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

Prishtina, on 23 January 2024
Ref. no.: AGJ 2316/24

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JUDGMENT

in

case no. KO79/23

Applicant

The Ombudsperson

Constitutional review of Law No. 08/L-196 on Salaries in the Public Sector

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by the Ombudsperson Institution of the Republic of Kosovo (hereinafter: the Ombudsperson).

Contested Law

2. The Ombudsperson partially challenges the constitutionality of Law no. 08/L-196 on Salaries in the Public Sector (hereinafter: the Law on Salaries or the contested Law).

Subject matter

3. The subject matter of the Referral is the constitutional review of the contested Law, claiming that certain provisions and annexes thereof are not in compliance: (i) with *"the principle of separation of powers, control and balance between them and preservation of the independence of independent constitutional institutions"* guaranteed by Article 4 [Form of Government and Separation of Power]; (ii) with "*the rule of law"* guaranteed by Article 7 [Values]; (iii) with "*equality before the law"* guaranteed by Articles 3 and 24 [Equality Before the Law]; and (iii) with *"protection of property"* guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights (hereinafter: the ECHR).

4. The Ombudsperson specifically challenges the constitutionality of the provisions of the contested Law, as follows: paragraph 3 of Article 2 (Scope); subparagraphs 1.3 and 1.4 of Article 4 (Principles of salary system), subparagraph 6.1 of Article 6 (Basic salary); paragraph 1 of Article 9 (Setting the coefficient value); paragraphs 2, 3 and 4 of Article 41 (Transitional allowance), paragraphs 4 and 5 of Article 26 (Allowance for specific working conditions), paragraphs 1, 2, 3 and 4 of Article 42 (Determining the equivalence), as well as Annexes: no. 2 (Judicial System); no. 3 (Prosecutorial System); no. 4 (Kosovo Security Force); no. 7 (Kosovo Correctional Service); no. 8 (Public officer of university and pre-university education); no. 9 (Public health system employee); no. 10.3 (The Assembly of Kosovo); no. 10.5 (Independent Constitutional Institutions); no. 10.6 (Ministries, independent agencies, agencies and regulators, executive agencies and public service agencies); 10.7 (Municipalities); no. 14.1 (National Audit Office); and 14.2 (Internal Audit).

Legal basis

5. The Referral is based on sub-paragraph (1) of paragraph 2 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution; Articles 22 (Processing Referrals), 29 (Accuracy of the Referral) and 30 (Deadlines) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law); and Rule 25 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court No. 01/2023 ((hereinafter: the Rules of Procedure).

6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo no. 01/2023, was published in the Official Gazette of the Republic of Kosovo and entered into force 15 days after its publication. Therefore, when considering the referral, the Constitutional Court refers to the provisions of the abovementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure no. 01/2023, exceptionally certain provisions of the Rules of Procedure no. 01/2018, continue to be applied to cases that were registered in the Court before its repeal, only if and to the extent they are more favorable for the parties.

Proceedings before the Court

7. On 7 April 2023, the Ombudsperson submitted the Referral to the Court.

8. On 13 April 2023, the President of the Court by Decision [GJR. KO79/23], appointed Judge Safet Hoxha as Judge Rapporteur and by Decision [KSH. KO79/23], the members of the Review Panel composed of judges: Selvete Gërxhaliu Krasniqi (Presiding), Radomir Laban and Nexhmi Rexhepi (members).

9. On 14 April 2023, the Ombudsperson was notified about the registration of the referral. On the same date, the referral was communicated to (i) the President of the Republic of Kosovo; (ii) the Prime Minister of the Republic of Kosovo; as well as (iii) the President of the Assembly of Kosovo with the invitation to submit to the Court their eventual comments or those of the deputies of the Assembly by 2 May 2023. The referral was also communicated to the Secretary of the Assembly of the Republic of Kosovo, who was requested to submit to the Court all the documents relevant to the contested Law.

10. On 14 April 2023, the registration of the referral was also communicated to the Ministry of Internal Affairs (hereinafter: MIA), providing them the opportunity for possible comments until 2 May 2023.

11. On 28 April 2023, the Secretary of the Assembly of the Republic of Kosovo submitted the following documents to the Court: 1. Draft Law no. 08/L-196 on Salaries in the Public Sector, processed by the Government in the Assembly on 24 November 2022; 2. Minutes from the meeting of the functional Committee on Public Administration, Local Governance, Media and Regional Development for the first review of Draft Law no. 08/L-196 on Salaries in the Public Sector of 2 December 2022; 3. The report of the functional Committee on Public Administration, Local Government, Media and Regional Development for the review in principle of the Draft Law no. 08/L-196 on Salaries in the Public Sector of 2 December 2022; 4. Decision [no. 08-V-447] of 9 December 2022 of the Assembly for the approval in principle of Draft Law no. 08/L-196 on Salaries in the Public Sector; 5. Minutes of the Plenary Session of the Assembly of 9 December 2022; 6. The request of 40 deputies for an extraordinary session of the Assembly for the second review of the Draft Law no. 08/L-196 on Salaries in the Public Sector of 15 December 2022; 7. Decision [no. 08-V-450] of 15 December 2022 of the Assembly for avoiding the provisions of the Regulation for the review of Draft Law no. 08/L-196 on Salaries in the Public Sector; 8. The transcript of the meeting of the functional Committee of the second review of the Draft Law no. 08/L-196 on Salaries in the Public Sector of 20 December 2022; 9. Minutes from the meetings of the functional Committee on Public Administration, Local Governance, Media and Regional Development for the second review of Draft Law no. 08/L-196 on Salaries in the Public Sector of 19 and 21 December 2022; 10. The report of the functional Committee on Public Administration, Local Governance, Media and Regional Development for the second review of Draft Law no. 08/L-196 on Salaries in the Public Sector, together with the reports of the permanent committees of 21 December 2022, 11. Decision [no. 08-V-455] of 22 December 2022 of the Assembly for the approval of Draft Law no. 08/L-196 on Salaries in the Public Sector; 12. Minutes of the plenary session of the Assembly of 22 December 2022, 13. Part of the Transcript of the Plenary Session of the second review of the Draft Law no. 08/L-196 on Salaries in the Public Sector of 22 December 2022; and 14. Law no. 08/L-196 on Salaries in the Public Sector of 22 December 2022, sent for promulgation on 4 January 2023.

12. On 2 May 2023, the deputies of the parliamentary group of the Democratic Party of Kosovo (hereinafter: the PDK) submitted to the Court the comments related to the referral of the Ombudsperson for the constitutional review of the contested Law.

13. On 2 May 2023, the MIA, on behalf of the Government of the Republic of Kosovo, submitted to the Court the comments related to the referral of the Ombudsperson for the constitutional review of the contested Law.

14. On 18 May 2023, the Court notified (i) the President of the Republic of Kosovo; (ii) the President of the Assembly; (iii) the Prime Minister; (iv) the Ombudsperson; and (v) the MIA for accepting the comments of (i) the PDK parliamentary group; and (ii) MIA; as well as providing them the opportunity for possible comments until 2 June 2023.

15. On 8 August 2023, the Professional Associates of the Basic Courts of the Republic of Kosovo, represented by Besnik Berisha, requested an additional deadline for submitting comments regarding the contested Law.

16. On 17 August 2023, the Chief Financial Officers of the Central and Local Level, represented by Qazim Krasniqi, submitted comments regarding the contested Law.

17. On 28 September 2023, the Court, as it requested for the referral KO219/19, where the constitutionality of Law no. 06/L-111 on Salaries in the Public Sector was reviewed, also in connection with the current referral KO79/23 submitted by the Ombudsperson, requested additional documentation, namely the payrolls from the Ministry of Finance, Labor and Transfers (hereinafter: Ministry of Finance) in relation to the contested Law. On the same date, the Court approved the request of the Professional Associates for the submission of comments.

18. On 6 October 2023, the Ministry of Finance, based on subparagraph 1.5, paragraph 1 of Article 4 of Annex 1 of Regulation (GRK) No. 14/2023 on the Areas of Administrative Responsibility of the of the Office of the Prime Minister and Ministers, notified the Court that the MIA is responsible for providing the required information and documentation (payrolls).

19. On 13 October 2023, the Court requested from the MIA additional documentation (payrolls) according to the aforementioned clarifications, based on the response of the Ministry of Finance.

20. On 31 October 2023, the MIA submitted to the Court the requested documentation related to the contested Law.

21. On 2 and 7 November 2023, the Professional Associates of the Courts and Basic Prosecutions, represented by Besnik Berisha, submitted their comments regarding the contested Law.

22. On 26 December 2023, the Court unanimously found that the referral is admissible for review and to find, unanimously, that (i) paragraph 2 of Article 2 (Scope), and paragraph 2 of Article 45 (Repeal) in conjunction with paragraph 2 of Article 24 (Allowance for labour market conditions), paragraph 5 of Article 25 (Performance allowance), paragraph 4 of Article 28 (Workload allowance) and paragraphs 2 and 3 of Article 42 (Determining the equivalence), of the contested Law, are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution; (ii) paragraph 6 of Article 6 (Basic salary) of the contested Law, is not in compliance with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights; (iii) paragraph 2 of Article 41 (Transitional allowance) of the contested Law, is 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 and paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution; (iv) paragraph 3 of Article 41 (Transitional allowance) of the contested Law, is 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 and paragraph 1 of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the European Convention on Human Rights; (v) paragraph 4 of Article 41 (Transitional allowance) of the contested Law, is not in compliance with paragraph 1 of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 1 (General prohibition of discrimination) of Protocol no. 12 of the European Convention on Human Rights; (vi) paragraphs 2, 3 and 4 of Article 41 (Transitional allowance) and paragraph 2 of Article 45 (Repeal) of the contested Law, are declared invalid upon entry into force of the Judgment; (vii) in accordance with paragraph 1 of Article 116 [Legal Effect of Decisions] of the Constitution, to order the Assembly of the Republic of Kosovo, within six (6) months from the entry into force of the Judgment, to take the necessary actions to supplement and amend paragraph 2 of Article 2 (Scope) and paragraph 6 of Article 6 (Basic Salary) of the contested Law, in accordance with the Constitution and this Judgment; (viii) until supplementation and amendment of paragraph 2 of article 2 (Scope) of the contested Law, paragraph 3 of Article 2 (Scope), paragraph 2 of article 22 (Allowances), paragraph 5 of Article 24 (Allowance for labour market conditions), paragraph 8 of Article 25 (Performance Allowance), paragraph 7 of Article 28 (Workload allowance) and paragraph 4 of Article 42 (Determining the equivalence), are applied in accordance with the Constitution and this Judgment; and (ix) this Judgment enters into force on 1 February 2024.

Summary of facts

Brief summary of the facts of the Judgment of the Court in case KO219/19 regarding the review and repeal of Law no. 06/L-111 on Salaries in the Public Sector

23. On 2 February 2019, the Assembly proceeded for the second reading of Draft Law no. 06/L-111 on Salaries. On the same date, the Assembly by Decision No. 06-V-310 adopted Law no. 06/L-111 on Salaries in the Public Sector. On 12 February 2019, Law no. 06/L-111 on Salaries in the Public Sector was sent to the President of the Republic of Kosovo for decree and publication in the Official Gazette. On 1 March 2019, Law no. 06/L-111 on Salaries in the Public Sector was published in the Official Gazette.

24. On 5 December 2019, the Ombudsperson challenged the constitutionality of Law no. 06/L-111 on Salaries in the Public Sector before the Court, with the allegation that the latter was contrary to the Constitution. More specifically, the subject matter of the relevant referral was the constitutional review of the contested Law, which, according to the Ombudsperson's allegation, was not in compliance with paragraph 2 of Article 3 [Equality Before the Law], Article 4 [Form of Government and Separation of Power], paragraph 1 of Article 7 [Values], Article 10 [Economy], Article 21 [General Principles], paragraph 1 of Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 46 [Protection of Property], Article 55 [Limitations on Fundamental Rights and Freedoms], paragraphs 3 and 7 of Article 58 [Responsibilities of the State], paragraph 2 of Article 102 [General Principles of the Judicial System], paragraph 1 of Article 109 [State Prosecutor], Article 119 [General Principles], paragraphs 1 and 2 of Article 142 [Independent Agencies], Article 130 [Civil Aviation Authority] of the Constitution and Article 1 of Protocol no. 1 (Protection of property) of the European Convention on Human Rights (hereinafter: the ECHR); as well as paragraph 2 of Article 23 of the Universal Declaration of Human Rights (hereinafter: UDHR).

25. On 30 June 2020, the Court (i) found that Law no. 06/L-111 on Salaries in the Public Sector, in its entirety, was not in compliance with Articles 4 [Form of Government and Separation of Power]; 7 [Values]; 102 [General Principles of the Judicial System]; 103 [Organization and Jurisdiction of Courts]; 108 [Kosovo Judicial Council]; 109 [State Prosecutor]; 110 [Kosovo Prosecutorial Council]; 115 [Organization of the Constitutional Court]; and Articles 132 [Role and Competencies of the Ombudsperson]; 136 [Auditor-General of Kosovo]; 139 [Central Election Commission]; and 141 [Independent Media Commission] of Chapter XII [Independent Institutions] of the Constitution; and (ii) to declare the latter invalid in its entirety.

Summary of facts related to the procedure of drafting, reviewing and adopting the contested Law

a) Drafting

26. In 2020, the MIA began drafting Draft Law no. 08/L-196 on Salaries in the Public Sector.

27. On 18 November 2022, the European Union (EU) Law Division of the Prime Minister's Office, sent its assessment to the MIA Legal Department regarding the compliance of the Draft Law on Salaries with the EU *acquis*.

28. On 21 November 2022, the Department of Budget of the Ministry of Finance sent its assessment to the Legal Department of the MIA regarding the budgetary impacts of the Draft Law on Salaries.

b) Approval in the Government

29. On 22 November 2022, the MIA processed for approval the Draft Law on Salaries in the Government of the Republic of Kosovo.

30. On 23 November 2022, the Government approved the Draft Law on Salaries.

c) Proceedings in the Assembly

31. On 24 November 2022, the Government, through the MIA, forwarded the Draft Law on Salaries to the Assembly for review and adoption.

32. On the same date, the President of the Assembly sent the Draft Law on Salaries to all deputies of the Assembly.

33. On 2 December 2022, the functional Committee on Public Administration, Local Governance, Media and Regional Development reviewed the Draft Law on Salaries and unanimously approved it in principle, presenting the proposal to the Assembly to adopt it in principle.

d) First reading

34. On 9 December 2022, the Assembly by Decision [no. 08-V-447], with sixty-eight (68) votes for, none (0) against and none (0) abstentions, after the first reading, adopted in principle the Draft Law on Salaries. On the same date, the Assembly tasked the permanent committees to review the Draft Law on Salaries and to submit the report with recommendations to the latter.

35. On 15 December 2022, forty (40) deputies of the Assembly asked the Presidency of the Assembly to call an extraordinary session for the second review of the Draft Law on Salaries.

36. On the same date, based on Article 123 (Avoidance of the Rules of Procedure) of the Regulation [No. 08-V-349] of 28 July 2022, the Assembly by Decision [no. 08-V-450], decided that the review of the Draft Law on Salaries be done with an accelerated procedure, avoiding regular procedural deadlines. In this case, the Assembly asked the permanent committees to finally present to the Assembly the report with recommendations for the Draft Law on Salaries by 21 December 2022.

37. On 20 December 2022, the functional Committee on Public Administration, Local Governance, Media and Regional Development reviewed the Draft Law on Salaries for the second time.

38. On 21 December 2022, the Functional Committee on Public Administration, Local Governance, Media and Regional Development, after the second review, compiled the report with recommendations for the Draft Law on Salaries and submitted it to the Assembly for a second review.

e) Second reading, adoption, decree and entry into force

39. On 22 December 2022, the Assembly, after the second review, by Decision [no. 08-V-455], adopted the contested Law with sixty-three (63) votes for, none (0) against and one (1) abstention.

40. On 4 January 2022, the Assembly processed the contested Law of the President for decree and publication in the Official Gazette.

41. On 4 January 2022, the President decreed and sent the contested Law for publication in the Official Gazette.

42. On 5 January 2023, the contested Law was published in the Official Gazette of the Republic of Kosovo. Article 46 [Entry into force] of the contested Law establishes that "*This law shall enter into force one (1) month after its publication in the Official Gazette of the Republic of Kosovo"*.

43. On 5 February 2023, the contested Law entered into force.

Allegations of the Ombudsperson

44. The Ombudsperson claims that in some parts the contested Law is not in compliance (i) with *"the principle of separation of powers, control and balance between them and preservation of the independence of independent constitutional institutions"* guaranteed by Article 4 [Form of Government and Separation of Power]; (ii) with "*rule of law"* guaranteed by Article 7 [Values]; (iii) with "*equality before the law"* guaranteed by Articles 3 and 24 [Equality Before the Law]; and (iii) with *"protection of property"* guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

(i) Allegations regarding "separation of powers, control and balance between them and preservation of the independence of independent constitutional institutions"

45. Regarding the principle of separation of powers, control and balance between them and preservation of the independence of independent constitutional institutions, the Ombudsperson raises this allegation based on several levels.

46. Initially, the Ombudsperson emphasizes that in the context of the right to issue sub-legal acts, the contested law is a step forward compared to the law repealed by Judgment KO219/19, because with a number of provisions it provided for the issuance of sub-legal acts even by other authorities, in addition to the Government and the Assembly, as specified in paragraph 3 of Article 8, paragraph 2 of Article 22, paragraph 5 of Article 24, paragraph 8 of Article 25, paragraph 3 of Article 27, paragraph 7 of Article 28, paragraph 8 of Article 36, paragraph 4 of Article 37 and paragraph 4 of Article 42 of the contested Law.

47. The Ombudsperson also emphasizes that the issuance of sub-legal acts only by the Government would have an impact on the organizational, functional and budgetary independence of the institutions which are guaranteed independence from the Government by the Constitution and would also interfere with the control and balancing mechanism, which is a guarantor of the democratic functioning of the state.

48. However, the Ombudsperson further assesses that the contested Law limits the right to issue sub-legal acts by independent constitutional institutions in two forms:

    a. First, with the definitions of paragraph 3 of Article 2 (Scope) of the contested Law according to which it is determined: *"For the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, this law applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution".* The Ombudsperson draws attention to the wording *"their functional and organizational independence",* noting that this wording is deficient, because the Constitutional Court not only in Judgment KO219/19, but also in a number of judgments, where it addressed the issue of the independence of independent institutions, emphasized that independent institutions enjoy "*functional, organizational and budgetary independence"* (see Judgments of the Court in cases: KO73/16, Applicant *the Ombudsperson*, Constitutional review of the Administrative Circular No. 01/2016, of 21 January 2016, Judgment of 16 November 2016, published on 8 December 2016; case KO171/18, Applicant *the Ombudsperson*, Constitutional review of Articles 2, 3 (paragraph 1, subparagraphs 2, 3 and 4), 4 (paragraph 1), 6, 7 (paragraph 1, subparagraphs 2, 3 and 4), 11 (paragraph 3) 18, 19 (subparagraphs 5, 6, 7 and 8), 20 (paragraph 5) 21, 22, 23, 24 and 25 (paragraphs 2 and 3) of Law No. 06/L-048 on the Independent Oversight Board for Civil Service of Kosovo, Judgment of 25 April 2019, published on 20 May 2019; case KO203/19, Applicant *the Ombudsperson,* Constitutional review of certain articles of Law no. 06/L-114 on Public Officials, Judgment of 30 June 2020, published on 9 July 2020). In this regard, the contested Law, according to the Ombudsperson, did not take into account this assessment of the Constitutional Court and only mentioned "*functional and organizational independence*", while it did not take into account "*budgetary independence"*.

    b. The second limitation according to the Ombudsperson consists in setting a ceiling for budgetary organizations, such as (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) the Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) independent constitutional institutions and determines a number of allowances and the procedures for their benefit that will be established

by special acts adopted by the authorities in question, but only in accordance, respectively under the limitations of the contested Law.

49. The Ombudsperson also claims that the wording remains unclear in the provisions which allow the relevant institutions to issue special acts referring these rights to the contested Law. thus, according to the Ombudsperson, any right recognized by the provisions of the contested Law is stated: *"[...] is regulated by this law and by a special act approved by the competent bodies of the institutions"* The Ombudsperson takes into account the definition from paragraph 3 of Article 2 of the contested Law, according to which *"This law is applied to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution*". However, according to the Ombudsperson, this issue requires additional interpretation, because so far in practice it has been observed that other authorities have not referred to the internal acts of independent institutions, but to laws which may conflict with the organic laws of the independent institutions and with their own internal acts.

50. Furthermore, the Ombudsperson draws attention to paragraphs 1, 2 and 3 of Article 42 (Determining the equivalence) of the contested Law, according to which:

> *"1. Upon the entry into force of this law, any change in the structure, components or levels of salary coefficients shall be prohibited.*
> *2. the determination of the salary class that applies to that function, position or designation on the basis of equivalence.*
> *3. Upon receiving the request, the ministry responsible for public administration shall evaluate the function, position or designation with the equivalence based on the principles of this law and makes a proposal for approval to the Government, for the salary class that applies to that function, position or designation."*

51. The Ombudsperson emphasizes that despite the fact that the contested Law has left the possibility for independent institutions to regulate the creation of new functions/positions/titles by internal acts, the definition of general rules limits the institutions that with their internal acts define specific positions. Consequently, according to this provision, the independent constitutional institutions will be obliged, in each case where there is any structural change, to request from the Government/Ministry responsible for Public Administration, the determination of the salary class that applies to that function, position or designation on the basis of equivalence. Thus, regardless of the provisions in paragraph 4 of Article 42 (Determining the equivalence) of the contested Law, it seems that the Government is presented as the final decision-making mechanism that approves any proposal of independent institutions.

52. The Ombudsperson further claims that through annex 10.5 of the contested Law, it has directly interfered with the organizational structure, already established, of at least two independent institutions. In the complaint presented by the Central Election Commission, it is stated that the above-mentioned annex does not provide for the position of the deputy chief executive of the CEC Secretariat, a position that is provided for by Law no. 03/L -.073 for the General Elections in the Republic of Kosovo, while for the Institution of the Ombudsperson, it did not respect the hierarchy defined according to the internal organization, as will be clarified below.

53. According to the Ombudsperson, the contested Law did not take into account all the findings of the Constitutional Court expressed in Judgment KO219/19, in relation to the independent constitutional institutions, especially the Institution of the Ombudsperson. The Ombudsperson further states that the contested Law "*has made significant salary reductions in the justice system and in independent constitutional*

institutions, but also to the employees of the Assembly of the Republic of Kosovo." The Ombudsperson, regarding this claim, emphasizes that the Constitutional Court, in paragraph 217 of Judgment KO219/19, expressed its position by emphasizing*: "These public duties also include the obligation of each power that, while performing the constitutional duties to take care of respecting the independence of the power to which it creates an "interference". The latter must be measured, checked, balanced and confirmed in advance, in bona fide terms, as "constitutional interference" before any action is taken to execute the intended interference — which could potentially be permissible. For example, the Government and the Assembly, although having the competence to propose and vote on laws, respectively, which could also affect the judiciary, as a third power; they [the Government and the Assembly] must ensure that during the drafting of their legal initiatives and until their finalization by a vote of the Assembly, the constitutional independence of the sister power, namely the judiciary, is preserved. The Government and the Assembly must show the same care and sensitivity for the other state actors whom the Constitution has provided with constitutional guarantees of functional, organizational and budgetary independence. Guaranteeing and ensuring the constitutionality of the initiatives of the Government and the Assembly should be an essential part of the activity of these two powers".*

54. The Ombudsperson continues the argument regarding the above-mentioned issue, emphasizing that the EU Office, through the consolidated Opinion of the Draft Law on Salaries, of 10, October 2022, issued by *"Legal Review Mechanism"* had provided comments, in which case had expressed concerns about the Draft Law on Salaries from the point of view of "*the rule of law"* and of "*independence of judiciary"*, also referring to Judgment Ko219/19, with the following conclusions:

    "(The salaries of the judiciary) can never be reduced during the term of a judge unless the salary reduction is justified by an exceptional situation of proven financial difficulty. "
    "The reduction of the salaries of the judiciary can occur only under conditions of a pronounced economic and financial crisis and which, moreover, must be officially recognized as such."

