of slavery and forced labour)** of the European Convention on Human Rights.

The case concerned Ms Krachunova's attempts to obtain compensation for the earnings from sex work that X, her trafficker, had taken from her. The Bulgarian courts had refused compensation, stating she had been engaged in prostitution and returning the earnings from that would be contrary to "good morals". The Court held that States had an obligation to enable victims of trafficking to claim compensation for lost earnings from traffickers, and that the Bulgarian authorities had failed to balance Ms Krachunova's right under Article 4 to make such a claim with the interests of the community, who were unlikely to find the payment of compensation in such a situation immoral. This was the first time that the European Court had found that a trafficking victim had a right to seek compensation in respect of pecuniary damage from her trafficker under Article 4.

*** By sitting in a case despite their regular professional contacts with one of the parties, Court of Cassation judges cast legitimate doubt on their objective impartiality: violation of Article 6 § 1 of the Convention (14/12/2023)**

In its Chamber judgment in the case of **Syndicat National des Journalistes and Others v. France** (*application no. 41236/18*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 6 § 1 (right to a fair hearing)** of the European Convention on Human Rights.

The case concerned an alleged violation of the right to a fair hearing by an impartial court, as a result of the involvement of three Court of Cassation judges – who, in the applicants' submission, had ties with the opposing party – in the examination of their appeal on points of law. In the present case, at least two of the three judges in question regularly worked with the legal publishing company which was one of the parties to the profit-sharing dispute. In the context of a restructuring operation within the parent publishing company, a loan of 445 million euros had been taken out to acquire the shares of the wound-up group companies, which had resulted in a level of indebtedness that precluded any payments to employees under the mandatory profit-sharing scheme. The Court emphasized, first, that the contribution of judges to the dissemination of law, particularly through research events, teaching activities or publications, was clearly part of their role. However, it then considered that the professional contacts between certain judges and one of the parties to the proceedings had been regular, close and remunerated, which was sufficient to conclude that those judges should have withdrawn from sitting in the case, as the National Legal Service Commission (Conseil supérieur de la magistrature) itself had also held. It concluded that the applicant trade unions' fears as to the judges' lack of impartiality had been objectively justified. There had therefore been a violation of Article 6 § 1 of the Convention.

*** Fines for striking teachers with civil-servant status did not violate rights (14/12/2023)**

In its Grand Chamber judgment in the case of **Humpert and Others v. Germany** (*application nos. 59433/18 and 3 others*) the European Court of Human Rights held, by 16 votes to 1, that there had been: **no violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned the disciplinary sanctions imposed on the applicants, teachers with civil-servant status, for having participated, during their working hours, in strikes organised by their trade union in order to protest against worsening working conditions for teachers. The Court found in particular that the prohibition of strikes by teachers with civil-servant status – which was in place to ensure the fulfilment of State functions through effective public administration, including the provision of education – did not render their trade-union freedom devoid of substance, as the variety of different institutional safeguards which had been put in place enabled civil servants and their unions to effectively defend their professional interests. As a result, the Court held that the disciplinary measures against the applicants following their participation in strikes had been within the State's discretion ("margin of appreciation").

(*For more information please visit the website of the European Court of Human Rights: www.echr.coe.int*)

INFORMATION ON THE COURT

The building of the Constitutional Court:

The Constitutional Court of the Republic of Kosovo, since it became functional in 2009, has been located in the building of the former Kosovo Protection Corps - KPC, located in the center of Prishtina, in the area of Pejton. The position of the Court in the center of the capital city, symbolizes an equal access to all citizens and other authorized parties to the Constitutional Justice. Over the years this building has been adapted according to the needs and nature of work of the Constitutional Court. This has been carried out with the support of our donors, as in the case of construction of the Courtroom of the Court which has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the Library of the Court which was entirely supported by the GIZ Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011.
The building of the Court has a usable office space of 1 937 m^2 and is used by 65 employees.

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