55. Furthermore, in connection with the aforementioned case, the Ombudsman emphasizes that the EU Office, in particular, has requested increased attention to the provisions of the laws that regulate the justice system, thus ensuring respect for the principle of the independence of the judiciary.

56. Regarding the claim of the Ombudsperson for violation of the "*separation of powers*" as well as the "*check and balance between them*", the latter states that the contested Law does not take into account the particularities of the institutions of the "*justice system*" and violates the "*independence to independent institutions*", which have their own laws containing specific provisions, which specifically regulate the rights and obligations of the employees of these institutions.

57. The Ombudsperson points out that the contested Law, compared to the Law repealed by Judgment KO219/19, has only partially managed to implement Judgment KO219/19, including some provisions that in certain cases give the right to independent institutions to issue special acts, which will be regulated by the contested Law, but not by their organic laws and that the contested Law has only offered functional independence, while it does not offer budgetary independence at all. The Constitution and related laws require guarantees for adequate treatment of independent branches of power and, moreover, require guarantees for institutional, organizational and financial independence for the independent institutions defined by Chapter XII of the Constitution, as well as the Constitutional Court itself.

58. The Ombudsperson also emphasizes the aspects of the status of independent institutions defined in Chapter XII [Independent Institutions] and the Constitutional Court defined in Chapter VIII [Constitutional Court], drawing attention to the positions of the Constitutional Court, expressed in paragraph 97 of its Judgment in case KO73/16, where the Constitutional Court, among other things, found that *"The independent institutions envisaged in Chapter XII of the Constitution, and particularly the Applicant (formerly the Ombudsperson) and the Court (formerly the Constitutional Court) are situated outside of the three branches of the government, and as such, they are not and cannot be involved in the interplay of the division of power and checks and balances that characterizes the three branches of government. Accordingl, they have a specific constitutional status that must be respected by the governing authorities"*.

59. Furthermore, the Ombudsperson notes that the Constitutional Court, in the following paragraphs 98, 88 and 100 of the aforementioned Judgment, specified that *"The Ombudsperson and the Constitutional Court assist the three branches of government in ensuring the rule of law, the protection of fundamental human rights and the supremacy of the Constitution, which makes them specialized and uniquely independent institutions"*. In the following, the Ombudsperson underlines that in the context of strengthening this claim, the Court in paragraph 88 of Judgment KO219/19 emphasized: *"The personnel working in the Ombudsperson Institution and the Court have different work responsibilities compared to similar positions in other institutions and this explicit differentiation is reflected in their job descriptions and remuneration and is to be preserved."* In the following, the Ombudsperson emphasizes paragraph 100 of the aforementioned Judgment, which determines that: *"The Court agrees that the Government has a constitutional prerogative and duty to be the policymaker of the State, including the classification and categorization of job positions. But the Court opines that it could not be expected that the staff of the constitutionally independent institutions should conform in an identical manner to the system of recruitment, job classification, categorization and remuneration provided for by a legal act of general nature of the Government, or any act of the executive branch, without first taking into due account the specificities and uniqueness of the institutions in question"*.

60. The Ombudsperson further emphasizes that the contested Law does not make a clear distinction between the three powers of the state government, taking into account the principle of control and balance between them, as well as the independent institutions established by the Constitution. Regarding this claim, the Ombudsperson refers to Decision no. 19 of 3.5.2007 (V-19/07) of the Constitutional Court of the Republic of Albania, by which certain articles of "*Law no. 9584 (dated 17.7.2006) on salaries, rewards and structures of independent constitutional institutions and other independent institutions created by law were repealed.* "According to the reasoning of this decision:

> *" In a democracy, as a form of government, the important principle of separation and balance of powers mainly aims to eliminate the risk of concentration of power in the hands of a certain body or persons, which practically carries with it the risk of its abuse. For this purpose, despite the fact that the state power in entirety is one and indivisible, within it there is a series of interactions and mutual relations that the Constitution creates between certain segments of it. So, basically, based on this principle, the three central powers should be exercised not only independently but also in a balanced way. This is achieved through constitutional solutions that guarantee mutual control and sufficient balance between powers, without violating and without interfering with each other's competencies.*

In addition, the Constitution provides for the creation of other central bodies with a neutral or intermediate position, whose place and role is very important in the functioning of the democratic state as well as the protection of the rights and freedoms of citizens. Even these important bodies, in the exercise of their constitutional functions, enjoy independence that is guaranteed by special provisions of the Constitution."

61. Therefore, the Ombudsperson clarifies that the Constitutional Court of Albania drew attention to financial, organizational and functional independence and that these three elements of the independence of constitutional bodies and institutions: *"[...] special attention should be paid to them, as the case may be, which is dictated not only by the provisions of the Constitution but also by the organic laws that regulate the activity of each of them".*

(ii) Allegations regarding "the rule of law and legal certainty"

62. Regarding the principle of the rule of law, the Ombudsperson emphasizes that the Constitution defines the rule of law as one of the values of the constitutional order of a country. Referring to Opinion CDL-AD(20 11)003rev-e of the Venice Commission, the Ombudsman recalls the importance of the rule of law and emphasizes that principles such as legality, legal certainty, prohibition of arbitrariness, respect for human rights and non-discrimination and equality before the law should not be merely formal, but also essential in the fulfillment and functioning of the rule of law.

63. In this sense, the Ombudsperson refers to subparagraph 1.2 of paragraph 1 of Article 4 (Principles of the salary system) of the contested Law, which *"means that the salary determination and the other rights thereof consist of information of public interest and are treated in accordance with the relevant legislation on the protection of personal data".* Whereas, regarding the principle of "*foreseeability*", the Ombudsperson refers to subparagraph 1.3, paragraph 1, Article 4 of the contested Law, according to which this principle *"means that the salary level, determined under this Law, can be reduced, only based on the Law".*

64. Both principles, according to the Ombudsperson in the case of drafting the contested Law, were not fulfilled for the following reasons. First, because Article 9 (Setting the coefficient value) of the contested Law states that "*The monetary value of the coefficient shall be determined by the Law on Annual Budget*", which means that despite the fact that setting the coefficients is determined by the contested Law, which has entered into force on 5 February 2023, this law determined the value of the coefficient with the approval of Law no. 08/L-213 on Amending and Supplementing Law no. 08/L-193 on Budget Appropriations for the Budget of the Republic of Kosovo for year 2023 on 9 February 2023, namely 4 (four) days after the entry into force of the contested Law. Law no. 08/L-193 on Budget Appropriations for the Budget of the Republic entered into force on 28 February 2023, namely 23 days after the entry into force of the contested Law. As a result, the Ombudsperson claims that the contested Law was non-transparent and unpredictable, due to the fact that *"public officials, whose salaries are regulated by the contested Law, really did not know about the value of their salary even after its entry into force. For the value of the salary, which depended on another law, they were notified a few days after the entry into force of the contested Law, while the entry into force of the value of the coefficient occurred on 28 February 2023, with the entry into force of Law* no. 08/L-213 *on Amending and Supplementing Law* no. 08/L-193 *on Budget Appropriations for the Budget of the Republic of Kosovo for 2023".* Second, because the "*foreseeability"* of the contested Law also consists in the fact that with the publication of the value of the coefficient, three days after the entry into force of the law, a significant number of public officials have realized that their salaries will be reduced.

Accordingly, the salary reduction had taken place at the time when the contested Law had already entered into force, which contradicts Article 10 (Lowering the salary level) of the contested Law itself, which defines: *"1. The coefficient monetary value set under this Law can be lowered only by law and in the following situations: 1.1. a macroeconomic shock resulting in reduced income; 1. 2. a natural disaster pursuant to Article 131 of the Constitution of the Republic of Kosovo".*

65. Therefore, the Ombudsperson claims that the salary reduction occurred without fulfilling either of the two criteria defined by law, which makes the contested Law even more unpredictable and arbitrary.

66. The Ombudsperson, referring to paragraph 270 of Judgment KO219/19, considers that a completely similar situation has been repeated in the case of the contested Law, based on which the salaries of the employees have been reduced without any justification or prior analysis by the Government, respectively from the relevant ministry.

67. The Ombudsperson claims that the wording of paragraph 1 of Article 10 (Lowering the salary level) of the contested Law makes this law even more confusing and unpredictable, because the monetary value of the coefficient depends on another law, namely the Budget Law, which is amended every year. In this context, the Ombudsperson considers the setting of coefficients to be "*arbitrary*", as it is not known what was the criterion or criteria that were used as a basis for setting the coefficients. Adding that this may have been known to the drafter of the contested Law, but setting from a large number of complaints received by the Ombudsperson, regarding the contested Law, it implies that the persons, whose interests are affected by this law, have not been sufficiently informed about how the whole process has developed.

68. The drafting process of the contested Law, according to the Ombudsperson, was not accompanied by transparency, even in the case of the Institution of the Ombudsperson, which had initiated the procedure for assessing the compatibility with the Constitution of Law no. 06/L-111 on Salaries in the Public Sector in 2019. This is due to the fact that this institution was notified only in the final phase of drafting the law. However, he claims that he held a meeting with the Deputy Minister and the Minister of Internal Affairs and Public Administration and with the working group for the drafting of the contested Law, to which the findings of the Constitutional Court in Judgment KO219/19 were brought to attention, in such a way that the constitutional violations for which the previous law on salaries in public sector had been repealed were avoided, but despite this fact the working group did not take into account the conclusions of this Judgment.

69. Furthermore, the Ombudsperson emphasizes that the drafters of the law, in addition to non-transparency, unpredictability and arbitrariness, have not respected the *bona fide* principle, which is mentioned in paragraph 217 of Judgment KO219/19, where it is emphasized "*These public duties also include the obligation of each power, while performing its constitutional duties, to take care of respecting the independence of the power to which it creates "interference". The latter must be measured, controlled, balanced, and confirmed in advance, in bona fide terms, as "constitutional interference" before any action is taken to execute the intended interference - which could potentially be permissible".*

70. In this context, the Ombudsperson considers that the Government and the Assembly have failed to justify in any way the reduction of salaries for a certain category of employees, including here as a whole the employees of independent constitutional institutions, because they did not take into account this fact raised by the Constitutional Court in paragraph 271 of Judgment KO219/19.

71. The Ombudsperson also claims that subparagraph 6.1 of paragraph 6 of Article 6 (Basic salary) of the contested Law retroactively makes the calculation of work experience. According to him, it cannot be understood what was the "*legitimate purpose*" of this division in less than fifteen (15) years and in more than fifteen (15) years, which in itself constitutes an unequal treatment, setting from the fact that one year of work is the same for employees who have more than 15 years of work experience and for those who have less than 15 years of experience.

72. Such a calculation, according to the Ombudsperson, has deducted the salary increase that was earned based on work experience with the provisions of other laws, namely according to the provisions of paragraph 1 of article 18 (Allowances on salary for work experience) of Law no. 03/L-147on Salaries of Civil Servants. In the present case, a right acquired by the laws that were in force is denied with the entry into force of the contested Law.

73. The Ombudsperson emphasizes that the prohibition of "*retroactive*" application is an essential element of legal certainty and that the lack of clarification regarding the deduction of work experience upon the entry into force of the contested Law makes this provision to be contrary to the principle of legal certainty, despite the fact that such a principle would have to be understood by all the enforcers of this law. On the other hand, such a calculation of work experience also constitutes a violation of the property right.

74. In addition, the Ombudsperson draws attention to legislation of vital interest as well as the procedures for adopting, amending and repealing this legislation, emphasizing that the Constitution, in addition to expressly defining which laws are considered to be of vital interest, has also established the procedure of adopting, amending and repealing this legislation. In this context, the latter refers to paragraph 1 of Article 81 [Legislation of Vital Interest] of the Constitution, amended by Amendment 2 of the Amendments to the Constitution regarding the Completion of the International Supervision of the Independence of Kosovo, adding that the contested Law, in subparagraph 1.13, paragraph 1 of Article 45 (Repeal) has repealed Article 26 (Additional payment) of Law no. 06/L-046 on Education Inspectorate in the Republic of Kosovo.

75. On this basis, the Ombudsperson assesses that it is important for the Constitutional Court to assess whether Law no. 06/L-046 on the Education Inspectorate in the Republic of Kosovo is part of the legislation of vital interest and if in the case of repealing the provisions of this law the procedure according to paragraph 1 of Article 81 [Legislation of Vital Interest] of the Constitution and Amendment 2 of the Constitution regarding the Completion of the International Supervision of the Independence of Kosovo has been respected .

(iii) Allegations regarding "equality before the law"

76. In relation to this allegation, the Ombudsperson raises the issue regarding: (i) the inequality of equivalent positions; (ii) the inequality of management positions in independent constitutional institutions and independent agencies; (iii) the inequality of granting the transitional allowance; (iv) inequality of positions within the same working organization; (v) inequality for "*selective reduction*" of salaries in the public sector.

a) Allegation for inequality between "equivalent" positions"

77. The Ombudsperson emphasizes that the contested Law has failed to ensure equal pay for equal work in the entire public sector, because it has created divergences for

equivalent positions due to the fact that in different institutions the same or comparable positions are assessed at different salary levels.

b) Inequality of management positions in independent constitutional institutions and independent agencies

78. The Ombudsperson, based on the complaints received from the affected parties, claims that the contested Law treats in an unequal manner the public officials who hold the same positions in independent constitutional institutions and independent agencies. In this regard, he claims that in the Anti-Corruption Agency, which is an agency established by law, the director of the Investigative Department is classified with a coefficient 12; the heads of an Investigative/Operative Division are classified with a coefficient of 11, and professional officials in an Investigative Division are classified with a coefficient of 9.4 (Annex no. 14.4 of the contested Law), while the Directors of independent constitutional institutions have a coefficient of 8.5. In this context, the Ombudsperson emphasizes that such a definition shows unequal treatment because independent constitutional institutions are a constitutional category, while agencies are established by law. In this regard, he refers to case KO203/19, paragraph 117, where the Court emphasized *"In this regard, the Court notes that the independent agencies established under Article 142 of the Constitution, although established on the basis of Article 142 of the Constitution, contained in Chapter XII of the Constitution, do not have the same status as the independent constitutional institutions referred to expressively in Chapter XII of the Constitution. This is because the establishment, role and status of independent constitutional institutions is expressly regulated by Chapter XII of the Constitution. Whereas "Independent Agencies" provided by Article 142 of the Constitution "are institutions established by the Assembly, based on relevant laws, which regulate their establishment, functioning and competencies". Therefore, unlike the fact that the Assembly can create and shut down "by law" Independent Agencies; the Assembly can never shut down "by law" any of the above-mentioned five independent institutions. This is the main difference between the Independent Institutions referred to in Chapter XII of the Constitution"*.

c) Inequality in granting the "transitional allowance"

79. The Ombudsperson further claims that the contested Law shows unequal treatment between public sector officials whose salary has been increased and those whose salary has been reduced, because the latter will not benefit in the next two (2) year period increasing the value of the coefficient. Further, the Ombudsperson claims that in the case of the "*transitional allowance*" public sector officials have not been treated equally, referring in relation to this category to paragraph 3 of Article 41 (Transitional allowance) of the contested Law. The latter states that the exclusion of foreign service members from the "*transitional allowance*" puts them in an unequal position with others who benefit from the transitional allowance. In addition, the Ombudsperson referring to paragraph 4 of Article 41 (Transitional allowance) of the contested Law claims that public sector officials, who have established employment relationships after the entry into force of the contested Law, will receive a lower salary compared to those who established employment relationships before the contested Law came into force, as long as the "*transitional allowance*" is in effect. In his view, the implementation of this provision "*legitimizes the unequal*" and discriminatory treatment *for* public sector officials who have exactly the same position and work but were employed in different periods. Moreover, he emphasizes that this provision is in contradiction with the contested Law itself, respectively with subparagraph 1.4 of Article 4 (Principles of salary system) of the contested Law.

80. On this basis, the Ombudsperson notes that equal and non-discriminatory treatment would be possible if each position of public sector officials were treated exactly the same, as long as the transitional allowance is in effect, regardless of whether it is a matter of employment relationship established before the entry into force of the contested Law or after its entry into force.

d) *Inequality of employees "within the same working organization*"

81. In addition to the above allegations, the Ombudsperson also claims that the reduction and increase of salaries were not based on a linear system, not even within certain sectors, which resulted in the fact that some employees within the same organization had their salaries reduced and some others have their salaries increase increased. This conclusion, according to him, is based on the numerous complaints received regarding the contested Law.

e) Inequality due to the "selective reduction" of salaries in the public sector

82. The Ombudsperson, in order to clarify the situation created by the contested Law, refers to the case of the reduction of salaries of civil servants in Romania, which seems to have happened during the economic crisis of 2008 in this country. In this regard, he emphasizes that the ECtHR (*MIHĂIEŞ and Adrian Gavril SENTEŞ v. Rumania*, no. 44232/11 and 44605/11, Decision of 6 December 2011, emphasized that the decision of the Constitutional Court of Romania, which found that in the case of the reduction of salaries of civil servants, there was no discrimination, since the reduction of salaries was applied to all civil servants without distinction at the rate of 25%. The Constitutional Court of Romania, as the Ombudsperson points out, taking into account the threats to economic stability, manifested by budget imbalance, had emphasized that the government had the right to take the appropriate measures, including reductions of expenditures, among others, salary reduction for all civil servants. In this case, it was emphasized that the salary limitation measure, "*prescribed by law*", was necessary in the current context because there was a relationship of "*proportionality*" between the means used, namely the 25% salary reduction and the "*legitimate aim*" followed, namely the reduction of expenses/rebalancing of the state budget as well as a "*fair balance*" between the requirements of "*general interest*" and "*protection of fundamental rights for citizens*".

83. The Ombudsperson recalls that in the case of Romania there was an economic crisis, but nevertheless the principle of "*equality before the law*" had to be taken into account, which the contested Law has completely ignored, even in circumstances of economic stability, because officially there was no declaration of any economic crisis or difficulty. In this context, the Ombudsperson emphasizes that it is not clear what was the "*legitimate purpose*" of the salary reduction, and it is also unclear what was taken as a basis and what was the criterion to assess that the salaries which are expected to decrease were high. If the "*legitimate aim*" was the leveling of salaries, then in this context, "*Was this limitation of rights "proportional", also expressed through unequal treatment, and was there a milder measure to achieve the goal*".

84. The Ombudsperson considers that the harmonization of salaries could have been milder and more proportional, initially assessing and justifying each position which is said to have been paid more and those positions which have been paid less. Then, leveling could be achieved with a provision in the law, which would maintain salaries for positions that have been paid more, while raising salaries for positions that have hitherto been underpaid, until reaching leveling.

85. In this regard, the latter noted that the repealed Law on Salaries in the Public Sector, namely the draft law approved by the Government, had foreseen a provision according to which: *"1. If an individual, official or public functionary, received before the entry into force of this law, a full salary (basic salary with all kinds of regular allowances), which is higher than the full salary provided by this law, he will receive the new salary according to the provisions of this law and a special transitional allowance equal to the difference between the old salary and the new salary"*. (Draft Law no. 06/L-111 on Salaries in the Public Sector, Article 27). Regarding this issue, the latter notes that the Constitutional Court, in case KO219/19, in paragraph 270, emphasized: *"However, the Assembly considered that such a draft-article was not necessary and removed it from the final draft of the Law on Salaries during the legislative process in the Assembly. From the preparatory documents, the Court has not noticed any discussion or reasoning as to why this was done".*

(iv) Allegations regarding "protection of property"

86. The Ombudsperson, based on the practice of the ECtHR, raised as an issue before the Court the request to assess whether the contested Law violates the property rights of individuals or groups in the public sector, since the salary has been reduced in many sectors. The Ombudsperson points out that the jurisprudence of the ECtHR determines that public authorities are obliged to maintain a fair and necessary balance for the public interest and for the protection of the fundamental rights of citizens. According to the ECtHR, this balance is not achieved when citizens have to carry a large and disproportionate burden, with a direct impact on the reduction of economic rights. In these circumstances, according to the Ombudsperson, there is a violation of Article 1 of Protocol No. 1 of the ECHR due to the violation of reasonableness and proportionality in the reduction of property rights, referring to the ECtHR case, *Kjartan Asmundsson v. Iceland*, no. 60669/00, Judgment of 12 October 2004 and *Moskal v. Poland*, no. 10373/05, Judgment of 15 September 2009. It is clear that budgetary issues impose large and disproportionate burdens on employees who are paid from the state budget, without maintaining the right balance between the public interest and the necessary protection of fundamental human rights. For more, the Ombudsperson emphasizes that in the case of *Kjartan Asmundsson v. Iceland* it is determined that if the amount of benefits is reduced or prohibited, this represents a limitation of property rights and that this must be justified by the general interest. In essence, the ECtHR considers that a restriction is justified even in cases where the applicants would have to be in possession of the assets in circumstances where a legitimate aim was pursued, when it is proportionate, taking into account the wide scope of the state's assessment in the economic and social policies and the balance achieved with the application of such measures, thus referring to the ECtHR case *Hasani v. Croatia*, no. 20844/09, Decision of 23 March 2009.

87. The Ombudsperson further emphasizes that the ECtHR has determined that the salary goods, from the point of view of Article 1 (Protection of property) of Protocol no. 1 of the ECHR, when it must be paid or when the employee can claim that he has "*legitimate expectations*" regarding its materialization, referring to this case to the ECtHR, *Kopecky v. Slovakia*, no. 44912/98, Decision of 1 February 2001. In this regard, the jurisprudence of the ECtHR emphasizes that the salary falls under property rights. However, the Ombudsperson recalls that the ECtHR recognizes the right of states to determine the amounts that will be paid to employees from the state budget. Therefore, it remains for the Constitutional Court to assess "*if the salary reduction of a number of subjects in the public sector was done in accordance with Article 55 of the Constitution*"**,** which foresees the restriction of fundamental rights and freedoms, the essence of the right that is restricted, the importance of the purpose of the restriction, the nature and volume of the restriction, the relationship between the restriction and

the goal that is intended to be achieved, as well as the possibility of achieving that goal with the smaller limitation.

88. In such cases, the Ombudsperson claims that there has been a violation of Article 1 (Protection of property) of Protocol no. 1 of the ECHR, due to the violation of the reasonableness and proportionality of the reduction of wealth. This is because the salary reduction without a detailed justification and without fulfilling the criteria of the economic crisis, the retroactive action of calculating the salary allowance based on work experience (0.25% up to 15 years of experience), have influenced the reduction of income to the workers whose salaries have been reduced, as well as to all others who have been denied the right to an allowance based on work experience, which they have gained over the past years, respectively, they have influenced the violation of the property of the employees who are affected by the contested Law. In the following, the Applicant emphasizes that the issue of salary increase does not constitute a constitutional issue, but only the reduction of salaries, therefore, he asks the Constitutional Court to focus on the positions where the salaries of the workers have been reduced, the verification of which can be done by looking at the payrolls, which are owned by the Ministry of Finance, Labor and Transfers.

89. In summary, the Ombudsperson emphasizes that *"...taking into account the issues raised in the part of the argument, as well as taking into account the concerns of various subjects who have addressed the Ombudsperson for raising the issue of the constitutionality of the contested Law, the Ombudsperson considers that this law contains flaws that lead to constitutional violations, in connection with which the Ombudsperson requests review from the Constitutional Court".*

90. The Ombudsperson finally claims that the contested Law, in some parts of it, is not compatible: (i) with "t*he principle of separation of powers, control and balance between them and preservation of the independence of independent constitutional institutions*". guaranteed by Article 4 [Form of Government and Separation of Power]; (ii) with the "*rule of law*", guaranteed by Article 7 [Values]; (iii) with "*equality before the law*" guaranteed by Article 24 [Equality Before the Law]; and (iii) with the "*protection of property*" guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

91. The Ombudsperson thus claims that paragraph 3 of Article 2 (Scope); subparagraphs 1.3 and 1.4 of Article 4 (Principles of salary system), subparagraph 6.1 of Article 6 (Basic salary); paragraph 1 of Article 9 (Setting the coefficient value); paragraphs 3 and 4 of Article 41 (Transitional allowance), paragraphs 4 and 5 of Article 26 (Allowance for specific working conditions), paragraphs 1, 2, 3 and 4 of Article 42 (Determining the equivalence), as well as Annexes as it follows: *Annex no. 2 (Judicial System); Annex no. 3 (Prosecutorial System); Annex no. 4 (Kosovo Security Force); Annex no. 7 (Kosovo Correctional Service); Annex no. 8 (Public officer of university and pre-university education); Annex no. 9 (Public health system employee); Annex no. 10.3 (The Assembly of Kosovo); Annex no. 10.5 (Independent Constitutional Institutions); Annex no. 10.6 (Ministries, independent agencies, agencies and regulators, executive agencies and public service agencies); Annex 10.7 (Municipalities); Annex no. 14.1 (National Audit Office); and Annex 14. 2 (Internal Audit)* of the contested Law are not in compliance with the Constitution and the ECHR.

92. The Ombudsperson emphasizes that he does not challenge the Law and its annexes in the parts where there is an increase in salaries for certain sectors and where a legitimate purpose has been pursued for such increases, drawing attention to the positions of the Constitutional Court, expressed in paragraph 271 of Judgment KO219/19, according to which any salary reduction must be such that it does not place the burden of the salary

reduction only on certain persons or sectors of the public sector, and that the reasons for salary reduction must be many times more stable than the reasons for salary increase.

Comments of the MIA on behalf of the Government of the Republic of Kosovo

93. Initially, the MIA considers that the Ombudsperson has asked three questions in the context of the compatibility of the Law with constitutional principles. In this regard, the Ministry of Internal Affairs emphasizes that the Ombudsperson has the exclusive constitutional right to contest the compatibility of laws, the decrees of the President and the Prime Minister and the Government's regulations with the Constitution, but not to submit questions on the basis of this article nor of extended constitutional issues in the form of questions.

94. According to the MIA, this practice of the Constitutional Court was changed by the Decision of the President of 2018, where the Court emphasized that on the basis of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, it has no jurisdiction to review, namely, to give an interpretation to the authorized parties, not even to the Ombudsperson regarding the questions already presented. In this Decision, specifically in points 71 and 72, the Constitutional Court emphasized:

> *"72. However, the Court in its current composition, assesses that in full accordance with the clear, exhaustive and restrictive language of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, all other references in the Constitution that are related to the raising of constitutional issues in Constitutional Court, stem from Article 113.*
>
> *73. On this basis, the Court finds that the submitted request does not fall within the limits of Article 113, because based on Article 113. paragraph 2, the President can raise issues related to the compatibility with the Constitution of laws, acts of the Government and Prime Minister, defined in 113.2(1), [...]".*

95. The MIA also emphasizes that the Ombudsperson, outside the constitutional authorizations defined in paragraph (1) of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, requests the Court to assess the constitutionality of the Law on Salaries with Judgment KO219/19. According to the MIA, such an initiation where it is requested to assess whether the Law of Salaries is in compliance with Judgment KO219/19 is not foreseen and at the same time not allowed by Article 113 of the Constitution. Consequently, the MIA considers that this referral is contrary to the provisions of the Constitution and as such is inadmissible.

96. Furthermore, the MIA emphasizes that the Ombudsperson has not specified which articles have allegedly been violated. Thus, according to the MIA, the Ombudsperson, in addition to raising questions contrary to the constitutional authorizations defined in Article 113, in points II and III of the referral, only mentions the articles of the Constitution without providing any clarification as to which article of the Law on Salaries violates these articles of the Constitution. The practice of the Constitutional Court determines that the mention of the articles of the Constitution in itself is not sufficient to establish a violation of the constitutional articles. In this context, the MIA refers to case KI168/21, paragraph 37, which specifies: "*Regarding the claim of the applicant for the violation of articles 23, 27 and 54 of the Constitution, the Court emphasizes that the simple fact that the applicant is not satisfied with the result of the decisions of the regular courts or only the mention of the articles of the Constitution, is not sufficient to build a claim for Constitutional Violation. When such violations of*

the Constitution are alleged, applicants must provide reasoned claims and convincing arguments".

97. With regard to the allegation of the Ombudsperson regarding the separation of powers and respect for the independence of independent constitutional institutions, the MIA emphasizes that precisely the contested Law responds to the premises of the separation of powers, because paragraph 3 of Article 2 (Scope) of the Law on Salaries, which states: "*3. For the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, this law applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution".*

98. According to the MIA, each of the aforementioned institutions has the necessary space to make the internal regulation for the issues of the salary system. Thus, according to them, in the contested Law, only the basic principles and rules in determining the salary are provided, unifying and increasing the predictability and transparency of every employee in public institutions. In support of this argument, the MIA cites paragraphs 211 and 212 of Judgment KO219/19. Furthermore, the MIA states that in order to respect the separation of powers and independent constitutional institutions, the contested Law, in Article 3 (Definitions), paragraph 1, subparagraphs 1.2, 1.3, 1.4 and 1.5, includes definitions and respective divisions.

99. In connection with the aforementioned allegation, the MIA emphasizes that in order to ensure that the Law on Salaries fully respects the separation of powers as well as the organizational and functional independence guaranteed by the Constitution for the institutions mentioned above, in all cases where it authorizes the executive power to regulate the details of the salary and other rights in the salary, it has done the same for the above-mentioned institutions. As an example, the MIA highlights the respective articles of the contested Law, namely paragraph 3 of Article 8, paragraph 2 of Article 22, Article 23, paragraph 5 of Article 24, paragraph 8 of Article 25, paragraph 3 of Article 27, paragraph 7 of Article 28, paragraphs 4 and 8 of Article 36, paragraph 4 of Article 37 and paragraph 4 of Article 42.

100. According to MIA "*Neither the Applicant has given any option or example on how should articles or regulations to guarantee independence of constitutional bodies look like in the Law on Salaries".*

101. The MIA also notes that the Ombudsperson has not argued in any way as to why paragraph 3 of Article 2 (Scope) of the contested Law violates Article 4 [Form of Government and Separation of Power] of the Constitution.

102. Regarding the Ombudsperson's allegation with regards to the separation of powers, the MIA emphasizes that the proposer and the legislator must ensure that during the legislative process it is done in a balanced way and that none of the powers should have more weight under the pretext of exercising its independence. In this regard, the latter allege that the contested Law fully guarantees this balance between the Government, Assembly and the Justice System, the Presidency, the Constitutional Court and the independent constitutional institutions specified in Chapter XII of the Constitution.

103. With regards to the Ombudsperson's allegation of violation of the budgetary independence of independent institutions, which has resulted in a violation of the principle of separation of powers, the MIA brings to attention that paragraph 5 of Article 93 of the Constitution provides that the Government proposes the State Budget,

while the Assembly, according to paragraph 5 of Article 65 of the Constitution, approves the State Budget. While for other institutions, the Constitution only provides that they propose their own budget.

104. The MIA emphasizes that the institutional practice of drafting the budget in the Republic of Kosovo provides that each institution, including the independent ones, propose their budget to the relevant Ministry of Finance within the framework of the budget drafting rules and present the same to Assembly during the review of the budget. The latter emphasize that according to the budgetary possibilities of the state and compliance with the rules of drafting the budget, each independent institution is approved the proposed budget in harmony with the other expenses for which the Government has the constitutional and legal obligation to fulfill in addition to the salaries of independent institutions. As a conclusion of this argument, the MIA emphasizes that "*No institution in the Republic of Kosovo can and should not enjoy absolute discretion to determine its own budget, without taking into consideration other needs and priorities, sometimes urgent, that must be met by the state budget*".

105. In the following, the MIA emphasizes that Law no. 08/L-193 on Budgetary Appropriations for the Budget of the Republic of Kosovo for year 2023 has determined that for salaries and allowances, the state budget can afford an allocation up to the amount of 745,528,136 euro. This determination stems from the principles and rules established in the Law on Public Finance Management, where it is precisely determined how the total salary invoice is calculated in relation to the Gross Domestic Product, as well as taking into account the fact that any increase in this allocation directly affects the reduction of budgetary opportunities to cover other needs and priorities, such as national defense and security to basic health services.

106. Furthermore, the MIA emphasizes that considering that the Projection for the Gross Domestic Product for 2023 is 9,843 million, while for 2022 the GDP was 8,594 million euro and the bill of salaries and wages cannot increase more than the increase of GDP, while the deficit cannot be higher than 2% of GDP; the total salary bill for 2023 is as much as the value established in Law no. 08/L-193on Budgetary Appropriations for the Budget of the Republic of Kosovo for year 2023, Table 1: Fiscal forecasts (Revenues and Expenditure) mentioned above.

107. In connection with this argument, the MIA emphasizes that the International Monetary Fund has established that the increase in the participation of salaries in the public sector in GDP by one percent (1%) worsens the budget deficit by zero point five percent (0.5%).

108. In conclusion, the MIA emphasizes that the separation of powers and the budgetary independence of independent institutions cannot be beyond the general macro-financial framework of the country and the real financial possibilities presented in the state budget for each year.

109. Regarding the Ombudsperson's allegations regarding the rule of law and legal certainty, the MIA emphasizes that "*In his request, specifically in point 35, the applicant claims that the process of drafting and adopting the Law on Salaries was not transparent, responsible and democratic. Such an allegation is completely unfounded because the drafter of the law, as well as the legislator, have followed and exceeded the requirements of all phases of public consultation that are foreseen in a legislative process. For this, the bearer of the process held a large number of meetings, working groups and has been open to the administration and/or the public for seventy-five (75) calendar days. Even the legislator held public debates to ensure transparency and full inclusion in the Law on Salaries*".

110. In the following, the MIA emphasizes that the latter have presented in dozens of public appearances, including the media, the details of the drafting process, the data of the proposed law and have responded publicly to the claims, giving the Government's justifications. The latter claim that there is no part of the law for which there was no transparency for the public, even considering that its drafting took about twenty (20) months.

111. Regarding the Ombudsperson's allegation that the Law should be predictable, the MIA states that the legislator in Article 4, paragraph 1, subparagraph 1.3 of the contested Law establishes as follows: "*1.3. principle of predictability – means that the salary level, determined under this Law, can be reduced, only based on the Law".*

112. Therefore, the principle of predictability in the Law on Salaries appears in two (2) situations. Initially, according to the MIA, this principle means that the beneficiaries of salaries under the contested Law must have a legitimate expectation that the salary level determined under this Law cannot be reduced except in exceptional situations of financial difficulties and only on the basis of the law. Secondly, it also corresponds to the transitional period in cases where it applies to salaries that are planned to be leveled and this leveling means a reduction of the salary for a certain public official, as provided for in the contested Law. Thus, according to the MIA, the contested Law also foresees situations where the individual, official or public functionary has received a salary that is higher than the salary defined in this law, he will receive a transitional allowance equal to the difference between old salary and new salary as follows: "*100% of the special transitional allowance, according to paragraph 1., during the first year after the entry into force of this Law; 50% of the special transitional allowance, according to paragraph 1., during the second year after the entry into force of this law*".

113. In this regard, the MIA emphasizes that it was precisely the removal of such transitional measures from the 2019 Salary Law, which was assessed as the reason for the unconstitutionality of that Law (see Judgment KO219/19, paragraphs 269-270) . Therefore, the MIA emphasizes that with the return of temporary allowances as a transitional measure, this principle is embodied in the provisions of the contested Law with the aim of respecting, among other things, the principle of legal certainty.

114. The MIA further emphasizes that related to the concept of legal certainty, the Constitutional Court of the Republic of Albania emphasizes that "*Legal certainty, as a constitutional concept, includes the clarity, comprehensibility, and consistency of the normative system. The principle of legal certainty has as a necessary requirement the fact that the law as a whole, its parts or special provisions, in their content must be clear, defined, and understandable. (See Decision No. 34, dated 20.12.2005, of the Constitutional Court of the Republic of Albania)".*

115. The MIA also emphasizes that the Constitutional Court of Albania in the cases: (i) Decision No. 10, dated 19.03.2008 and (ii) Decision No. 37, dated 13.06.2012, among others, contain that "*Not every measure with negative effects taken by the legislator for the subjects of the law is a violation of a right guaranteed by the Constitution. The legislator not only has the right but is obliged to regulate through his own acts in detail the rights provided for in the Constitution. Only those rights, which are provided as expressly unlimited, cannot be affected by the legislator".*

116. In the following, the MIA refers to: (i) Decision No. 26, dated 02.11.2005; and (ii) Decision No. 37, dated 13.06,2012, of the Constitutional Court of the Republic of Albania, where it states that it is important to note that the principle of legal certainty is not absolute and, in particular, must be balanced with the general public interest:

"*[...] the principle of legal certainty does not guarantee any kind of expectation of non-change of a favorable legal situation. This principle cannot prevail in every case. This means that, if the case arises that a different legal regulation of a relationship is directly affected by an important public interest, with all its essential elements, this interest may take precedence over the principle of legal certainty*."

117. The MIA emphasizes that regarding the need to balance legal certainty with the general public interest, this was also emphasized by the Venice Commission when it emphasized that the extent of balancing and deciding between the public interest and legal certainty, i.e. foreseeability, depends especially on the specific field which is covered by certain legislation: "*The necessary degree of foreseeability depends however on the nature of the law. In particular, it is essential in criminal legislation. [...] However, in the areas where the precautionary approach of laws apply, such as risk law, the prerequisites for State action are outlined in terms that are considerably broader and more imprecise [...]. (See Rule of Law Checklist).*

118. According to the MIA, the Ombudsperson erroneously claims that the principle of legal certainty has been violated in Article 9 (Setting the coefficient value) of the contested Law. According to the MIA, the Salary Law, by Article 9, has respected the financial principles already established by the Law on Public Finance Management and has referred to the annual Budget Law as the only law that makes budget allocations.

119. In addition, the MIA emphasizes that the contested Law expressly determines in Article 9 that the value of the coefficient by which the salary is determined is regulated by another law, specifically by the relevant Law on budget appropriations.

120. In the context of the Ombudsperson's claim, where he stated that "*the value of the coefficient defined in the Budget Law (another law) was published three (3) days after the entry into force of the Law on Salaries and this in itself is a violation of the principle of foreseeability*", the MIA emphasizes that this claim is clearly erroneous because it is about two (2) different legal acts and different procedures. Regarding this Ombudsperson's claim, the MIA notes: "*The Applicant knowing the fact that the setting the value of the coefficient through which the salary is determined is regulated by the budget law, then the Applicant had the opportunity to contest the latter before the Constitutional Court, if he was dissatisfied with the determined value*".

121. Regarding the Ombudsperson's claim that "*foreseeabilityis also violated because there is no fixed value of the coefficient, but the latter is variable, every time the Law on the Budget changes",* the MIA emphasizes that this finding is completely ungrounded and reflects a logical error, ignoring "*the law on public finance management and budget law*". According to the MIA, the general salary invoice is determined for each year according to GDP growth and the limitation of 2% of the deficit. In the following, the MIA states that *"in table 1 of the law on the budget, the projections for GDP in 2024 and 2025 are increasing and this automatically means an increase in the total salary bill and therefore the value of the coefficient as already defined and declared by the Government of Republic of Kosovo. In the 2024 budget, which is approved during 2023, the value of the coefficient will increase to 110 euros, as officially announced by the Government of the Republic of Kosovo*".

122. The MIA also stresses that Article 10 (Lowering the salary level) of the contested Law provides for the provision of guarantees for any circumstances of unusual changes in the macroeconomic situation of the country.

123. According to the MIA, there is no provision in the Law on salaries that defines any form of retroactivity as claimed by the Ombudsperson. The latter emphasizes that the contested Law provides for the transitional allowance for two (2) years so that under no circumstances will there be immediate changes in the future. Determining the allowance for work experience does not constitute a measure of retroactivity. In order for there to be a measure of retroactivity, such a measure should have been foreseen by law, and the Law on Salaries does not foresee such a thing in any of its provisions.

124. According to the MIA, "*experience is rewarded in the future even though it is created in the past*". Also, the MIA emphasizes that there is no circumstance where equality before the law is affected because every employee based on the same number of years of work experience benefits the same value of the experience allowance in relation to the salary he enjoys in the relevant position. According to them, scaling the value of work experience allowance is a legitimate goal of the legislator to support and stimulate the contribution as a service to the state and society.

125. The MIA further emphasizes that equality before the law, which is provided for in Article 3 [Equality Before the Law] of the Constitution, is a concept that is fully fulfilled within the article on the allowance of work experience in the contested Law due to the fact that all those who fall into the aforementioned categories equally receive the same allowance after the period established in law.

126. The MIA also emphasizes that "*otherwise, in December 2018, the Government of the Republic of Kosovo, led by Prime Minister Ramush Haradinaj, rendered a decision contrary to the legislation in force by which it increased the salaries of the executive power, where on the basis of this Decision and related to the legislation in force, the salaries of the justice system and the Constitutional Court were automatically increased This Decision, contrary to the legislation on the management of public finances, lacked an assessment of the financial impact, specifically the budget impact. In February 2020, the Government of the Republic of Kosovo, led by Prime Minister Albin Kurti, made a Decision to return salaries to their previous state, but by this Decision it was ensured that it would not affect the salaries of the justice system and the Constitutional Court, since the Law No. 06/L-111 on Salaries repealed by the Judgment on Salaries was still under constitutional review by the Constitutional Court, thus maintaining the principle of predictability and the principle of separation of powers*".

127. In the following, the MIA gives the following chronology of some issues that they consider to be related as follows:

> *"On 9 July 2020, the Constitutional Court published the Judgment on Salaries by which it repealed Law No. 06/L-111 on Salaries in entirety.*
> *After Law No. 06/L-11 on Salaries was repealed, the Government of the Republic of Kosovo led by Prime Minister Avdullah Hoti established the working group for the drafting of the new law that regulates the field of salaries in the public sector, whose work was not finished because, based on the Judgment of the Constitutional Court, early elections were announced.*
> *After the constitution of the Assembly of the Republic of Kosovo and the election of the Government, the latter directed by Prime Minister Albin Kurti at the II meeting of the Government by decision 01/11 dated 07.05.2021 has placed the Law on Salaries on the legislative agenda.*
> *On 25.05.2021, the Working Group for the drafting of the Salary Law was established by Decision No. 396/21 of the Secretary General of the Ministry of Internal Affairs.*

On 23.11.2022, the Government of the Republic of Kosovo, in accordance with the legislation in force, by Decision No. 02/109, repealed points 3 and 4 of Decision No. 01/02 dated 12.02.2020.
Thus, since the Ministry of Internal Affairs finalized the Draft Law on Salaries and since all parties had been informed for 2 years that the decision of the Government led by Prime Minister Ramush Haradinaj would be repealed with the issuance of the Judgment and the completion of the new draft law on Salaries.
Based on Law no. 06/L-054*on the Courts, Article 35, where as a result the salaries of the justice system and the Constitutional Court have returned to the previous legal situation.*
At the time of the adoption of the Law on Salaries by the Government, the salaries of the justice system and the Constitutional Court were not in the state in which the applicant claims.
On 22.12.2022, the Assembly of the Republic of Kosovo adopts Law No. 08/ L-196 on Salaries in the Public Sector. On 09.03.2023, the Assembly of the Republic of Kosovo approves the amendment and completion of the Law on Budget Appropriations by which it determines the monetary value of the coefficient. Contrary to the claims of the applicant, based on the Law on Budget Appropriations, the salaries of the justice system and the Constitutional Court in relation to the salary they enjoy after the repeal of Decision No. 02/109 dated 23.11.2022 by the Government, are salaries which through the system established by the Law on Salaries and based on the value determined by the law on budget appropriations, have increased. Thus, the salaries determined by the relevant laws before the entry into force of the Law on Salaries, in relation to the latter, were lower, Therefore, the Law on Salaries did not interfere with functional and organizational independence, not even the financial one in the sense of lowering of the salary, on the contrary, it increases the salaries for these sectors."

128. In relation to the above chronology, the MIA emphasizes that paragraph 271 of the Judgment KO219/19, also establishes that: *"[...] The legislator has the right to take any kind of step immediately after this Judgment to increase salaries in the public sector in order to meet any public policy goal of increasing wages in certain sectors [...]".*

129. Furthermore, the MIA emphasized that the contested Law regulates in the same spirit the concept of salary increases among independent constitutional institutions.

130. The MIA claims that the proposer of the Law on Salaries also took into account the relations between the positions at their horizontal level in the sense of the separation of powers and other internal divisions of state functions. The MIA emphasizes that the President according to Article 83 [Status of the President] of the Constitution is the head of the state and as such has the highest coefficient that no one else holds in state positions. In order to respect the constitutional position of the Constitutional Court, the President of the Constitutional Court is placed between the President and the representative of the powers and has special coefficients from other positions.

131. The MIA also emphasizes that from the above-mentioned point onwards, the principle of hierarchy has been preserved in horizontal lines where the President of the Assembly, the President of the Supreme Court, the Chief State Prosecutor and the Prime Minister have the same determination of the coefficient. The deputies of the same are also placed in the same horizontal line and such principle is followed in the annexes 10 and 13 of the Salary Law.

132. Regarding the local level, the MIA notes that the division and categorization of the coefficients has been done according to the Law on Local Self-Government, specifically its article 36 (Number and election of assembly members), thus preserving the principle

of the organization of local government throughout the Republic of Kosovo according to the number of inhabitants. Public officials at the local level and the staff of the Municipality administration are placed in a horizontal line according to the similarity of the number of inhabitants in the category they belong to. The only difference from them is the capital, as the Law on the capital city also regulates the additional functions presented in Article 7 (Competences of the Capital City) of this law. Another aspect of fundamental importance of the horizontal categorization is that of presenting the education system, qualifications, state importance of the position, required experience, degree of difficulty, limitations of general labor rights and labor market conditions.

133. Therefore, according to the MIA, the Ombudsperson has erroneously assessed that the contested Law foresees a reduction of salaries for the justice sector and the Constitutional Court when it is known that by this Law, in relation to the previous legal regulations, salaries have been increased on the basis of value monetary coefficient that is regulated by another law, i.e. the Law on Budgetary Appropriation which was not challenged by the Ombudsperson before the Constitutional Court for assessment of the control of its constitutionality.

134. With regard to the claims of the Ombudsperson that the contested Law infringes upon property rights of individuals or groups in the public sector, the MIA emphasizes that this is contrary to Article 1 (Protection of property) of Protocol no. 1 of the ECHR due to the violation of reasonableness and proportionality in the reduction of property rights.

135. The MIA considers that the Ombudsperson has given a wrong assessment, claiming that salaries have been reduced without detailed justification and without meeting the economic crisis criterion due to the fact that, firstly, there is no salary reduction as claimed by the Ombudsperson, secondly there is no salary reduction by this law because the salary law does not determine the value of the salary but the salary system in the salary sector, thirdly, the contested Law through the explanatory memorandum in detail justifies this regulation and the need for this regulation according to an unified system.

136. According to the MIA *"the total salary bill is determined according to the Law on Public Finance Management and not the Law on Salaries. From there originate the budget limits for salaries and for the projects of the institutions and the areas for which the authorities have the responsibility to take care"*.

137. Therefore, according to MIA "*the budgetary independence claimed by the Ombudsperson cannot be connected immediately or without clear and concrete justification to the violation of the right to property*".

138. According to the MIA and further, "*the budgetary independence of the justice system and independent institutions in the present case has not been violated under any circumstances and form by the contested law and according to them, Judgment KO219/19 has interpreted that as long as the institutional, organizational and budgetary independence is not violated it can be moved within the limits with salaries according to the internal regulations of these institutions*".

139. Therefore, the MIA claims that the Ombudsperson has not argued in any form how the right to property is violated in the constitutional sense and where specifically the independence of independent institutions and the justice system has been affected in their functional, organizational and budget sense.

140. The MIA also emphasized that *"Therefore, there is no submission in the sense of violating any article of the contested law with any article or principle of the Constitution where budgetary independence and the right to property are related"*.

141. Furthermore, the MIA emphasizes that *"The principle of independence of constitutional institutions, including budgetary independence, is not intended to sanction in the constitutional sense the salary as property and the laws for it as laws for the right to property. The independence of institutions is related to the result they give to society and that they have a constitutional mandate to exercise that activity"*.

142. According to the MIA, the ECtHR foresees that legitimate expectations in principle in relation to Article 1 (Protection of property) of Protocol no. 1 of the ECHR, or the right to property, in the case *"Marckx v Belgium"* had confirmed its position by repeating that *"Article 1 of Protocol No. 1 does no more than provide for the right of all to enjoy their property, which applies only to the actual (existing) possession of the person, and which does not guarantee the right to claim possession"*

143. In the following, the MIA emphasizes that *"future income cannot be considered to constitute 'possession' unless it was already earned or definitely payable ((Payl and Erkan Erol v. Turkey, case 51358/99 of 24 March 2005)"*.

144. The MIA requests the Court to hold a hearing, open to the public.

145. Finally, the MIA emphasizes that the Ombudsperson's allegations are manifestly ill-founded and therefore the Law on Salaries is fully in accordance with the Constitution and the international Conventions included in it and which are respected by the Republic of Kosovo.

The comments submitted by the deputies of the PDK parliamentary group

146. On 2 May 2023, the deputies of the PDK parliamentary group, through Abelard Tahir, submitted comments regarding the contested Law.

(i) allegations of violation of procedure

147. The deputies of the PDK parliamentary group claim that the contested Law, from a procedural point of view, did not meet the requirements of the parliamentary review in the permanent parliamentary committees of the Assembly, because by being treated in an accelerated procedure, the foreseen procedural deadlines were avoided by paragraph 4 of Article 34, paragraph 1 of Article 52 and paragraphs 3 and 8 of Article 76 of the Rules of the Assembly, it was adopted without being examined at all in the Standing Committee on Budgets, Labor and Transfers and the Committee on the Rights and Interests of Communities and Return. In this way, the Assembly, by adopting the contested Law, also violated the Decision [no. 08-V-449] of 15 December 2022, according to which, in addition to the responsibilities defined for the functional Committee for Public Administration, Local Government, Media and Regional Development, in point 1.3 of this decision, it has expressly provided that the permanent committees review the draft law until 21 December, at 12:00. Consequently, the latter claim that out of the four (4) permanent committees, the contested Law has been examined by only two (2) committees, respectively by the Committee on Legislation, Mandates, Immunities, the Rules of the Assembly and the Supervision of the Anti-Corruption Agency, and by the Committee on European Integration, while it has not been reviewed in the other two (2) permanent committees of the Assembly, respectively

in the Committee on Budgets, Labor and Transfers and the Committee on the Rights and Interests of Communities and Return.

148. On this basis, the deputies of the parliamentary group of the PDK, claim that the procedure provided by the Rules of Procedure of the Assembly and the Decision [no. 08-V-449] of 15 December 2022 of the Assembly has been ignored, as a result the Assembly has violated paragraph 1 of Article 77 (Committees) of the Constitution, in conjunction with Article 29 [Competences of the committees] and paragraphs 3, 4 and 5 of Article 42 of Rules of Procedure of the Assembly. In addition, the latter claim that the contested Law also contradicts paragraph 8 of Article 76 [Review of the draft laws in committees] of the Rules of Procedure of the Assembly, which expressly in paragraph 8 of it, foresees the obligation for the permanent committees to review the draft law with the eventual proposed amendments. Finally, the deputies of the PDK parliamentary group claim that the contested Law was adopted, in essential violation of the provisions of the Rules of Procedure of the Assembly, violating the competencies and responsibilities of the two permanent parliamentary committees, as well as violating Article 77 [Committees] and Article 78 [Committee on Rights and Interests of Communities] of the Constitution.

(ii) claims of substantive infringement

149. The deputies of the PDK parliamentary group allege that in terms of content, the contested Law in a concerning manner has justified the violation of some of the values of the constitutional principles, such as the rule of law, as one of the values of the constitutional order, which among others, includes (i) respect for human rights; (ii) prohibition of discrimination; and (iii) equality before the law - which in addition to representing fundamental human rights, they also represent concepts of the rule of law. In this sense, the contested Law has failed to ensure "*equal pay for equal work*" in the entire public sector. Likewise, the contested Law has created a divergent situation for equivalent positions in the ranks of many categories of public officials, because at different levels the same or comparable positions have been evaluated with different salary levels, without taking education and professional qualifications. The deputies of this parliamentary group emphasize that by the contested Law, entire categories of public officials are subject to unequal treatment and discrimination, which therefore result in a violation of Articles 7 [Values] and 24 [Equality Before the Law] of the Constitution and relevant articles of international instruments which apply directly in the Republic of Kosovo. The contested law, according to the comments, makes unjustifiable differences in treatment, incorporating within itself - respectively the implementation - some seemingly random exceptions, but which are in complete contradiction to the claimed goal - that of harmonizing the salary system, because has left many important sectors unaddressed. Likewise, the contested Law fails to provide legal certainty, because it delegated it to the Government, thus equating the existing categories of work with those defined by law. Therefore, the contested Law should restore the general framework to define the salaries of public employees, but also define the specific rules for independent institutions and the detailed, comprehensive and open process for defining the equivalence of professional categories (the so-called 'work catalog'). According to them, this new catalog should enjoy the maximum support of organizations, unions and groups of civil servants. Its categories must be defined taking into account the requirements of the Constitutional Court to guarantee "*that there will be no disproportionate benefit (nor prejudice) to any specific group, that any exclusion is justified and that any possible reduction in pay will be based on sound arguments, otherwise these actions would violate the individual rights of affected employees*".

a) Unequal treatment of "local level officials"

150. The deputies of the PDK parliamentary group further allege that municipal officials according to the contested Law will be paid depending on the number of residents, and that this difference in salary constitutes discrimination and that this criterion should not be applied to municipal employees regardless of their number. According to the fact that the difference in salary of the positions "*Low Manager, Specialist, Inspector, Professional 1, 2, 3, Municipal Lawyer, depending on the municipalities where they work - is unequal* treatment and therefore *discriminatory*". According to them, the municipal officials are there with the same qualities and qualifications that are required and they do the same work. Consequently, according to them, this difference has the following consequences: (i) violation of the principle of legal certainty, which requires that legal rules be clear and precise, the purpose of which is to ensure that legal situations and relationships are predictable ; (ii) respect for human rights and the rule of law; and (iii) prohibition of discrimination and equality before the law.

b) Treatment of the "justice system"

151. As for the reduction of payments in the justice system, the deputies of the PDK parliamentary group claim that this reduction is "*unacceptable and unconstitutional*" because the contested Law was preceded by the Government's Decision, which repealed the Decision of Haradinaj Government of 2017, returning salaries as they were before this decision was made. In this regard, they emphasize that on the issue of salaries of the judicial system there are two decisions of the Constitutional Court which, by the Government's decision, "*were massively violated*". According to one judgment, the Constitutional Court assessed that the salary increase of 2017 was in accordance with the Constitution. According to Judgment KO219/19, the Constitutional Court had assessed that the only power whose independence had been ignored, for any type of specific regulation, was the judiciary, adding that the complete exclusion of the self-regulatory powers of the judiciary had created an imbalance in the separation of powers, which the spirit and letter of the Constitution does not aspire to. Therefore, the legal regulation by the contested Law has the potential to create "*interference*" of the executive power with the judicial power and "*dependence*" and "*subordination*" of the judicial power with the executive power, *"because the first would have to depend on the will of the second in terms of internal arrangements for staff and functional, organizational, budgetary and structural aspects of work. Such a legal regulation is in open contradiction with the Constitution".*

152. Based on this argument, the deputies of the PDK parliamentary group claim that the contested Law is unacceptable and contrary to the Constitution, respectively with the key principle of the separation of powers, adding that the reasons for salary cuts should be many times more stable than the reason for salary increases, because the first ones reduce an existing right, while the second ones add to an existing right. This is the legal position of the Venice Commission, which should be taken into consideration. It is further stated that the logic of the principle of the separation of powers is that the influence of one power on another, during the process of their institutional interaction, should never create an interfering relationship or of dependency or subordination that could result in the loss of independence to act as a free and uninfluenced power. This constitutes the essence of the constitutional balance that the Constitution has defined, and that is required to be maintained in every interactive instance between independent powers. Consequently, the deputies of the PDK parliamentary group claim that the reduction of the salaries of judges and prosecutors or the difference in the salaries of professional associates depending on the level of the courts or prosecutor's offices where they serve is unacceptable and unconstitutional. Furthermore, they emphasize that Professional Associates are not categorized in annex No. 10.5 of Independent Constitutional Institutions.

c) Treatment of the "Independent Oversight Board"

153. Regarding the Independent Oversight Board of the Civil Service (hereinafter: IOBCS), the deputies of the PDK parliamentary group emphasize that this institution is independent, established by the Constitution, with a specific mandate for ensuring and respecting the rules and principles governing the civil service, thus referring to paragraph 2 of Article 101 [Civil Service] of the Constitution and Judgment KO171/18 of 20 May 2019 of the Constitutional Court. The latter, in Judgment KO127/21 of 21 December 2021, in paragraphs 78 and 80, found that, in addition to the independent constitutional institutions defined in chapter XII of the Constitution and independent agencies, according to Article 142 [Independent Agencies] of Constitution, the Constitution has established several other institutions, among others, the Constitutional Court in its Chapter VIII, as well as the IOBCS in its Article 101. Therefore, by this Judgment, the Constitutional Court has established that the Board cannot be categorized as an independent agency according to Article 142 of the Constitution, because unlike the Independent Agencies which, based on Article 142 of the Constitution, are established by the Assembly, the IOBCS is an institution which is established by Article 101 of the Constitution, and as such the institutional independence attributed to it exceeds that guaranteed to Independent Agencies by Article 142 of the Constitution (see Judgment KO127/21 of 21 December 2021, paragraphs 78 and 80). In this context, deputies from the PDK parliamentary group claim that the IOBCS is not included in the independent constitutional institutions, nor is it categorized with a special annex, based on the constitutional position enjoyed by this institution. Moreover, the chair and members of the IOBCS are not included in the Annex no. 1 Public Officials, No. 1.1 Central Level and that for members of the IOBCS, Annex No. 10.6, since the latter is not an Independent Agency.

d) Treatment of the "Consultative Council for Communities"

154. The deputies of the PDK parliamentary group claim that they have received a complaint from the Secretariat of the Consultative Council for Communities (hereinafter: CCC), regarding the treatment of this constitutional institution by the contested Law. The Secretary of the CCC, according to them, considers that the non-inclusion of the CCC in the process of drafting proposals related to the classification and categorization of employees in the President's institution results in unequal and disproportionate treatment of the employees of the CCC. Therefore, the latter require the attention of the Constitutional Court, especially when it is based on the fact that the Head of the Secretariat of the CCC, until the entry into force of the contested law, respectively according to the current appointment act and the functional category rank and coefficient 16.5, was categorized as "Middle Manager" with a coefficient of 8.5, claiming that this type of categorization is discriminatory, because beyond the individual name and surname, the position of the Head of the CCC Secretariat is the highest administrative position within the constitutional institution such as the CCC, the constitutional position which is regulated by Article 60 [Consultative Council for Communities] of the Constitution, and the same is led by the President of the Republic of Kosovo, also based on the Constitution, respectively Article 84 [Competencies of the President], paragraph 13 thereof. It is emphasized that such a position is foreseen by a special law, respectively by Law no. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo, amended and supplemented by Law no. 03/L-047, which prevails over the contested Law. This position has neither dependence nor subordination to the position of Secretary General of the Office of the President, because it reports directly to the President, according to the classification made by the "working group", this position is ranked at the level of directors in this institution, therefore it is discriminatory. without legal basis and unfair.

e) Partial treatment of the "health sector"

155. The deputies of the PDK parliamentary group emphasize that paragraph; 1 and 2 of Article 30 (Allowance for the health system employee) of the contested Law is unconstitutional, because it imposes a limitation only on the health system employees for the benefit of the allowance on the basic salary, excluding from this allowance only health workers and professionals who work in the private sector. Consequently, such a restriction, according to them, represents a clear violation of the principle of equality before the law, guaranteed by paragraph 2 of Article 3 and Article 24 of the Constitution and is also not in compliance with Judgment KO131/12, Applicant *Shaip Muja and 11 other deputies of the Assembly of the Republic of Kosovo*.

156. Secondly, according to them, Annex no. 9 of the contested Law is in complete contradiction with subparagraph 1.4 of Article 4 [Principles of salary system] of the contested Law itself and in contradiction with Article 7 [Values] of the Constitution. On this basis, the deputies of the PDK parliamentary group argue that the contested Law by categorizing health professionals practicing the profession of Physiotherapist in class H15, HI6 and H17 discriminates against them in relation to other employees of the health sector, who have same duties and qualifications.

157. Thirdly, the non-determination of coefficients, based on qualifications and scientific degrees, according to the PDK parliamentary group, is contrary to Article 24 of the Constitution, as the treatment of Physiotherapists at the same level as those with secondary education constitutes discrimination. Thus, they emphasize that the contested Law does not recognize the higher education of level 7 and 8 of the National Framework of Qualifications, and as such is in complete contradiction with Article 22 [Educational process] of Law no. 041/L-125 on Health, based on which, all health professionals with the qualification of "specialist" who have more than three (3) years of specialist work experience in the institutions where the educational process takes place, are "clinic mentors" and receive financial compensation for their work based on the sub-legal act from paragraph 1 of this article as well as the sub-legal act issued by the Ministry.

158. Fourth, Annex No. 9 does not foresee regulation and treatment of managerial positions of physiotherapists, such as the chief physiotherapist, who currently has a coefficient of 7.2 in the health system, while by this annex neither the category nor the coefficient has been assigned to him.

159. Fifth, the contested Law, according to them, is discriminatory in relation to physiotherapists, nurses, speech therapists, diagnostic radiology technicians, radiotherapy technicians, sanitary medicine technicians, laboratory technicians, midwives and physiotherapist technicians, because it categorizes them based on levels of health care organization (primary, secondary and comprehensive), as defined by paragraph 1 of Article 15 of Law No. 04/L-125 on Health [Healthcare level]. However, it does not do this for other health professionals, such as specialist doctors, specialist family medicine doctors, specialist dentists, specialist pharmacists, clinical pharmacists, specialist clinical psychologists; doctor in specialization, medical physics expert, clinical psychologist in specialization; general practitioner, dentist, pharmacist, veterinary doctor of medical physics in specialization, health and pharmaceutical inspector, clinical psychologist.

160. Sixth, the deputies of the PDK parliamentary group point out that the contested Law increases the inequality in determining the coefficients among health professionals in relation to their education, because *"The specialist doctor currently has a coefficient of 8.4, with the contested law it is 12.0; The doctor in specialization currently has a*

coefficient of 8.0, even with the contested it is 8.0; The Msc pharmacist currently has a coefficient of 8.4, with the contested law it is 12.0; Clinical Psychologist - Bachelor, currently has a coefficient of 7.2, with the contested law it is 7.0; The speech therapist currently has a coefficient of 7.2, with the contested law it decreases to 5.6; Physiotherapist - Bachelor, currently has a coefficient of 7.2, with the contested law it decreases to 5.6; Nursing-Bachelor, currently has a coefficient of 5.4, with the contested law it became 5.6, 5.5 and 5.4; The head nurse currently has a coefficient of 7.2, with the contested law it has decreased to 6.2; and the Chief Physiotherapist, currently has a coefficient of 7.2 the contested law does not assign the coefficient".

161. Seventh, it is emphasized that the contested Law categorizes health professionals as follows: General Practitioner, Dentist, Pharmacist, Veterinarian, Medical Physicist in Specialization, Health and Pharmaceutical Inspector, which the Annex includes in one class (H10). Also, health professionals: Specialist Doctor, Family medicine specialist, Dentist specialist, Pharmacist specialist, Clinical pharmacist Annex included in one class (H10), as well as Clinical Psychologists Annex included in one class (H11), regardless of whether the aforementioned have education equal to 180 ECTS + 120 ECTS, such as Nurses, Physiotherapists, Speech Therapists, Diagnostic Radiology Technicians, Radiotherapy Technicians, Sanitary Medicine, Laboratory Technicians, Midwives who are not treated the same. Also, Annex no. 9 of the contested Law, according to the deputies of this parliamentary group, it is also discriminatory for the way of treatment among the health professionals themselves, because it enables clinical psychologists, pharmacists, medical physicists to be recognized for their higher education and specialization, but not for their professions. other health professionals such as physiotherapists, nurses, midwives, speech therapists, radiology technicians, biochemical laboratory technicians, despite the fact that according to Article 69 of Law no. 04/L-125 on Health, within the profiles of health professionals, also included Physiotherapists (1.5 Graduated Physiotherapist), and this law recognizes them as having specialized education (see articles 72, 73 and 74), while this education is not recognized at all by the contested Law.

162. In the end, the deputies of the PDK parliamentary group reiterate that considering that fundamental human rights and freedoms are indivisible, inalienable and inviolable and as such are the basis of the legal order of the Republic of Kosovo, consequently any difference, exception, limitation or preference on any basis, which has the purpose or effect of invalidating or infringing the recognition, enjoyment or exercise, in the same way as others, of the fundamental rights and freedoms defined by the Constitution and by laws applicable in the Republic of Kosovo, constitutes discrimination. Therefore, they request the respected panel of this court to examine the above comments in the light of the established practice and standards of this court and its jurisprudence and the ECtHR and to declare the contested law partially invalid, respectively unconstitutional.

Comments of Chief Financial Officers (CFOs), of the central and local level submitted by authorized Qazim Krasniqi

163. The Chief Financial Officers (hereinafter: CFO) point out that based on the contested Law, the position of CFO is not included as a separate position at all and as a result this category is ranked with a different coefficient as professional 2, professional 1, lower manager, both at the local level and at the central level, which is contrary to the main principle of the contested Law that the same position has the same salary. CFOs emphasize that their position according to the old regulation had a coefficient of 9.5 at the local level, respectively 9.6 and up to 10.2 at the central level, i.e. higher in the group of civil servants of budgetary organizations.

164. According to the CFOs, based on all legal and sub-legal acts, the position of the Chief Financial Officer is the position of the main financial manager within the budget organization, who reports directly to the highest person of the relevant institution. In this context, the CFOs emphasize that they cannot agree with this legal regulation, namely with the change of the salary class and the coefficient, stressing that their position within the budget organization must be *"...evaluated with a higher coefficient than the position of certifying officials. Also, all of us would agree to perform the work of the certifying officer with a coefficient anyway lower than the coefficient for CFOs, as the categories that will be finalized by the salary law in the public sector"*.

165. In conclusion, the CFOs ask the Court to analyze all the legal and sub-legal acts that regulate the rights and responsibilities of the CFOs and to assess whether this category should be treated as special by the contested Law, adding that their responsibility is equivalent to the general secretaries of ministries or general/executive directors in independent agencies or other public institutions.

Comments submitted by the Professional Associates of the Basic Courts and Prosecutions of the Republic of Kosovo

166. On 2 November 2023, the professional associates of the Basic Courts submitted their comments regarding the determination of their coefficient by the contested Law. On 7 November 2023, the comments of the professional associates of the Basic Courts were joined by the professional associates of the Basic Prosecutions, who also commented on the determination of their coefficient, by the contested Law.

167. The professional associates, regarding the contested Law, note that in Annex no. 2 and 2.1 related to the Judicial System, in the ordinal number 16, 17, 18, the coefficient for professional associates in the Basic Courts, the Commercial Court, the Court of Appeals and the Supreme Court is established. However, they emphasize that the contested Law for professional associates in the Basic Courts has defined class J11 with a coefficient of 7.14, while for professional associates in the Commercial, Appeals and Supreme Courts it has defined the J10 class, with a coefficient 8.5.

168. The professional associates of the basic courts claim that by this division according to the level of the courts, they have been treated unequally by the legislator in relation to the professional associates who work in the Commercial, Appeals and Supreme Courts. In the judicial and prosecutorial system, according to them, these positions in chronological context have been treated every time as the same and single position, the salary has been the same and the description of the work duties has always been the same, just as the employer has been the same. The latter point out that the position of the judge (salary) was handled according to the judicial institution where the judge worked, but here it should be noted that the salary of the position of the judge is determined by Law no. 06/L-054 on Courts, while the salary of the professional associate position is not determined by this law. Therefore, in this regard, any tendency of the legislator for a different treatment of the same positions in this aspect, alluding to selective advancement of a part of professional associates, by determining the coefficient differently for the same positions, necessarily constitutes a violation of the right of equality before the law, as a constitutional right.

169. Furthermore, the latter emphasize that with the entry into force of the contested Law, professional associates working in basic courts have been directly discriminated against, because this unequal treatment has been done only for the position of "*professional associate*" as part of - annex 2.1, this is because in sub-annex 2.2, other positions related to the judicial administration of this sub-annex have been treated

according to the principle of equality for positions such as Manager, Professional, Technical Clerk, etc., coefficients have been determined to be the same, regardless of which court they are employed.

170. The professional associates of the basic courts assess that the coefficient of the position of "*professional associate*" should be unique in the entire judicial system, including the prosecutorial system, be it 7.14 or 8.5. Moreover, they emphasize that even in Regulation no. 04/2021 on the Procedure for the Recruitment and Selection of Professional Associates, which was recently approved by the KJC, professional associates, in Article 2 of this regulation, it is established that "*Professional associate - the official with professional competence who provides professional support to the judge within the court in which he works*", therefore, according to this regulation, all professional associates are treated as equals, regardless of which court they work in, thus making no distinction between them, but in this regulation it is determined that the work duties and the conditions for recruiting professional associates are the same and that the professional associates of the higher instances do not even have an additional responsibility or duty of work more than those of the basic courts.

171. In this regard, the latter reiterate that the contested sub-annex under class J11 is also in contradiction with Article 38 of the Law on Public Officials, because in paragraph 4 of Article 38 of this law it is defined that "*every service position civil is classified as part of a certain class based on the description of the work duties*", and that in the present case, for all the professional associates there is the same description of the work duties, but despite this the professional associates are not classified with a class but their differentiation into classes has been created, then defining different coefficients even though they are all part of the judicial system (part of the same Annex). Such treatment contradicts the principle of "*equal pay for equal work*", which is incorporated and guaranteed by all international instruments that protect fundamental human rights and freedoms. Thus, in the present case, discrimination occurred in violation of the right to equality before the law, which does not pursue a legitimate goal, nor is it proportional. In this context, they consider that the implementation of the current annex and sub-annex only legitimizes the unequal treatment for professional associates of the basic courts, adding that the contested sub-annex is contrary to the principles of the contested Law, namely in opposition to subparagraph 1.4, paragraph 1 of Article 4 of the contested Law.

172. For all these reasons, professional associates consider that Law no. 08/L-196 on Salaries in the Public Sector, namely Article 4 of the Law and Annex no. 2 relating to the Judicial System, sub-annex 2.1 relating to the Judiciary, in ordinal number 16, 17, 18 is not in compliance with Article 24 [Equality Before the Law], Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, in conjunction with articles 7 and 23, paragraph 2 of the Universal Declaration of Human Rights, Protocol no. 12 of the European Convention on Human Rights.

RELEVANT PROVISIONS OF THE CONSTITUTION, INTERNATIONAL CONVENTIONS AND LAWS OF THE REPUBLIC OF KOSOVO

THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 3
[Equality Before the Law]

[...]

2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as

protection of the rights of and participation by all Communities and their members.

Article 4
[Form of Government and Separation of Power]

1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.
2. The Assembly of the Republic of Kosovo exercises the legislative power.
3. The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and - 1 - externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.
4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control.
5. The judicial power is unique and independent and is exercised by courts.
6. The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution.
7. The Republic of Kosovo has institutions for the protection of the constitutional order and territorial integrity, public order and safety, which operate under the constitutional authority of the democratic institutions of the Republic of Kosovo.

Article 7
[Values]

1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.
[...]

Article 21
[General Principles]

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

Article 22
[Direct Applicability of International Agreements and Instruments]

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:
(1) Universal Declaration of Human Rights;
(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
(3) International Covenant on Civil and Political Rights and its Protocols;
(4) Council of Europe Framework Convention for the Protection of National Minorities;
(5) Convention on the Elimination of All Forms of Racial Discrimination;
(6) Convention on the Elimination of All Forms of Discrimination Against Women;

(7) Convention on the Rights of the Child;
(8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

Article 24
[Equality Before the Law]

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

Article 46
[Protection of Property]

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

Article 55
[Limitations on Fundamental Rights and Freedoms]

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

Article 102
[General Principles of the Judicial System]

1. Judicial power in the Republic of Kosovo is exercised by the courts.
2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.
3. Courts shall adjudicate based on the Constitution and the law.
4. Judges shall be independent and impartial in exercising their functions.
5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law

may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal.

Article 108
[Kosovo Judicial Council]

1. *The Kosovo Judicial Council shall ensure the independence and impartiality of the judicial system.*
2. The Kosovo Judicial Council is a fully independent institution in the performance of its functions. The Kosovo Judicial Council shall ensure that the Kosovo courts are independent, professional and impartial and fully reflect the multi-ethnic nature of Kosovo and follow the principles of gender equality. The Kosovo Judicial Council shall give preference in the appointment of judges to members of Communities that are underrepresented in the judiciary as provided by law.
3. The Kosovo Judicial Council is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office. The Kosovo Judicial Council is also responsible for transfer and disciplinary proceedings of judges.
[...]
5. The Kosovo Judicial Council is responsible for conducting judicial inspections, judicial administration, developing court rules in accordance with the law, hiring and supervising court administrators, developing and overseeing the budget of the judiciary, determining the number of judges in each jurisdiction and making recommendations for the establishment of new courts. New courts shall be established according to law.
[...]

Article 109
[State Prosecutor]

1. The State Prosecutor is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law.
2. The State Prosecutor is an impartial institution and acts in accordance with the Constitution and the law.
3. The organization, competencies and duties of the State Prosecutor shall be defined by law.
4. The State Prosecutor shall reflect the multiethnic composition of the Republic of Kosovo and shall respect the principles of gender equality.
5. The mandate for prosecutors shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law.
6. Prosecutors may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties.
7. The Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment.

Article 110
[Kosovo Prosecutorial Council]

1. The Kosovo Prosecutorial Council is a fully independent institution in the performance of its functions in accordance with law. The Kosovo Prosecutorial Council shall ensure that all persons have equal access to justice. The Kosovo Prosecutorial Council shall ensure that the State Prosecutor is independent, professional and impartial and reflects the multiethnic nature of Kosovo and the principles of gender equality.

2. The Kosovo Prosecutorial Council shall recruit, propose, promote, transfer, reappoint and discipline prosecutors in a manner provided by law. The Council shall give preference for appointment as prosecutors to members of underrepresented Communities as provided by law. All candidates shall fulfill the selection criteria as provided by law.
3. Proposals for appointments of prosecutors must be made on the basis of an open appointment process, on the basis of the merit of the candidates, and the proposals shall reflect principles of gender equality and the ethnic composition of the relevant territorial jurisdiction.
4. The composition of Kosovo Prosecutorial Council, as well as provisions regarding appointment, removal, term of office, organizational structure and rules of procedure, shall be determined by law.

Article 115
[Organization of the Constitutional Court]

1. The Constitutional Court shall determine its internal organization, rules of procedure, decision-making processes and other organizational issues pursuant to law.
2. The Constitutional Court shall publish an annual report.

Article 132
[Role and Competencies of the Ombudsperson]

1. The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.
2. The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo.
3. Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.

Article 136
[Auditor-General of Kosovo]

1. The Auditor-General of the Republic of Kosovo is the highest institution of economic and financial control.
2. Organization, operation and competencies of the Auditor-General of the Republic of Kosovo shall be determined by the Constitution and law.
3. The Auditor-General of the Republic of Kosovo is elected and dismissed by the Assembly by a majority vote of all its deputies on the proposal of the President of the Republic of Kosovo.
4. The Assembly decides on the dismissal of the Auditor-General of the Republic of Kosovo by a two thirds (2/3) majority of all its deputies upon the proposal of the President of the Republic of Kosovo or upon the proposal of one third (1/3) of all its deputies.
5. The mandate of the Auditor-General of the Republic of Kosovo is five (5) years with the possibility of re-election to only one additional mandate.

Article 139
[Central Election Commission]

1. The Central Election Commission is a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections and referenda and announces their results.
2. The Commission is composed of eleven (11) members.

3. The Chair of the Central Election Commission is appointed by the President of the Republic of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction.
4. Six (6) members shall be appointed by the six largest parliamentary groups represented in the Assembly, which are not entitled to reserved seats. If fewer groups are represented in the Assembly, the largest group or groups may appoint additional members. One (1) member shall be appointed by the Assembly deputies holding seats reserved or guaranteed for the Kosovo Serb Community, and three (3) members shall be appointed by the Assembly deputies holding seats reserved or guaranteed for other Communities that are not in majority in Kosovo.

Article 140
[Central Bank of Kosovo]

1. The Central Bank of the Republic of Kosovo is an independent institution which reports to the Assembly of Kosovo.
2. The Central Bank of the Republic of Kosovo exercises its competencies and powers exclusively in accordance with this Constitution and other applicable legislative instruments.
3. The Governor of the Central Bank of the Republic of Kosovo will serve as the Chief Executive Officer.
4. The governance of the Central Bank of the Republic of Kosovo and the selection and nomination procedures of the Central Bank Board members shall be regulated by law, which shall ensure its independence and autonomy.

Article 141
[Independent Media Commission]

1. The Independent Media Commission is an independent body, which regulates the Range of Broadcasting Frequencies in the Republic of Kosovo, issues licenses to public and private broadcasters, establishes and implements broadcasting policies and exercises other competencies as set forth by law.
2. The members of the Independent Media Commission shall be elected in a transparent process in accordance with the law.

Article 142
[Independent Agencies]

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

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 14
[Prohibition of discrimination]

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol No. 1 to the European Convention on Human Rights

Article 1
[Protection of property]

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
[...]

Protocol No. 12 to the European Convention on Human Rights

Article 1
[General prohibition of discrimination]

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

CONTESTED PROVISIONS OF LAW NO. 08/L-196 ON SALARIES IN THE PUBLIC SECTOR

(Contested Law)

Article 1
Purpose

The purpose of this law is to create a uniform system of salaries in the public sector, which includes the principles and rules for determining the salary in the public sector, as well as to create a transparent and manageable system of salaries and bonuses where the main element is the basic salary.

Article 2
(Scope)

1. This law applies to public sector employees whose salaries are paid by and through the state budget, excluding the Kosovo Intelligence Agency.
2. The rules and terms for determining the salary of the public sector employees are exclusively regulated by this law, and may be regulated by other by-laws, only when explicitly provided for by this law.
3. For the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, this law applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution.

Article 4
(Principles of salary system)

[...]
*1.3. **principle of predictability** – means that the salary level, determined under this Law, can be reduced, only based on the Law;*
*1.4. **principle of equality and non-discrimination** - means that everyone, without any discrimination, shall be entitled to receive equal pay for equal work,*

by considering the nature of work, the requirements for the job, the institution where the task is performed, and the qualification.
[...]

Article 6
(Basic salary)

[...]
6. Basic salary shall be raised based on the work experience, to the extent of:
6.1. zero-point twenty-five percent (0.25%) for each full year of work, up to fifteen years (15) of work; and
6.2. zero-point five percent (0.5%) for every full year of work, over fifteen (15) years of work.
[...]

Article 9
Setting the coefficient value

1. The monetary value of the coefficient shall be determined by the Law on Annual Budget. The coefficient value shall be set under the legislation on public financial management and accountability.
[...]

Article 10
Lowering the salary level

1. The coefficient monetary value set under this Law can be lowered only by law and in the following situations:
1.1. a macroeconomic shock resulting in reduced income;
1.2. a natural disaster pursuant to Article 131 of the Constitution of the Republic of Kosovo.

Article 23
Special allowance for the nominees

1. Members of Parliament may benefit from a special allowance in addition to their basic salary, for the additional function or participation in parliamentary committees.
2. The special allowance for participation in all commissions cannot exceed thirty percent (30%) of the Member of Parliament basic salary.
3. The criteria and procedure for the special allowance under paragraph 1. and 2 of this Article shall be set by a bylaw approved by the Presidency of the Assembly.
4. Members of the Municipal Assembly may receive a special allowance of thirty percent (30%) of their basic salary for participation in standing committees determined for the member of the Assembly.
5. Members of the Municipal Assembly, who receive a regular salary from the Kosovo budget, shall only benefit from the allowance pursuant to paragraph 4. of this Article. 6. The allowance under paragraph 4. of this Article shall be allocated only once per month and shall be paid only if the members of the Municipal Assembly participate in the Municipal Assembly standing committees.

Article 24
Allowance for labour market conditions

1. *The allowance for labour market conditions shall be granted to necessary occupations, in certain deficit occupational positions of the civil service and public service, where the recruitment or retention of employees in these occupations and positions is objectively impossible.*

2. The funds used in each institution for the allowance for labor market conditions cannot be higher than 0.5 % of the total funds used by the institution for the basic salary of the officials in the same fiscal year.
3. For the purpose of implementing this Article, the Government of the Republic of Kosovo shall be treated as one (1) budgetary organization.
4. The respective professions for which the allowance for the labor market conditions for civil servant and public service employee is received, its value and procedure shall be approved by a bylaw by the ministry responsible for finance. The allowance for market conditions for civil servants shall be reviewed at least every three (3) years.
5. The respective professions for which the market conditions allowance is received, its value and procedure for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions are regulated by this law and by a special act approved by the competent bodies of the institutions. The market conditions allowance shall be reviewed at least every three (3) years by the competent bodies of these institutions.

Article 25
Performance allowance

1. *The performance allowance aims to stimulate civil servants and public service administration employees of the professional category in budgetary organizations funded by the state budget.*
2. A civil servant and public service administration servant shall receive an annual performance allowance based on the results of the annual performance evaluation.
3. The performance allowance shall be awarded to a civil servant and public service administration servant who has been evaluated as "Extraordinary Achievement" in the relevant year, under the relevant provisions of the Law on Public Officials.
4. The performance bonus shall be benefited at the end of each year and shall be awarded according to individual performance and shall be paid in the first three (3) months of the following year.
5. The funds used in each institution for the performance allowance shall not be higher than 0.1% of the total funds used by the institution for the basic salary of officials in the same financial year.
6. The performance allowance shall not be awarded to a civil servant or public service administration servant who has been subjected to an active disciplinary measure for erious violations.
7. The Government of the Republic of Kosovo shall, at the proposal of the ministry responsible for finances and the consent of the ministry responsible for public administration, approve by a by-law the criteria, amount and procedure for obtaining the performance allowance as well as its calculation method.
8. he performance allowance and the procedure for obtaining the performance allowance for the employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions are regulated by this law and by a special act approved by the competent bodies of the institutions.

Article 27
Overtime allowance

1.In addition to the basic salary, political officer of the cabinet who does not have predetermined working hours can benefit from a special allowance, which cannot exceed thirty percent (30%) of the basic salary.
2. The criteria and procedure for benefiting the allowance under paragraph 1. of this Article shall be regulated by a bylaw approved by the Government, at the proposal of the Ministry of Public Administration and the approval of Ministry of Finance.
3. The criteria and procedure for benefiting the allowance under paragraph 1. of this Article by a cabinet officer of the President of the Republic of Kosovo and the Assembly of the Republic of Kosovo are regulated by this law and by a special act approved by the competent bodies of the institutions.

Article 28
Workload allowance

1. Budgetary organizations may, in cases provided for by this Law, grant a workload allowance for the performance of work due to the increased workload, if they have funds available for this purpose from the savings of the salary funds that are accumulated due to the lack of civil servants, or unfilled positions for which funds are provided for in the financial plan of the budget user and funds for special projects.
2. Civil servants shall receive a workload allowance due to the increased workload for the work performed that exceeds the expected results of the work in one (1) month, if in this way it is possible to provide a more rational way of achieving work results as well as the budget.
3. The workload allowance shall be approved by the chief administrative officer of the institution, upon the agreement with the civil servant.
4. The allowance defined in paragraph 1. of this Article shall not be higher than 0.5% of the total funds used by the budget organization, for the basic salary of public officers of the budget organization in the same financial year.
5. To implement this Article, the Government of the Republic of Kosovo shall be treated as a single budgetary organization.
6. The benefiting rules, the allowance value and the benefit period shall be determined by a Government bylaw, at the proposal of the Ministry of Finance and the consent of the Ministry of Public Administration.
7. The criteria and procedure for benefiting the allowance under this Article by a civil servant of the office of the President of Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions are regulated by this law and by a special act approved by the competent bodies of the institutions.

Article 42
Determining the equivalence

1. Upon the entry into force of this law, any change in the structure, components or levels of salary coefficients shall be prohibited.
2. In the case of the creation of new functions, positions or designations, the institution in which the position is created shall request from the ministry responsible for public administration the determination of the salary class that applies to that function, position or designation on the basis of equivalence.
3. Upon receiving the request, the ministry responsible for public administration shall evaluate the function, position or designation with the equivalence based on the principles of this law and makes a proposal for approval to the Government, for the salary class that applies to that function, position or designation.
4. The creation of new functions, positions, or designations for officials in the President of Republic of Kosovo, the Constitutional Court of the Republic of

Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions are regulated by this law and by a special act approved by the competent bodies of the institutions, shall be regulated by this law and by a special act approved by the competent bodies of institutions.

Article 41
Transitional allowance

1. If a public officer or public functionary, before the entry into force of this law, was receiving a basic salary greater than the full salary provided by this Law, he/she shall receive a new salary according to the provisions of this Law and a transitional allowance equal to the difference between the current salary and the new basic salary.

2. Persons, public officers or public functionaries shall, under paragraph 1. of this Article, benefit from the new salary in:

2.1. 100% of the special transitional allowance, according to paragraph 1., during the first year after the entry into force of this Law;

2.2. 50% of the special transitional allowance, according to paragraph 1., during the second year after the entry into force of this law.

3. In derogation from paragraph 1. and 2. of this Article, the foreign service members shall not enjoy the right to a transitional allowance.

4. Every person who is employed after the approval of this law shall receive a salary according to this law and shall not enjoy the right ta transitional allowance.

Article 44
(Annexes of the Law)

1. The following annexes shall be an integral part of this Law:

[...]

1.2. Annex No. 2 – Judicial System:

[...]

1.3. . Annex No. 3 – Prosecutorial System:

[...]

1.4. Annex No. 4 – Kosovo Security Force;

[...]

1.7. Annex No. 7– Kosovo Correctional Service

[...]

1.8. Annex No. 8 – Public officer of university and pre-university education;

[...]

1.9. Annex No. 9 – Public health system employee

[...]

1.10.3. Annex No. 10.3. - The Assembly of Kosovo;;

[...]

1.10.5. Annex No. 10.5. – Independent Constitutional Institutions;

1.10.6. Annex No. 10.6. – Ministries, independent agencies, agencies and regulators, executive agencies and public service agencies;

1.10.7. Annex No. 10.7. – Municipalities;

[...]

1.14.1. Annex No. 14.1. – National Audit Office;); and

1.14.2. Annex No. 14.2. – Internal Audit).

SPECIFIC PROVISIONS OF OTHER LAWS REPEALED BY ARTICLE 45 [REPEAL] OF THE CONTESTED LAW

Article 45
(Repeal)

1. The following laws shall be repealed upon the entry into force of this law*:*
1.1. Law No. 03/L-147 on Salaries of Civil Servants;
1.2. Article 11, paragraph 2. of Law No. 03/L-094 on the President of the Republic of Kosovo;
1.3. Article 15 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo;
1.4. Article 35, paragraph 1. and 2 of Law No. 06/L-054 on Courts;
1.5. Article 21, paragraph 1., sub-paragraph 1.1. to 1.10., of the Law No. 03/L-225 on State Prosecutor;
1.6. Article 4, paragraph 2. of Law No. 03/L-222 on Tax Administration and Procedures;
1.7. Article 28, paragraph 1. and 2. of Law No. 03/L-231 on the Kosovo Police Inspectorate;
1.8. Article 80 of Law No. 03/L-048 on Public Financial Management and Accountability;
1.9. Article 97 of Law No. 04/-L-027 on Protection from Natural Disasters and other Disasters;
1.10. Article 20, paragraphs 2. and 3. of the Law No. 04/L-064 on the Kosovo Forensic Agency;
1.11. Article 47, paragraph 4 . of Law No. 04/L-076 on the Police;
1.12. Article 23, paragraph 2. of Law No. 06/L-021 on Internal Control of Public Finances;
1.13. Article 26 of Law No. 06/L-046 for the Education Inspectorate in the Republic of Kosovo;
1.14. Article 18, paragraph 1., of Law no. 06/L-055 on the Judicial Council of Kosovo;
1.15. Article 29, paragraph 1., sub-paragraph 1.1., 1.2., and paragraph 4. of Law No. 08/L-131 on the Correctional Service of Kosovo;
1.16. Article 28, paragraph 5. of Law No. 08/L-056 on Protection of Competition.
2. With the entry into force of this law, any provision of the law or other by-law that regulates the issue of salary, compensations, allowances, bonuses or other categories in the field of salaries and that is not expressly authorized to be derived from the provisions of this law is also repealed.

CONTENT OF THE PROVISIONS REPEALED BY ARTICLE 45 OF THE CONTESTED LAW

Article 11, paragraph 2 of Law No. 03/L-094 on the President of the Republic of Kosovo

Article 11
Salary of the President of Republic

1. Salary of the President of Republic of Kosovo shall be the highest among the state institutions of Republic of Kosovo.
2. Salary of the President of Republic shall always be at least twenty five percent (25%) higher than the general income of the President of the Assembly of Republic of Kosovo and of the other institutional leaders.

Article 15 of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo

Article 15
Remuneration of Judges

The remuneration of Constitutional Court judges shall be 1.3 times that of the judges of the Supreme Court of the Republic of Kosovo.

Article 9 of Law No. 03/L-159 on the Anti-Corruption Agency;

Article 9
Salary of Director

Director of the Agency has a salary at the salary level of the President of the Parliamentary Committee of the Assembly of Kosovo.

Article 35 paragraphs 1 and 2 of Law No. 06/L-054 on Courts

Article 35
Salary and Judicial Compensation

1. During their terms of office, judges shall receive the following salaries:
1.1. the President of the Supreme Court shall receive a salary not less than that of the Prime Minister of the Republic of Kosovo;
1.2. judges of the Supreme Court shall receive a salary equivalent to ninety percent (90%) of the salary of the President of the Supreme Court;
1.3. the President of the Court of Appeals shall receive a salary equivalent to that of a judge of the Supreme Court of Kosovo;
1.4. all other judges of the Court of Appeals shall receive a salary equivalent to ninety percent (90%) of the salary of the President of the Court of Appeals;
1.5. the President of a Basic Court shall receive a salary equivalent to the salary of a judge of the Court of Appeals;
1.6. the Supervising Judge of a Branch of the Basic Court shall receive a salary equivalent to ninety-five percent (95%) of the salary of the President of a Basic Court;
1.7. all judges of the Basic Court shall receive a salary equivalent to eighty (80%) percent of the President of the Basic Court
2. The salary of a judge shall not be reduced during the term of office to which the judge is appointed, except as a disciplinary sanction imposed under the authority of the Kosovo Judicial Council.
3. Judges are entitled to annual leave in accordance to the Law on Labour.

Article 21, paragraph 1, sub-paragraphs 1.1 until 1.10 of Law No. 03/L-225 on the State Prosecutor

Article 21
Compensation of State Prosecutors

1. During the period of service, state prosecutors will be entitled to the following basic salaries:
1.1. The Chief State Prosecutor shall receive a salary equivalent to that of the President of the Supreme Court.
1.2. Prosecutors permanently appointed to the Office of the Chief State Prosecutor shall receive a salary equivalent to ninety percent (90%) of the salary of the Chief State Prosecutor.
1.3. The Chief Prosecutor of the Special Prosecution Office shall receive a salary equivalent to ninety-five percent (95%) of the salary of the Chief State Prosecutor.
1.4. Prosecutors permanently appointed to the Special Prosecution Office shall receive a salary equivalent to the salary of the prosecutors in the Office of Chief State Prosecutor.
1.5. The Chief Prosecutor of the Appellate Prosecution Office shall receive a salary equivalent to that of the president of the Court of Appeals. 1.6. Prosecutors permanently appointed to the Appellate Prosecution Office shall receive a salary

equivalent to ninety percent (90%) of the salary of the Chief Prosecutor of the Appellate Prosecution Office.
1.7. The Chief Prosecutors of Basic Prosecution Offices shall receive a salary equivalent to the salary of presidents of the Basic Courts.
1.8. Each prosecutor permanently appointed to the Basic Prosecution Office shall receive a base salary of not less than seventy percent (70%) of the salary of the Chief Prosecutor of a Basic Prosecution Office. The Council shall promulgate a schedule for additional compensation that recognizes the unique responsibilities of prosecutors appearing before the Serious Crimes Department of the Basic Court; but in no case shall the sum of the base salary and the additional compensation exceed ninety percent (90%) of the salary of the Chief Prosecutor of a Basic Prosecution Office.
1.9. In addition to their basic remuneration, every prosecutor will be entitled to additional compensation for other services as provided for by law or the rules issued by Kosovo Prosecutorial Council.
1.10. Regardless of any other provision of the law, the salary of prosecutors will not be reduced during their term of service unless it is imposed as sanction by the Council or the Council's Disciplinary Committee upon a determination that the prosecutor has engaged in misconduct or has committed a criminal offence.
1.11. State Prosecutors are entitled to annual leave in an amount equal to civil servants, but in no case fewer than twenty (20) days of paid annual leave per year.

Article 18, paragraph 1 of Law No. 06/L-055 on Kosovo Judicial Council

Article 18
The salary of the Chair and the Council members

1. During their term of office, the Chair and the members of the Council appointed for full time, shall receive their salaries as follows:
1.1. The Chair receives a salary equivalent to the salary of the President of the Supreme Court.
1.2. The Vice-Chair and the full time members shall receive a salary equivalent to the salary of the judge of the Supreme Court.
[...]
5. The Chair, the Vice-Chair and the members of the Council shall not be entitled to exercise any other public or professional duty for which they are rewarded with payment, except for teaching in higher education institutions.
6. The Chair, the Vice-Chair and the members of the Council may engage in scientific, cultural, academic and other activities which do not contradict their functions and legislation in force.

Admissibility of the Referral

173. In order to decide regarding the Applicants' Referral, the Court must first examine whether the admissibility criteria established in the Constitution and further specified in the Law and the Rules of Procedure have been met.

174. In this regard, the Court refers to the relevant provisions of the Constitution, the Law and the Rules of Procedure, according to which the Ombudsperson can appear as an Applicant before this Court:

Constitution of the Republic of Kosovo

Article 113
[Jurisdiction and Authorized Parties]

[...]
2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government.
[...]

Article 135
[Ombudsperson Reporting]

[...]
4. *The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution.*

Law on the Court

Article 29
(Accuracy of the Referral)

1. A referral pursuant to Article 113, Paragraph 2 of the Constitution, shall be filed by either one fourth (¼) of the deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo, the Government or the Ombudsperson.
2. A referral that a contested act by virtue of Article 113, Paragraph 2 of the Constitution shall indicate, inter alia, whether the full content of the challenged act or certain parts of the said act are deemed to be incompatible with the Constitution.
3. A referral shall specify the objections put forward against the constitutionality of the contested act.

Rules of Procedure of the Constitutional Court

Rule 65
[Referral Pursuant to Sub-paragraphs 1 and 2 of Paragraph 2 of Article 113 of the Constitution and Articles 29 and 30 of the Law]

"(1) A referral filed under this Rule must fulfil the criteria established in subparagraphs (1) and (2) of paragraph (2) of Article 113 of the Constitution and Articles 29 (Accuracy of the Referral) and 30 (Deadlines) of the Law.
(2) When filling a referral pursuant to paragraph (2) of Article 113 of the Constitution, the authorized party shall indicate, inter alia, whether the full content of the challenged act or certain parts thereof and what parts of that act are deemed to be incompatible with the Constitution.
(3) The authorized party shall specify in the referral objections regarding the constitutionality of the challenged act.
(4) The referral under this Rule must be filed within a period of six (6) months from the day of entry into force of the challenged act."

175. Following this, the Court will assess: (i) whether the Referral was filed by an authorized party, as set out in subparagraph (1) of paragraph 2 of Article 113 of the Constitution and paragraph 1 of Article 29 of the Law; (ii) the nature of the contested act, (iii) the accuracy of the Referral, as required by paragraphs 2 and 3 of Article 29 of the Law and

sub-rule (2) and (3) of Rule 67 of the Rules of Procedure; and (iv) if the Referral is filed within a period of six (6) months after the entry into force of the contested act, as defined in Article 30 of the Law and sub-rule (4) of Rule 65 of the Rules of Procedure.

(i) Regarding the Authorized Party and the contested act

176. The Ombudsperson, pursuant to Article 113.2 (1) of the Constitution is authorized to raise before the Court the issue of compliance with the Constitution of (i) laws; (ii) decrees of the President; (iii) decrees of the Prime Minister; and (iv) Government regulations. Article 29 of the Law specifies that the Ombudsperson is an authorized party before the Court and Rule 65 of the Rules of Procedure refers to the respective articles, cited above, of the Constitution and the Law.

177. In terms of the circumstances of the present case, the Court notes that the Ombudsperson, in his capacity as Applicant, before the Court challenges the constitutionality of Law No. 08/L-196 on Salaries in the Public Sector, namely a "*law*" adopted by the Assembly.

178. Therefore, the Court finds that there is a Referral before the Court by the Ombudsperson, who based on the above-mentioned Articles of the Constitution, the Law and the Rules of Procedure, is a party authorized to bring before the Court, *inter alia*, the issue of compatibility of "*laws*" with the Constitution. Therefore, the Ombudsperson is an authorized party and challenges an act which he has constitutional authorization to challenge.

(ii) Regarding the accuracy of the Referral and specification of the objections

179. The Court recalls that Article 29 of the Law and Rule 65 of the Rules of Procedure stipulate that the Referral raised in the context of Article 113.2 (1) of the Constitution must specify (i) whether the entire of the contested act or certain parts of the said act are deemed to be incompatible with the Constitution; and (ii) specify the objections raised against the constitutionality of the contested act.

180. As regards the first criterion, the Court notes that the Court notes that the Ombudsperson contests the constitutionality of the contested Law, with the claim that certain of its provisions and annexes are not compatible: (i) with *"the principle of separation of powers, control and balance between them and preservation of the independence of independent constitutional institutions"* guaranteed by Article 4 [Form of Government and Separation of Power]; (ii) with "*rule of law"* guaranteed by Article 7 [Values]; (iii) with "*equality before the law"* guaranteed by Articles 3 and 24 [Equality Before the Law]; and (iii) with *"protection of property"* guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

181. In addition, the Ombudsperson specifically challenges the constitutionality of the provisions of the contested Law, as follows: (i) paragraph 3 of Article 2 (Scope); subparagraphs 1.3 and 1.4 of Article 4 (Principles of salary system), subparagraph 6.1 of Article 6 (Basic salary); paragraph 1 of Article 9 (Setting the coefficient value); paragraphs 3 and 4 of Article 41 (Transitional allowance), paragraphs 4 and 5 of Article 26 (Allowance for specific working conditions), paragraphs 1, 2 and 3 of Article 42 (Determining the equivalence), as well as (ii) Annexes: no. 2 (Judicial System); no. 3 (Prosecutorial System); no. 4 (Kosovo Security Force); no. 7 (Kosovo Correctional Service); no. 8 (Public officer of university and pre-university education); no. 9 (Public health system employee); no. 10.3 (The Assembly of Kosovo); no. 10.5 (Independent Constitutional Institutions); no. 10.6 (Ministries, independent agencies, agencies and

regulators, executive agencies and public service agencies); 10.7 (Municipalities); no. 14.1 (National Audit Office); and 14. 2 (Internal Audit).

182. Therefore, the Court finds that the Applicant has specified in which parts he challenges the contested Law and that he has presented his objections regarding the unconstitutionality of specific articles of the contested Law with specific articles of the Constitution and the Judgment of the Constitutional Court in case KO219/19.

183. However, the Court also notes that, in addition to the allegations about the unconstitutionality of the contested Law and in particular aspects regarding the aforementioned constitutional principles, the Applicant points out that 104 complaints from institutions and entities have been submitted to it by various parties interested in the constitutionality of the contested Law.

184. In this regard, the Court clarifies that any complaint or request that the Applicant decides to support with the purpose of contesting a law or other act before the Constitutional Court, must justify it in such a way that his objection, position and request directed to the Court are clearly understood. Such competence is given to the Ombudsperson by Article 113.2 (1) of the Constitution, the purpose of which is to give the Ombudsperson the opportunity to exercise his constitutional role to *"monitor, defend and protect the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities*" challenging the constitutionality of a law of the Assembly or other act under the jurisdiction provided by Article 113 of the Constitution (see, case of the Court KO219/19, *the Ombudsperson,* Constitutional review of Law no. 06/L-111 on Salaries in the Public Sector, Judgment of 9 July 2020, paragraph 189).

185. Consequently, in assessing the constitutionality of the contested Law, the Court will focus only on the specified and substantiated allegations and objections of the Applicant, namely the Ombudsperson regarding the unconstitutionality of the contested Law, by not entering an individual assessment of 104 complaints submitted to the Ombudsperson by the interested parties (see related to this approach the case of the Court KO219/19, cited above, paragraph 190).

186. Based on the above, the Court finds that the Applicant before the Court challenges the contested Law in some of its parts, and consequently, the Applicant's Referral (i) specifies the contested Law is contrary to the Constitution; and (ii) specifies the objections raised regarding the constitutionality of the contested Law.

(iii) Regarding the deadline

187. The Court recalls that Article 30 [Deadlines] of the Law and Rule 67 (4) of the Rules of Procedure stipulate that the Referral submitted based on Article 113.2 (1) of the Constitution must be filed within a period of 6 (six) months after the entry into force of the contested act.

188. In this context, the Court notes that the contested Law entered into force on 5 February 2023, while it was challenged in the Court on 7 April 2023, and consequently, it was submitted to the Court within the time limit set out in the abovementioned provisions.

(iv) Conclusion regarding the admissibility of the Referral

189. The Court finds that the Applicant: (i) is an authorized party before the Court; (ii) challenges the Law of the Assembly, which he has the right to challenge; (iii) has specified that he challenges the contested Law partially; (iv) has presented

constitutional objections against the contested Law; and (v) has challenged the contested Law within the prescribed time limit.

190. Therefore, the Court declares the Referral admissible and will further examine its merits.

MERITS OF THE REFERRAL

I. Introduction

191. The Court first recalls that the Applicant, respectively the Ombudsperson, challenges the constitutionality of the Law on Salaries in the Public Sector, claiming that the latter is not in compliance with the Constitution of the Republic of Kosovo. More specifically, the Ombudsperson claims that the specified provisions of the contested Law are contrary to (i) paragraph 2 of Article 3 [Equality Before the Law], Article 4 [Form of Government and Separation of Power], Article 7 [Values], Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution; and (ii) the Court's Judgment, in case KO219/19, whereby the previous law on Salaries in the Public Sector, namely Law no. 06/L-111 on Salaries in the Public Sector was contrary to the Constitution and, therefore, invalid. In essence, the Ombudsperson before the Court raises claims related to (i) the principle of separation and interaction of powers, including the principle of the rule of law; and (ii) equality before the law and respective property rights of civil and public officials and servants.

192. As explained in detail in the part of this Judgment that is related to the relevant claims and counter-arguments, the Ombudsperson before the Court specifically challenges the constitutionality of the provisions of the contested Law, as follows: (i) paragraph 3 of Article 2 (Scope); subparagraphs 1.3 and 1.4 of Article 4 (Principles of salary system), subparagraph 6.1 of Article 6 (Basic salary); paragraph 1 of Article 9 (Setting the coefficient value); paragraphs 2, 3 and 4 of Article 41 (Transitional allowance), paragraphs 4 and 5 of Article 26 (Allowance for specific working conditions), paragraphs 1, 2, 3 and 4 of Article 42 (Determining the equivalence), as well as Annexes: no. 2 (Judicial System); no. 3 (Prosecutorial System); no. 4 (Kosovo Security Force); no. 7 (Kosovo Correctional Service); no. 8 (Public officer of university and pre-university education); no. 9 (Public health system employee); no. 10.3 (The Assembly of Kosovo); no. 10.5 (Independent Constitutional Institutions); no. 10.6 (Ministries, independent agencies, agencies and regulators, executive agencies and public service agencies); 10.7 (Municipalities); no. 14.1 (National Audit Office); and 14. 2 (Internal Audit).

193. The Court also recalls that the Applicant, respectively the Ombudsperson, in addition to alleging unconstitutionality of the contested law, states that it has received one hundred and four (104) individual complaints from institutions and various subjects, which claim the violation of their constitutional rights and, consequently, the unconstitutionality of the contested Law. In relation to all this, the Court, as it acted in the previous case, namely Judgment KO219/19, emphasizes that the latter cannot be subject to the individual assessment of constitutionality because (i) the appellants in question are not authorized parties before this Court; and as a consequence (ii) in the absence of a reasoning and position regarding them from the Ombudsperson, it cannot enter their assessment and the latter will be assessed by the Court, only insofar as, the Ombudsperson, argued the issues raised in them through his submission submitted to the Court (see, in this context, Court case KO219/19, cited above, paragraph 197).

194. The Court also clarifies that the claims of the deputies of the Assembly, namely of the PDK Parliamentary Group, will be taken into account insofar as they are under the scope of the claims raised by the Ombudsperson. The Court recalls that the Constitution of the Republic of Kosovo establishes the possibility for the members of the Assembly to challenge the constitutionality of the laws before the Court (i) within eight (8) days from the day of their adoption, within the framework of preventive constitutional control based on paragraph 5 of Article 113 of the Constitution; and (ii) within six (6) months from the entry into force of the Law based on subparagraph 1 of paragraph 2 of Article 113 of the Constitution. As long as the members of the Assembly have not used this opportunity, they cannot raise new claims outside the scope of the referral and beyond the claims raised by the Ombudsperson.

195. Beyond the above-mentioned clarifications, the Court also recalls that the Ombudsperson emphasizes that the issue of increasing salaries implemented through the contested Law does not constitute a constitutional issue, therefore "*requests the Court to focus on the positions whose salaries have been reduced*." In this context, the Court refers to the Judgment in case KO219/19, through which it assessed the constitutionality of the preliminary Law on Salaries in the Public Sector, and in which, it emphasized, that the constitutional review of the contested Law would focus on "*arbitrary reductions*" of salaries and not "*increase*" of salaries, among other things, due to the fact that the Assembly "*during the law making had to take care of the rights of persons whose salaries are reduced"* and that *"the reasons for salary reductions must be many times more stable than the reasons for salary increase, because the former reduce an existing right while the latter add to an existing right*".

196. The Court further also emphasizes the main constitutional authority of the Assembly for legislation at the country level. The Assembly, as a legislative power, "*in addition to the Constitution and the obligation to exercise legislative power in accordance with the Constitution, [...] is not subject to any other authority*" (see, among others, Court case KO72/20, Applicant: *Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 28 May 2022, paragraph 352). In the context of the circumstances of the present case, it is therefore indisputable the authorization of the Assembly, in the exercise of its competence, based on paragraph 1 of Article 65 of the Constitution for the *"adoption of laws*", to regulate salaries in the public sector according to a certain policy chosen by the Assembly itself. The latter has full authorization to choose the best and most appropriate modality that it considers to be suitable for the salary system for the Republic of Kosovo in terms of public policies. The only limitation that the Assembly has in legislation is to respect the law-making procedures and vote laws that are in compliance with the Constitution and the values and principles proclaimed therein.

197. The Court also emphasizes that it is clear that based on the Constitution of the Republic of Kosovo, the Constitutional Court does not act *ex officio* in controlling the constitutionality of laws. The constitutionality of all laws in force in the Republic of Kosovo is presumed as such as long as the latter is not challenged before the Constitutional Court by the authorized parties. The Assembly is considered to have issued a constitutional law until the moment such a law or a part of the law is not assessed as unconstitutional by the Court. The latter also highlights the fact that in all cases where a Law of the Assembly is challenged before the Court by the authorized parties, the focus of the assessment is always the respect of constitutional norms and human rights and freedoms - and never the assessment of the selection of public policy that has led to the approval of a certain Law. The Court has already emphasized in its case law that when examining the constitutionality of a law, it never assesses whether it is a law based on good public policies or not (see, the cases of the Court: KO73/16, Applicant: *the Ombudsperson*, Judgment of 16 November 2016, paragraph 52; case

KO72/20, cited above, para 357; KO12/18, Applicant: *Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 29 May 2018, paragraph 117; KO219/19, cited above, para 259; and KO216/22_KO220/22, Applicant: for referral KO216/22-*Isak Shabani and 10 (ten) other deputies*, and for KO220/22-*Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Judgment of 2 August 2023, paragraph 312).

198. Moreover, the Court, as it has done in its Judgment in case KO219/19, considers it necessary to emphasize an important fact related to the referral under consideration. This has to do with the fact that the act contested by the Ombudsperson, in addition to having an effect on all functionaries/officials and employees who are paid from the budget of the Republic of Kosovo, also has an effect on all judges and staff of the Constitutional Court . In this respect, aware of the effect of the contested act, the Court recalls the general international principles that in cases where the entire body of the Constitutional Court is affected in the same and equal way by the act which it must assess, it is impossible that all judges are recused because there would be no other alternative authority that would be able to assess the constitutionality of a certain act. In this context, the Court refers to the Opinions of the Venice Commission based on which, among other things, "*the authorization of the Court stems from the necessity of ensuring that no law escapes constitutional control, including laws related to the position of judges*". The possibility of exclusion of judges should not result in the impossibility of the Court to take a decision because it must be ensured that the Constitutional Court, as guarantor of the Constitution, continues to function as a democratic institution. For this purpose, the Rules of Procedure of the Court, in paragraph 8 of Rule 38 (Procedure for the recusal of the Judge), specifies that with the exception for the reasons for recusal of judges provided for in paragraph 1 of Article 18 (Exclusion of a Judge) of the Law on Court, when in a given case, if there are circumstances that concern all of the judges and that raise reasonable doubt regarding their impartiality to the same extent, then no judge shall be excluded (see, among others, Opinion no. 524 /2009 of the Venice Commission regarding the Law on the Cleanliness of the Figure of High Functionaries of the Public Administration and Elected Persons in Albania, adopted by the Venice Commission in the 80th Plenary Session, paragraph 142, Venice 9-10 October 2009. (see case KI108/16, Applicants: *Bojana Ivković, Marija Perić and Miro Jaredić*, regarding the constitutional review of Decision No. 2016-COS-0488, issued by the acting Head of the European Union Mission for the Rule of Law in Kosovo, of 22 July 2016, Resolution on Inadmissibility of 16 November 2016, paragraph 34; and also, the case KO219/19, cited above, paragraph 201).

199. With the above clarifications in mind, the Court emphasizes that the scope of this referral and respectively the constitutional issue that this Judgment entails is the compatibility with the Constitution of the contested Law, namely the assessment of whether the latter violates the principle of separation and interaction of powers, equality before the law and the right to property guaranteed by Articles 4, 7, 24 and 46 of the Constitution. In order to assess the constitutionality of the contested Law, the Court will first present: (i) the general principles related to the separation and interaction of powers in the Republic of Kosovo, including as elaborated through its case law; and (ii) general principles stemming from relevant international standards and practices, including the relevant Opinions of the Venice Commission, the contribution of the Constitutional Courts member of the Forum of the Venice Commission, the relevant case law of other Constitutional Courts and the relevant case law of the ECtHR and the CJEU.

II. General principles

1. General principles related to the separation and interaction of powers in the Republic of Kosovo

200. The Court first recalls that among the fundamental values embodied in the Constitution, on which the constitutional order of the Republic of Kosovo is based, among others, are the "*separation of powers*" and the "*rule of law*", according to the provisions of Article 7 of the Constitution. Further, and based on Article 4 of the Constitution, the functioning of the democratic state of the Republic of Kosovo is based on the constitutional principle of separation of powers and control of the balance between them.

201. The Constitution has dedicated a separate chapter to each of the three classical branches of the separation of powers. The legislative power is regulated through Chapter IV of the Constitution, the executive power is regulated through Chapter V of the Constitution, while the judicial power is regulated through Chapter VII of the Constitution. In the three aforementioned chapters of the Constitution, the general principles as well as the duties and responsibilities of each power are foreseen. In addition, the check and balancing mechanisms between them are provided for, which constitute the essence of how these powers should check and balance each other, without creating any unconstitutional "*interference*", "*dependence"* or "*subordination*" between them that could potentially affect the independence of one or the other power, violating the necessary constitutional balance (see, among others, the cases of the Court KO219/19, cited above, paragraphs 210 and 325; KO100/22_KO101/22, cited above, paragraph 168; and KO216/22_KO220/22, cited above, paragraph 243).

202. In addition to the three classic powers, the Constitutional Court has a special place in the system of separation of powers, as the institution responsible for the final guarantee of constitutionality, and the President, as the representative of the unity of the people and the guarantor of the democratic functioning of the institutions (see, among others, the Court cases: KO72/20, cited above, paragraph 351; KO100/22_KO101/22, cited above, paragraph 168, point (v); and KO216/22_KO220/22, cited above, paragraph 243, point (v)). The Constitution has dedicated a separate chapter to both of these public institutions, respectively chapters V and VIII - where their special status and powers are described according to the Constitution. Neither of these two institutions are part of the classical separation of powers chapters, but both appear specifically in Article 4 of the Constitution, which describes the "*Form of Government and Separation of Powers"* at the level of the Republic of Kosovo *(see* the case of the Court KO219/19, cited above, paragraph 211).

203. Furthermore, the Constitution has recognized a special and important status and role in the smooth running of public state duties also to the Independent Institutions referred to in Chapter XII of the Constitution, which have been singled out as such not without reason and which include (i) in articles 132-135, the role and powers of the Ombudsperson; (ii) in articles 136-138, the Auditor General of Kosovo; (iii) in Article 139, the Central Election Commission; (iv) in Article 140, the Central Bank of Kosovo; and (v) in Article 141, the Independent Media Commission. Each of those institutions has its own specifics, depending on the public duty entrusted to it, however, a common denominator of all the institutions referred to in Chapter XII is that they are independent institutions "*in the exercise*" of their public duties and that such a constitutional regulation should be taken into account by all public actors at the level of the Republic of Kosovo - in cases where legislative initiatives are created that may create "*interference*" in their independence at the constitutional level (see, among others, case KO219/19, cited above, paragraphs 212 and 213).

204. Further, and unlike the aforementioned institutions, Article 142 of the Constitution defines Independent Agencies as "*institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies*" (see, among others, case KO171/18, Applicant the Ombudsperson, Judgment of 20 May 2019, paragraph 156). As clarified through the case law of the Court, while the institutions specified in Chapter XII are institutions established by the Constitution, the Agencies specified in Article 142 of the Constitution are agencies for the creation of which, the Constitution gives the Assembly the right to create and extinguish them, by law, depending on the needs that may arise in public and social life. Unlike the fact that the Assembly can create and extinguish "*by law*" Independent Agencies; the Assembly can never extinguish "*by law*" any of the above-mentioned five independent institutions. Those five independent institutions were created by the Constitution and can be amended, changed, supplemented, only by the Constitution, through the amendment of the latter. This constitutes the main difference between the Independent Institutions referred to in Chapter XII of the Constitution - which must be taken into account as such whenever actions are taken that affect them (see, among others, case of the Court KO219/19, cited above, paragraph 214).

205. In this regard, it is important to emphasize that the word "*independent*" referring to these institutions should not be understood as a constitutional competence to act in isolation and vacuum from other powers defined by the Constitution. The word "*independent*" should be understood as a constitutional guarantee for the exercise and performance of public duties independently and uninfluenced, in terms of decision-making, by other powers. This does not mean that the Government and the Assembly cannot supplement and change the applicable legal regulations for the activity of these institutions - as long as it is amended in accordance with their guarantees of the constitutional level (see, among others, the case of the Court KO219/19, cited above, paragraph 215).

206. The Court also recalls that all powers *"[...] without exception, whether they are part of the classic triangle of separation of powers, or other important part of the structure of the state, have a constitutional obligation to co-operate with each other for the common good and in the best interest of all citizens of the Republic of Kosovo. All these powers have the obligation to perform their public duties in order to implement the values and principles on which the Republic of Kosovo is built to function*" (see, among others, Judgment KO72/20, cited above, paragraph 353).

207. The exercise of these public duties also include the obligation of each power, while performing its constitutional duties, to take care of respecting the independence of the power to which it creates "*interference*". The latter must be measured, checks, balanced, and confirmed in advance, in *bona fide* terms, as "*constitutional interference*" before any action is taken to execute the intended interference - which could potentially be permissible. For example, the Government and the Assembly, although having the competence to propose and vote on laws, respectively, which could also affect the judiciary, as a third power; they [the Government and the Assembly] must ensure that during the drafting of their legal initiatives and until their finalization by a vote of the Assembly, the constitutional independence of the sister power, namely the judiciary, is preserved. The Government and the Assembly must show the same care and sensitivity for the other state actors whom the Constitution has provided with constitutional guarantees of functional, organizational and budgetary independence. Guaranteeing and ensuring the constitutionality of the initiatives of the Government and the Assembly should be an essential part of the activity of these two powers (see, among others, the case of the Court KO219/19, cited above, paragraph 217).

208. The Court further considers it important to emphasize that the principle of legal certainty and that of "*predictability*" are inherent features of a law and an integral part of the constitutional principle of the rule of law. Legal certainty is one of the main pillars of the rule of law and requires, among other things, that the rules be clear and precise, and aim to ensure that legal situations and relationships remain predictable. Predictability first of all requires that the legal norm be formulated with sufficient precision and clarity, so as to enable individuals and legal entities to regulate their behavior in accordance with it. Individuals and other legal entities need to know exactly how and to what extent they are affected by a particular legal norm and how a new legal norm changes their previous status or status provided by another legal norm. Public authorities, when drafting laws, should take into account these basic principles of the rule of law - as important parts of the constitutional system of the Republic of Kosovo (see, in this context, case of the Court KO219/19, cited above, paragraph 218).

209. In the light of what was said above, the Court will further recall its case law in which, in fact, for the umpteenth time, these general principles for the separation and balancing of power have already been emphasized. The case law of the Constitutional Court, through which certain articles of the Constitution are interpreted, is mandatory for all public institutions and individuals in the Republic of Kosovo. As such, in addition to the Constitution, the case law of the Constitutional Court, cited in this Judgment and in other decisions of the Court, should be embodied in any legal initiative that can be transformed into the law of the land.

2. The general principles stemming from relevant case law of Constitutional Court

210. Since its establishment, the Court has elaborated in its judgments the basic principles of the separation and balancing of powers and the guarantees for independent constitutional institutions, based, among other things, on good international practices, Relevant Opinions of the Venice Commission as well as the case law of the ECtHR and the CJEU, insofar it was necessary and applicable. These Judgments include but are not limited to (i) the Judgment of the Court in case KO73/16, with the Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo; (ii) The judgment of the Court in case KO171/18, in which the Court assessed the constitutionality of Law no. 06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo (iii) Court's Judgment in case KO203/19, in which the Court assessed the constitutionality of Law no. 06/L-114 on Public Officials; (iv) Judgment in case KO219/19, in which the Court assessed the constitutionality of Law no. 06/L-111 on Salaries in the Public Sector; (v) Judgment in case of the Court KO100/22_KO101/22, in which it assessed the constitutionality of Law no. 08/L-136 on Amending and Supplementing Law no. 08/L-056 on the Prosecutorial Council of Kosovo; and (vi) the Judgment of the Court in case KO216/22_KO220/22, in which it assessed the constitutionality of articles 9, 12, 46 and 99 of Law no. 08/L-197 on Public Officials.

211. From the aforementioned Judgments of the Court, and as far as it is relevant to the circumstances of the present case, among others, it follows that: (i) among the basic values embodied in the Constitution, on which the constitutional order of the Republic of Kosovo is based, is "*separation of powers*"; (ii) the functioning of the democratic state of the Republic of Kosovo is based on the constitutional principle of the separation of powers and checks and balances among them; (iii) the three independent powers defined by the Constitution constitute the classic triangle of separation of powers and that the relationship between them is based on the principle of separation of powers and control checks and balances among them; (iv) each of the powers, including the

independent institutions, are regulated in separate constitutional chapters and each of these chapters establishes the general principles as well as the duties and responsibilities of each power, including the check and balance mechanisms between them, which constitute the essence of how these powers should check and balance each other, without creating any unconstitutional "*interference", "dependence*" or "*subordination*" between them, which could potentially affect the independence of one or the other power; (v) in addition to the three classical powers, the Constitutional Court has a special place in the system of separation of powers, as an institution responsible for the final guarantee of constitutionality at the country level, the President, as a representative of the unity of the people and guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as well as the independent institutions referred to in Chapter XII of the Constitution; and finally, (vi) the separation of powers as a fundamental principle of the highest constitutional level, is embodied in the spirit of the country's Constitution and, as such, is non-negotiable (see, among others, the Court's cases, KO100/22_KO101/22, cited above, paragraph 158).

212. In the context of the aforementioned case law, and with an emphasis on the "*institutional, functional and budgetary*" independence of the independent constitutional institutions, including regarding the categorization of the respective positions and salaries within the respective institutions, the Court emphasizes four (4) its cases, namely (i) in case KO73/16, regarding the constitutional review of Administrative Circular no. 01/2016 issued by MAP; (ii) in case KO171/18, regarding the constitutional review of Law no. 06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo; (iii) in case KO203/19, regarding the constitutional review of the first Law on Public Officials, namely Law no. 06/L-114 on Public Officials; and (iii) in case KO216/22_KO220/22, regarding the constitutional review of the second Law on Public Officials, namely the Law nr. 08/L-197_ on Public Officials.

213. In the aforementioned context, the Court first highlights the reasoning of the Court in the case KO73/16,_and which is directly relevant, at the level of principles, to the circumstances of the present case. By this Judgment, the Court, among other things, emphasized that the Government has a constitutional prerogative and duty to be the policymaker of the State, including the classification and categorization of job positions, but also emphasizing that "*it could not be expected that the staff of the constitutionally independent institutions should conform in an identical manner to the system of recruitment, job classification, categorization and remuneration provided for by a legal act of general nature of the Government, or any act of the executive branch, without first taking into due account the specificities and uniqueness of the institutions in question*" (see, the aforementioned Judgment, paragraph 100). Further, by the Judgment in the case KO171/18, the Court, among other things, emphasized that "*The Court recalls once again that according to the Constitution and the special laws on the staff of independent constitutional institutions, the rules of civil service apply unless they do not violate their independence. This also means the laws that regulate the oversight of the implementation of these laws such as the contested Law. However, as it derives from the Constitution and the special laws, the independent institutions, in particular, the Applicant and the Court, are authorized to issue regulations, orders and other legal acts to regulate the specifics regarding the employment relationship of staff which differ from the general norms set by other laws, including the contested Law, in such a way as to ensure their functional and organizational independence. These special norms should be respected by all institutions including the Board*" (see the aforementioned Judgment, paragraph 144).

214. In case KO203/19, the Court, among other things, further found that Law no. 06/L-114 on Public Officials, is incompatible with Article 4 [Form of Government and Separation of Power] of the Constitution due to and among others, because in the exceptions of

paragraphs 3 and 4 of Article 4 ([Civil Servants with Special Status) of the aforementioned Law, civil servants of independent constitutional institutions, including the Constitutional Court, the institutions defined in Chapter VII [Justice System] and those defined in Chapter XII [Independent Institutions] of the Constitution were not included, emphasizing, among others, that the latter, based on the constitutional guarantees, *"[...] are authorized to decide on their internal organization, including the regulation of certain specifics related to their personnel, in order to ensure their functional and organizational independence*" (see case of the Court KO203/19, cited above, paragraph 206). In this respect, in the above-mentioned Judgment, the Court also assessed that *"[...] the Assembly, authorizing the Government through the contested Law to issue sub-legal acts which regulate the issue of employment, including the classification of positions, criteria for recruitment and other issues in the Independent Constitutional Institutions, without taking into account their independence – violates the essence of the independence of the Independent Constitutional Institutions guaranteed by Article 115 of Chapter VIII of the Constitution and Articles 132, 136, 139, 140, 141 of Chapter XII of the Constitution, as State public authorities separated from the Legislature, the Executive authority, and the regular Judiciary. Therefore, the Court finds that the above-mentioned violations make the disputed Law inconsistent with the Constitution in relation to the Judiciary and Independent Institutions and that it cannot be applied to them as long as it does not respect their institutional and organizational independence*." (see Court case KO203/19, cited above, paragraph 208).

215. In case KO203/19, the Court also summarized the main principles regarding the status of the personnel of independent constitutional institutions, as derived from the Constitution and special laws, emphasizing that according to these principles, among others, it follows that: (i) the provisions of relevant legislation, including civil service legislation which was in force before the adoption of the contested Law, do not specifically refer to the staff of independent constitutional institutions as civil servants, but foresee the application of the civil service legislation (see the case of the Court KO203/19, cited above, paragraph 150 (a)); (ii) civil service legislation, including the contested Law, applies to the staff of these independent constitutional institutions only to the extent that they do not violate their independence; (see case of the Court KO203/19, cited above, paragraph 150(b)); (iii) the Constitution and the special laws authorize and oblige the independent institutions, in particular the Applicant and the Court, to issue regulations, orders and other legal acts to regulate the specifics related to the employment relationship of their staff, which differ from the general norms set by other laws, including the contested Law, in such a way as to ensure their functional and organizational independence, but only to the extent necessary to ensure their independence as provided for by the Constitution and special laws (see, the case of the Court KO203/19, cited above, paragraph 150 (c)); and (iv) the regulations and other legal acts of the independent constitutional institutions that regulate the specifics related to the employment relationships of the staff of independent institutions deriving from the Constitution and the special laws must be respected by all institutions including the executive and other institutions (see the case of the Court KO203/19, cited above, paragraph 150 (d)).

216. The Court also recalls its case KO216/22_KO220/22 regarding the constitutional review of Law no. 08/L-197 on Public Officials, whereby it reiterated the constitutional principles regarding the functional, organizational and budgetary/financial independence of independent constitutional institutions. As far as it is relevant to the circumstances of the present case, the Court recalls that similar to the circumstances of the contested Law, Article 2 (Scope) of the Law on Public Officials, specified that for employees in (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) independent

constitutional institutions, "*this law applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution*." Having said that, and unlike the contested Law, the Law on Public Officials, in its article 6 (A civil servant with special status), (i) qualified the employees of the administration within the aforementioned institutions as subordinate civil employees with a special status, whose regulation is made by a special act; and also (ii) based on paragraphs 2 and 3 of the latter, it enabled regulation by special law for civil servants with special status, also emphasizing that in case of regulation by special law, for civil servant with special status - the prevailing provisions are the provisions of the special law. The Court, assessing that the Law on Public Officials (i) has determined that the same applies to the employees of independent constitutional institutions, "*to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution*"; (ii) for employees with a special status, insofar as there are special laws, the provisions of the relevant Law prevail; and (iii) that in certain of its provisions, and as specified above, it determines the competence of independent institutions to regulate the employment relationship of their employees with special acts, including laws, assessed that, in principle, such a regulation does not violate the independence of independent constitutional institutions (see, case KO216/22_KO220/22, cited above, paragraph 270). Such finding of the Court, (i) was completed by declaring as contrary to the Constitution paragraph 2 of Article 104 (Repeal) of the Law on Public Officials and according to which "*any other provision contrary to this law*" was repealed, including related to the independent constitutional institutions and which the law itself enabled to act based on special laws and acts; and (ii) the obligation of the Assembly to supplement and amend Article 6 of the Law on Public Officials in relation to the Independent Agencies established under Article 142 of the Constitution, including their personnel in the category of employees with a special status, so that to guarantee the independence of these agencies based on Article 142 of the Constitution as well as the relevant laws for their establishment, and which prevail over the contested Law (see the above-mentioned case, KO216/22_KO220/22, cited above, paragraph 280).

217. The Court also recalls that subparagraph 1.5 of Article 13 (Ministry responsible for public administration) of the Law on Public Officials, determined the supervisory competence of the Ministry responsible for Public Administration, namely the MIA, to draft acts from other institutions related to employment relationship of public officials, through the determination that the latter prepares a statement of compliance with this law in relation to any draft act of other institutions. The Court found that such a supervisory competence of the relevant Ministry contradicts the independence of the institutions, such as the Presidency of the Republic of Kosovo, the Constitutional Court, the Justice System, the Assembly and the independent constitutional institutions, to which the Constitution, as it has been interpreted by the Court, among others, in the Judgments of the Court cases KO73/16 and KO203/19, but as it is also defined in paragraph 3 of Article 2 of the relevant Law, protects their independence, especially in relation to the executive power (see, the case KO216/22_KO220/22, cited above, paragraph 280). The Court also acted similarly with the specified competence of the MIA, based on which, the latter had the right to request and obtain any necessary information in the field of the employment relationship from the institutions of the Republic of Kosovo according to sub-paragraph 1.9 of Article 13 of the Law on Public Officials. The Court emphasized, among other things, that such competence, based on Article 101 [Civil Service] of the Constitution and Law no. 06/L-048 on the Independent Oversight Board, is under the scope of the latter, and is not in compliance with the independence of independent constitutional institutions (see case KO216/22_KO220/22, cited above, para 255).

3. General principles stemming from the Court's Judgement in case KO219/19 regarding the salaries in public sector

218. In declaring invalid the previous Law on Salaries in the Public Sector through the Judgment in case KO219/19, the Court, among other things, elaborated (i) the relevant principles according to the Constitution of the Republic of Kosovo; (ii) the relevant case law of the Constitutional Court; (iii) the contribution received from the Constitutional Courts and/or the respective equivalent members of the Venice Commission Forum; (iv) Relevant opinions of the Venice Commission; and (v) the case law of the ECtHR and the CJEU and other Constitutional Courts (see the case of the Court KO219/19, cited above, paragraphs 208 -232 and 234 - 251).

219. In the application of these principles, the Court through the above-mentioned Judgment, as far as it is relevant to the circumstances of the present case, initially emphasized that the constitutional review of the contested Law would focus on arbitrary *"reductions"* of the salary and not on *"increase"* of salaries, among other things, due to the fact that the Assembly "*during the law making had to take care of the rights of persons whose salaries are reduced"* and that *"the reasons for salary reductions must be many times more stable than the reasons for salary increase, because the former reduce an existing right while the latter add to an existing right*". Further, and among other things, the Court found that (i) while the contested Law defined the relevant goal of *"harmonizing"* salaries at the level of the entire public sector, it had made arbitrary and unjustified exceptions for some institutions, including the Kosovo Security Force, the Kosovo Intelligence Agency, the Privatization Agency Kosovo, the Central Bank of Kosovo, and the Assembly itself; (ii) The contested Law completely excluded the independence of the judicial power, leaving no self-regulatory competence for issues related to the implementation of *"functional, organizational and budgetary"* independence in relation to their internal organization and staff; (iii) The contested Law reduced the legal regulation for many issues to the level of sub-legal acts, giving the possibility of sub-legal regulation only to the executive and the legislature and excluding from this possibility the judicial power and independent constitutional institutions, a solution that would create *"interference"* of the executive power with the judicial power and *"dependence"* and *"subordination"* of the judicial power to the executive power, because the former would have to depend on the will of the latter in terms of internal arrangements for staff and functional , organizational, budgetary and structural work aspects, contrary to constitutional guarantees; and (iv) The contested Law prohibits any change in the *"structure, components or levels of salary coefficients"*, obliging independent constitutional institutions to obtain permission and approval for the creation of a new position and to request permission and approval for change of the internal organizational structure, a solution that places these institutions under the "*subordination"* of the executive power and, as a result, *"flagrantly, in opposition to the notion of "institutional, functional and organizational" independence of the judiciary and independent institutions* and *"unacceptable and contrary to the Constitution and the key principle of the separation of powers, as the selected constitutional model for the governance of the Republic of the country"* (see, in this context, the case of the Court KO219/19, cited above, paragraphs 322, 310 and 317).

220. Furthermore and more importantly for the circumstances of the specific case, the Court's Judgment in the case KO219/19, also deals with two important issues, namely (i) the principle of legal certainty and *"predictability";* and (ii) transitional provisions in connection with the maintenance of the reduced salary level for judges and prosecutors until 2022. Regarding the first issue, the Judgment emphasizes that the contested Law emphasized, among other things, that the salary "*cannot be reduced , except in an extraordinary situation of financial difficulties and only on the basis of the law"*, while the Assembly had considered such a principle of predictability as

important only for the future, not for the present, with the consequence of neglecting the rights of persons who have been negatively affected by the Law on Salaries, emphasizing, among other things, that "*according to the new legal regulation of the Assembly, it turns out that for the future, the legislator considers that salaries can be reduced only in extraordinary situations and financial difficulties; while none of the reduced salaries in the public sector by the contested Law have been justified on the basis of any "extraordinary situation" or "financial difficulty*" (see, in this context, the case of the Court KO219/19, cited above, paragraph 312). Whereas, in relation to the second issue, the Judgment emphasized that the contested Law had expressly repealed some of the specific articles of the organic laws of the judiciary that regulated the issue of salaries of the judiciary, of the Constitutional Court and of the chairpersons of both , the judicial and prosecutorial Councils, respectively, however, had foreseen a transitional period for maintaining the level of these salaries, namely until 31 December 2022. According to the Judgment, such a scenario through which, after the specified transitional period, the level would suffer a drastic reduction of salaries for judges and prosecutors, violates the independence of the judicial power, and among other things, *"would place undesirable pressure on the Judiciary versus Legislative and Executive power"* (see, in this context, Judgment KO219/19, cited above, paragraph 319).

221. In the context of the reduction of salaries in the public sector, the aforementioned Judgment, among other things, emphasized that the legislator, while exercising the constitutional power to make laws, is within its right to take any type of step (i) to increase salaries in the public sector so as to fulfill any public policy goal for salary increases in certain sectors; and (ii) to reduce salaries in the public sector because there is no absolute prohibition not to reduce salaries in the public sector. Having said the latter, the Judgment also emphasizes that (i) it must be taken into account that any reduction in salaries, for each existing position, must be strongly justified and not be arbitrary; (ii) any reduction in salaries must be such that it does not place the burden of the salary reduction on certain persons or certain sectors of the public sector; (iii) the reasons for salary reduction must be many times more stable than the reasons for salary increase; while (iv) judges' salaries cannot be reduced during a judge's term, unless the reduction in salary is justified by *"an extraordinary situation of proven financial difficulty"*, adding at the end also that (v) the burden of reducing salaries , if it is already considered necessary due to the economic crisis, it must be proportionate and involve everyone equally so that no particular sector takes over the main burden (see, in this context, the Judgment KO219/19, cited above, paragraphs 271 and 293).

222. The Court also in the aforementioned Judgment emphasized an important fact, that in case of new legislation in this field, namely in the sphere that may have an impact on the powers and independent constitutional institutions, the Government as the proposer of laws and the Assembly as the voter of the laws are obliged to take into account the principles emphasized in the Judgments of the Court in interpreting the respective articles of the Constitution and that "*institutional, functional, organizational and budgetary independence*" of the Judiciary and Independent Institutions must be recognized, and any legal initiative must respect this independence (see, in this context, the cases of the Court KO73/16, cited above, paragraphs 73, 76 and 89; KO171/18, cited above, paragraph 257; and KO219/19, cited above, paragraph 330).

223. Moreover, in the context of the Law on Salaries in the Public Sector, the Court specifically recalls that in the Court's Judgment in case KO219/19, it specifically recalled that the Court, based on the constitutional definition, is vested with the burden of final interpretation of the Constitution and that its decisions are binding for the judiciary and all persons and institutions of the Republic of Kosovo and therefore, in addition to the Constitution, the case law of the Constitutional Court, must be embodied in any legal

initiative that is transformed into the domestic law, by the Government and the Assembly (see, among others, Judgment KO219/19, cited above, paragraph 219).

224. The Court, in fact, emphasized the obligation of the Government, as the proposer of the laws, and the Assembly, as the legislator that ultimately adopts the laws proposed by the Government, that during the drafting of the legislation related to salaries in the public sector, either through a general law or through some special laws or even the amendment of existing laws, (i) take into account the principles of equality before the law and the equal treatment of all persons whose rights are affected by any type of legal supplementation or amendment, emphasizing that the Government and the Assembly must ensure that the constitutional values of equality before the law and non-discrimination are respected in every circumstance and that any legal regulation is in accordance with Articles 3 and 24 of the Constitution in conjunction with Article 14 of the ECHR as well as in accordance with the case law of the Constitutional Court and that of the ECtHR (see, among others, the case of the Court KO219/19, cited above, paragraph 302); and (ii) take into account the relevant aspects of property rights and (legitimate) expectations of all persons whose rights are affected by any type of amendment, supplement or legal change, also emphasizing that any possible reduction of existing salaries, must be reasonable and respect human rights and freedoms and be in accordance with the principle of predictability, legal certainty and that of the rule of law and ensure that the right to property is respected in each circumstance and that any legal regulation to be in accordance with Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, as well as in accordance with the case law of the Constitutional Court and that of the ECtHR (see, among others, the case of the Court KO219/19, cited, paragraph 303).

4. General principles stemming from relevant international practice

225. In the following, the Court will summarize the principles relevant to the circumstances of the present case that (i) originate in the relevant Opinions of the Venice Commission and the contributions of member states of the Forum of the Venice Commission in the case of the assessment of the first Law on Salaries assessed by the Court's Judgment in case KO219/19; and (ii) the relevant case law of the Constitutional Courts and the CJEU.

(i) Relevant opinions and principles of the Venice Commission

226. In assessment of the constitutionality of the previous Law on Salaries in the Public Sector, the Court addressed the Forum of the Venice Commission, in order to analyze the case law of the Constitutional Courts of the member states of the Venice Commission relevant to the specifics of the case under consideration. As reflected in the respective paragraphs of Judgment KO219/19, in light of the responses received from the Venice Commission Forum, the Court concludes that the common denominator of the relevant practice consist in that: (i) there is no single possible system of salary regulation in the public sector; (ii) most countries regulate salaries through different laws and at the same time apply different methods by regulating this issue either through specific laws for specific sectors or through some more concentrated legal regulation; (iii) the Assembly, as a legislative body, has the organic competence and right to issue any kind of legislation on the regulation of salaries in the public sector, provided that it is in accordance with the Constitution and constitutional principles of the respective country; (iv) the Assembly, as a legislative body and as a representative of the elected people, is in the best position to adopt laws aimed at regulating relations in all spheres of social life, including the salary sector; (v) judicial independence requires a fundamental degree of financial security from arbitrary interference by the executive or other branches of power; (vi) the principle of separation of powers and balance between the legislative, executive and judicial branches does not imply the isolation of powers

and the absence of mutual dependence; however, it means avoiding situations under which unconstitutional "*interference*", "*dependence*" or "*subordination*" can be created between independent powers; (viii) the creation of a conditional correlation between salary and the exercise of the power of the courts is a violation of the constitutional principle of separation of powers; (ix) the reduction of the salaries of the judiciary can occur only under conditions of a pronounced economic and financial crisis and which, moreover, must be officially recognized as such; (x) ensuring functional and financial independence is part of the necessary constitutional guarantees; (xi) the principle of separation of powers means that there should be no interference, dependence or subordination between the powers and that none of the powers can take actions that imply interference in the sphere of competences of the other power, which would potentially cause unconstitutional dependence of one branch to another (see, case KO219/19, cited above, paragraph 233).

227. Further, the Court will refer to the Opinion no. 598/2010 CDL-AD(2010)038, published on 20 December 2010 of the Venice Commission, namely *Amicus Curiae* for the Constitutional Court of the former Yugoslav Republic of Macedonia regarding the amendment of several laws relating to the system of salaries and remunerations of elected and appointed officials. Among the categories affected by the change of these laws, were judges of the Constitutional Court and officials of the regular judicial system, including judges of regular courts, prosecutors and members of the relevant judicial and prosecutorial councils (paragraph 1, page 2). As a result, the Constitutional Court addressed the Venice Commission, in essence, regarding two issues: (i) whether the rule prohibiting the reduction of judges' salaries is valid in times of crisis; and (ii) if yes, whether this prohibition also applies to the judges of the Constitutional Court (see, Venice Commission, Opinion no. 598/2010, paragraph 4, page 2).

228. The Venice Commission examined the two issues separately, referring to a series of soft law acts at the level of the Council of Europe, but also of the United Nations, its own previous opinions, as well as the case law of several European constitutional courts. The Commission, in the aforementioned Opinion, begins the analysis of the first issue, namely whether the rule prohibiting the reduction of judges' salaries applies even in times of crisis, analyzing the principle of judicial independence and the connection of this principle with judges' salaries. The Commission first noted that in the Macedonian constitutional system, the Constitution defined the separation of state power into three branches and that the independence of the courts was guaranteed at the level of the Constitution (paragraph 9, page 3). As a result, the Commission, among other things, had emphasized that the necessary guarantees for adequate and stable income of judges constitute an important element of the independence of the judiciary, guaranteed by the Macedonian Constitution (see, Venice Commission, Opinion no. 598/2010, paragraph 10, page 3).

229. Further, the Venice Commission emphasized that according to the Recommendation no. (94) 12 of the Committee of Ministers of the Council of Europe, the salaries of judges must be determined at the law level and be proportional in relation to the dignity of the profession and the burden of responsibility. Furthermore, citing the Universal Charter of Judges of the International Commission of Jurists, the Commission states that judges' salaries should not be linked to their performance and should not be reduced during the time they serve as judges. Similarly, the European Charter on the Status of Judges of the Council of Europe determines that the salaries of judges must be adequate, so as to ensure their true economic independence, and they must not be reduced during the time of service (paragraph 12, page 3). The Venice Commission notes that in the same spirit, the Human Rights Committee of the United Nations, in its General Comment, number 32, paragraph 19, of Article 14 of the Covenant on Civil and Political Rights, determines that member states must take specific measures to

guarantee the independence of judges and to protect judges from any form of political influence in their decision-making, among other things, by determining judges' salaries (paragraph 14, page 3). However, the Commission emphasizes that, like any guarantee in the context of the independence of the judiciary, the issue of judges' salaries is not an end in itself, but follows the goal of ensuring the fair and impartial administration of justice and the implementation of the right to a fair trial (see, Venice Commission, Opinion no. 598/2010, paragraph 15, page 3).

230. More precisely, the Commission distinguishes that there are two types of circumstances: (i) when the ban on the reduction of judges' salaries is expressly provided for in the Constitution; and (ii) cases where this issue is not expressly regulated at the level of the Constitution. In the first group is the case of the United States of America, where the Constitution expressly prohibits the salaries of judges from being reduced during the time they are in office (paragraph 16, page 4).

231. Further and referring as an example to a decision of the Constitutional Tribunal of Poland, the Commission notes that some constitutional courts have found that even in circumstances when the state is going through financial difficulties, especially the salaries of judges should be protected from excessive movements and their reduction (paragraph 17, page 4). Similarly, the Constitutional Court of Lithuania assessed that any attempt to reduce the salaries of judges or the budget of the courts constitutes interference with judicial independence (paragraph 17, page 4). The Constitutional Court of Slovenia also pointed out that the reduction of the salary for which the judge had a reasonable expectation at the time of assuming office as a judge, constitutes an interference with the independence of that judge. The Commission also emphasizes the position of the Constitutional Court of the Czech Republic, which by a decision of 1999, assessed that judges have an inalienable right to a full salary. By a 2010 decision, the same court had assessed that a temporary and justified freezing of judges' salaries should not be interpreted as interference with judicial independence (see, Venice Commission, Opinion no. 598/2010, paragraph 17, page 4).

232. The Commission notes, however, that if the issue of prohibiting the reduction of judges' salaries is not specified by the Constitution, then the legislator has a margin of action in cases of economic crises. The Opinion outlines several decisions of the constitutional courts, according to which the ban on the reduction of judges' salaries cannot be absolute (see, Venice Commission, Opinion no. 598/2010, paragraph 18, page 4). In this spirit, the Constitutional Court of Latvia, in a decision of 2010, emphasized that judges are also citizens and that their special status does not give them immunity from situations when the state goes through difficult economic circumstances. Therefore, this court emphasized that in special circumstances, in circumstances of economic recession, when the state is forced to make a general reduction of salaries that are financed from the state budget, there is the possibility of derogation from the principle of prohibition of reduction of judges' salaries (paragraph 18, page 4). Similarly, the Constitutional Court of Slovenia, in a 2009 decision, emphasized that the deduction of judges' salaries can only be justified in very exceptional situations, based on the assessment of the concrete circumstances of each case separately (see, Venice Commission , Opinion no. 598/2010, paragraph 19, page 4).

233. At the end of this analysis of various acts of soft law and the case law of the European constitutional courts, the Venice Commission states that in cases where there is no express prohibition in the Constitution, then the reduction of judges' salaries can be justified in the circumstances extraordinary and under special conditions and as such, not to imply an infringement of the independence of the judiciary (paragraph 20, page 4). In the process of reducing judges' salaries, conditioned by economic crises, special attention should be paid to the fact that salaries should continue to be proportional to

the dignity of the judge's work and the burden of responsibility. Thus, if the salary reduction does not coincide with the demand for an adequate salary, then it can come to the violation of the purpose for which the guarantee for a stable salary exists – the violation of the fair administration of justice, which, as a consequence, has the risk of corruption (see , Venice Commission, Opinion no. 598/2010, paragraph 20, page 4).

234. Referring to the practice of the European constitutional courts described above, the Venice Commission emphasizes that exceptional situations justifying the reduction of judges' salaries are the circumstances when a country is significantly affected by the consequences of an economic crisis and consequently, the legislator finds it necessary to reduce the salaries of state officials. In these circumstances, a general reduction of salaries financed by the state may also include the judiciary and not be considered as a violation of the principle of independence of the judiciary (see, Venice Commission, Opinion no. 598/2010, paragraph 21, page 4 -5). Such a comprehensive measure can also be understood as an expression of solidarity and social justice, which requires from judges the proportional responsibility to eliminate the consequences of an economic or financial crisis of a country, placing on them an equal burden as on the officials of other public (see, Venice Commission, Opinion no. 598/2010, paragraph 21, page 4-5).

235. As for the second issue, the Venice Commission assessed whether the prohibition on the reduction of salaries, in the circumstances where such a prohibition is considered to interfere with the principle of judicial independence, also applies to judges of the Constitutional Court (paragraph 22, page 5). Analyzing the relevant provisions of the Macedonian Constitution, the Commission noted that the legislator had regulated the regular judiciary in a different chapter of the Constitution from the Constitutional Court and that the principle of independence of the judiciary had been determined through a provision in the chapter of the Constitution dedicated to the regular judiciary (paragraph 23, page 5). Based on the constitutional powers of the Constitutional Court, the Venice Commission assessed that the functions performed by this institution belong to the exercise of state authority in the judicial branch (paragraph 25-26, page 5-6). Therefore, according to the Venice Commission, the fact that the Constitutional Court is regulated in a separate chapter of the Constitution does not mean that it is not a court, but it was done in order to emphasize the special status of this court in relation to all other institutions that exercise state power. Consequently, according to the Venice Commission, judicial independence is an essential element of constitutional courts as well (paragraph 26, page 6). Therefore, as a conclusion, if the legislator in question, motivated by the principle of judicial independence, considers that the salaries of judges cannot be reduced even in circumstances of crisis, then this principle must be applied to the Constitutional Court as well (see, the Venice Commission , Opinion no. 598/2010, paragraph 27, page 6).

(ii) Relevant case laws of Constitutional Courts

236. The Court recalls that it's Judgement in the case KO219/19, summarizes a number of decisions of other Constitutional Courts, including the Constitutional Court of Portugal, Cyprus, Slovenia, Poland and Canada. As detailed in paragraphs 243 to 251 of the aforementioned Judgment, and based on the factual specifics of each case separately, (i) the Constitutional Court of Portugal had not found a violation in Judgment POR-2013-1-006 (paragraph 244 of the abovementioned Judgment), while it had established a violation by the Judgment POR-2012-2-011 (paragraph 245 of the abovementioned Judgment); (ii) The Constitutional Tribunal of Poland, by Judgment POL-2001-H-001, had not found a violation (see, paragraph 249); while (iii) the Judgment of the Supreme Court of Cyprus in case reference number CYP-2014-2-001 (see, paragraph 247), the Judgment of the Constitutional Court of Slovenia in case reference number SLO-2009-3-006 (see, paragraph 248), Judgment of the Supreme Court of Canada in case

reference number - CAN-1997-3-005 (see, paragraph 251) and Judgment of the Constitutional Court of Slovenia in case reference number SLO-2009-3 -006 (see, paragraph 248), found a violation of constitutional principles in the context of salary reduction in the public sector, with emphasis on the judicial power.

237. Further and as explained in the Court Judgment KO219/19 and as far as it is relevant to the circumstances of the present case, based on the common denominator of the Judgments of the aforementioned Courts, among other things, it follows that (i) as long as in the context of the public employer there is no absolute prohibition in the context of the reduction of salaries, the latter cannot be reduced arbitrarily; (ii) as long as the sustainability of public finances is of interest to all, the achievement of this goal should be applied universally, namely the sacrifices should be distributed equally among all officials; (iii) the sustainability of public finances must be placed in proportion to the constitutional obligation for the independence and impartiality of the judiciary and that "*not only the basic salaries of judges are those that are protected from reduction, but also all the payments to which judges are entitled due to the performance of judicial duties*"; and (iv) exemption from salary protection during the judge's term, may only constitute cases of extraordinary financial emergency.

238. Beyond the comparative judicial practice and which has already been elaborated in the Court's Judgment KO219/19, for the purposes of this Judgment, in the following the Court will also summarize a number of other Judgments of the Constitutional Courts and which have dealt with issues of the level of salaries of the judicial power and/or the functional, organizational and budgetary/financial independence of independent constitutional institutions, including (i) Judgment [no. 2016-31-01] of the Constitutional Court of Latvia of 26 October 2017; (ii) Judgment [No. 6/06] of 29 March 2008 of the Constitutional Court of Bosnia and Herzegovina; (iii) Decision [U-I-772/21-37] of 1 June 2023 of the Constitutional Court of Slovenia; (iv) Decision no. 19, [V – 19/07], of 3 May 2007 of the Constitutional Court of the Republic of Albania; (v) Decision no. 35, [V – 35/22], of 15 November 2022 of the Constitutional Court of the Republic of Albania; to proceed with (vi) Judgment of the Grand Chamber of 27 February 2018 in case C-64/16 of the CJEU.

(a) The Constitutional Court of Latvia in case [no. 2016-31-01], of 26 October 2017

239. Case [no.2016-31-01] of the Constitutional Court of the Republic of Latvia deals with the compatibility of some provisions in *the "Law on Remuneration of Officials and Employees of State and Local Government Authorities"* with Articles 83 and 107 of the Satversme (Constitution) of Latvia. According to the Judgment, among other things, it results that in 2010, the Constitutional Court declared some transitional provisions in the law *"on judicial power"* as incompatible with the Constitution. As a result, the Parliament developed a new remuneration system, which came into force on 1 January 2011. The relevant Judicial Council, which initiated the case, argued that the relevant rates determining the level of the judge's salary violated the principle of independence of judges and were not in accordance with the Constitution. They, among other things, claimed that comparing the salaries of judges to those of officials in the public administration did not adequately take into account the differences in functions, status and responsibilities between these positions. They also claimed that the existing system of judges' remuneration hindered the recruitment of qualified candidates and failed to maintain the amount of judges' salaries.

240. The Constitutional Court of Latvia reviewed the case and determined that the dispute centered primarily on the calculation of judges' monthly salaries. The Constitutional Court recognized that the legislature should establish such a system of judges' remuneration that would include a mechanism for maintaining the current value of

judges' remuneration. The current value of judges' remuneration can be maintained, if the legislator establishes such a system of judges' remuneration that made the actual amount of judges' remuneration depend on economic indicators or by setting a deadline for the review of the amount of judges' remuneration, and concrete criteria, according to which the real amount of judges' remuneration had to be examined. But, since the link to the remuneration of judges established in the contested norms did not ensure the compliance of the remuneration of judges with the requirements derived from the principle of independence of judges, the Constitutional Court concluded that the contested norms were incompatible with Article 83 of the Constitution, as well as Article 107 of the Constitution and had to be declared invalid. The Constitutional Court also, among other things, emphasized that the judge must feel sure that during his term, the real value of his remuneration will not decrease, compared to the moment when he started to perform his duties and that in case the costs of living increase, his remuneration will be increased accordingly. If the law does not include a procedure for automatic adjustment of remuneration to the change in living costs, then the law should provide for another mechanism that would ensure this conformity (see Judgment of 18 January 2010 of the Constitutional Court of Latvia in case no. 2009-11 -01, paragraph 11.2).

(b) The Constitutional Court of Bosnia and Hercegovina in case [No. 6/06], of 29 March 2008

241. In the aforementioned case [no. 6/06], the Constitutional Court of Bosnia-Herzegovina considered the requests presented by two members of the Presidency of Bosnia-Herzegovina, regarding the constitutionality of some provisions of the *"Law on Salaries and Other Compensations in the Judicial and Prosecutorial Institutions of Bosnia - Herzegovina" (*referred to as the "Law on Salaries") and the Law on Civil Service in the Institutions of Bosnia and Herzegovina. The applicants claimed that the Law on Salaries violated the principle of independence of the Constitutional Court, as provided for in Article I(2) read in conjunction with Article VI of the Constitution of Bosnia and Herzegovina. The Constitutional Court declared the contested Law as contrary to the Constitution. Among other things, in the relevant Judgment it is emphasized as follows: *"30. The independence of the Constitutional Court implies that it is governed by specific rules which are also imposed on the legislator; and these rules should therefore have a constitutional value. [...] The Parliamentary Assembly has the power to establish the budget of the institutions of Bosnia and Herzegovina, but it can do this only in compliance with the Constitution of Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina obliges the legislator not to infringe upon the independence of the Constitutional Court. The fact that the contested Law was adopted as such shows the extent to which the Constitutional Court needs to be protected from pressures which may be exercised by other public authorities. As stated above, the respect for the financial independence of the Constitutional Court requires as a minimum that the Constitutional Court proposes its own budget and the manner of use of its own budget to the Parliamentary Assembly to adopt it".*

(c) The Constitutional Court of Slovenia in case [U-I-772/21-37] of 1 June 2023

242. The Constitutional Court of Slovenia examined the request of the Judicial Council for the assessment of the constitutionality of the legal regulation of judges' salaries. In essence, the applicant claimed that (i) there was inconsistency with the principle of judicial independence, because the remuneration of judges, taking into account the nature and responsibilities of the judicial function, should be decided clearly. The applicants also claimed inconsistency with the principle of the separation of powers, because the judges' salaries were not regulated in a comparable manner to the salaries of the representatives of the other two branches of government.

243. The Constitutional Court of Slovenia reiterated its established position that determining the level of salaries of civil servants and officials (including judges), in principle, is at the discretion of the legislator. However, the Constitutional Court also explained that the following requirements arise from Article 125 of the Constitution regarding the material independence of judges: (i) the judge's income must be such as to protect him from pressures that may influence his decision-making ; (ii) they must be of suitable amount to ensure the personal or family needs of the judge; (iii) they must be in accordance with the dignity of the profession of judge and must correspond to the role of judges and their responsibilities; (iv) must represent an adequate compensation for the strict limitations that apply to judges regarding the possibility of finding additional sources of income; and (v) should be relatively stable and should follow the general economic development of the country or the development of the standard of living in the country. The Constitutional Court concluded that the regulation of the basic salaries of judges is not in accordance with the constitutional principle of the independence of the judiciary, namely due to non-compliance with the constitutional requirement for the stability of judges' salaries. In relation to the principle of independence of the judiciary, the Constitutional Court also held the position that, from the point of view of this principle, the increase of the salaries of judges remains behind the increase in the average salary in the country or to some extent narrower, which is related to judges, it may also be important that there are inadequate ratios between judges' salaries and other salaries.

244. In this regard, the Constitutional Court of Slovenia taking into account the valid normative regulation of the consecutive monthly amount due to the deputies of the National Assembly to cover the expenses related to the performance of the parliamentary function in the electoral unit, and taking into consideration the fact that the deputies can be placed in salary grades higher than the starting point, concluded that the adjustment of judge' basic salaries, in terms of the salary relationship between deputies and lower-ranking judges, is not consistent with the principle of separation of powers. Moreover, according to the decision of the Constitutional Court, the legal regulation for the coordination of judges' salaries was also in violation of Article 125 of the Constitution. This regulation provided that judges' salaries are generally adjusted once a year, which does not guarantee that in case of a significant decrease in the real value of judges' salaries, they will actually be regulated/adjusted. This means that the constitutional requirement has not been met, according to which the legislator must provide mechanisms that will prevent a significant decrease in the real value of judges' salaries.

(d) The Constitutional Court of Albania in the case no.19/07 of 3 May 2007

245. By Decision [no. V-19/07], of 3 May 2007, at the request of the Supreme State Control and the Ombudsperson, the Constitutional Court of Albania assessed certain provisions of Law no. 9584, of 17.7.2006 "*On salaries, remuneration and structures of independent constitutional institutions and other independent institutions created by law*". The Constitutional Court declared this Law contrary to the Constitution, but only as regards the independent constitutional institutions. The respective applicants, among other things, claimed that the contested provisions seriously violate the independence of constitutional institutions in its three aspects, namely organizational independence, functional independence and financial independence in violation of constitutional guarantees. The contested law, among other things, (i) *aimed at "regulating the way of determining salaries, bonuses and structures of the bodies of constitutional institutions...*"; (ii) had linked the salary system of independent constitutional institutions with the salary of the President of the Republic and the Council of Ministers; (iii) specified that the categorization of the job positions of the independent constitutional institutions is done by decision of the Assembly and/or the

Council of Ministers; and (iv) had repealed all the provisions of the organic laws of the respective independent institutions.

246. In justifying the repeal of the contested Law, elaborating on the principles related to independence and the separation of powers, the Constitutional Court of Albania, among other things, emphasized that (i) apart from issues related to the election, appointment or dismissal of leaders or other high-ranking officials of constitutional bodies and institutions, among other things, organizational independence is also expressed in their right to draft and appoint themselves, in accordance with certain criteria, their structure and organization, including the right to appoint directors and advisors, the number and composition of auxiliary cabinet officials, the appointment of lower-level officials, the recruitment of personnel at different levels, etc.; and (ii) financial independence should be understood as such funding of constitutional bodies and institutions, which should enable them to normally exercise their activity to fulfill the functions assigned to them by the Constitution, without the interference or influence of the government, politics or other external factors with this activity, which could seriously affect the exercise of their powers.

247. Furthermore, the Judgment of the Constitutional Court of Albania states that the contested Law had as its main purpose the regulation of the way of determining salaries, renumeration and organic structures of constitutional institutions and other independent institutions. By establishing a hierarchical balance between the constitutional bodies, it is intended to build a stable pyramid of budget salaries. Thus, according to the Judgment, among other things, the Law establishes, through coefficients, certain relations between the salaries of the heads of constitutional bodies and institutions and the salary of the President of the Republic, which stands at the top of the salary pyramid and is determined every year in the Law on the State Budget, according to the proposal made by the Council of Ministers. According to the Constitutional Court, the means used to achieve this goal are not constitutional, including because (i) the contested provisions affect many constitutional provisions and other provisions of organic laws, which guarantee the independence of constitutional bodies and institutions; and (ii) structural and organic issues constitute exclusive issues of constitutional bodies and institutions as an expression of their organizational and functional independence in the exercise of constitutional duties. The judgment emphasizes that the classification and categorization of employees, apart from being closely related to the tasks that will be assigned to each of the employees appointed to the relevant position, since this is the purpose of this classification, also contains the amount of remuneration that these employees will benefit from employees for the task they perform. According to the Judgment, it is difficult to separate the concept of remuneration from that of the position of the workplace or structure in the public administration, since one of the principles on which the public administration relies is that the civil service constitutes a service or work that is performed according to a salary and consequently, the administration of these issues is within the competence of independent constitutional institutions.

(e) The Constitutional Court of the Republic of Albania in the case no. 35 of 15 November 2022

248. In decision No. 35 of 15 November 2022, with the applicant of the Union of Judges of Albania, the Constitutional Court of the Republic of Albania examined the compatibility with the Constitution of the contested provisions of two laws, namely Law no. 96/2016 "*On the status of judges and prosecutors in the Republic of Albania*", amended by Article 2, point 1, of Law no. 50/2021 (hereinafter: Law no. 96/2016) and Law no. 8096 "*On supplementary state pensions of persons performing constitutional functions and of state employees*", amended by Article 1, point 1, of Law no. 166/2020 (hereinafter:

Law no. 8096). By the contested provisions of the laws as above, the salaries and subsidiary pensions of the magistrates had been reduced, through the effect of the equivalence calculation formulas that determined the contested provisions. Consequently, according to the applicants, in essence, the constitutional principles of the rule of law, judicial independence, legal certainty, equality before the law and non-discrimination were violated, because the contested provisions did not respect the constitutional guarantees that stem from the status of the magistrate, according to Article 138 of the Constitution (paragraph 25, pp. 12-14). Article 138 of the Constitution of Albania regulates at the level of the Constitution the inviolability of the salary and benefits arising from exercising the function of a judge at the level of the Constitution, defining three special circumstances when, exceptionally, the salaries and benefits of judges can be reduced (paragraph 49, p. 27). These three circumstances, listed explicitly and exhaustively, include cases where: (i) it is necessary to take general economic-financial measures to avoid difficult financial situations of the country or other national emergencies; (ii) the judge returns to the position he held before the appointment; (iii) is given a disciplinary measure or assessed professionally insufficient, according to the law (paragraph 48, p. 26).

249. The contested Law, no. 96/2016, determined the criteria according to which the magistrate's salary is determined, including the *"basic reference salary"* and also regulated other financial benefits of the magistrate, including the supplementary pension, which it delegated for regulation in the relevant law on supplementary state pensions (paragraph 10, p. 7). The subsidiary pension for certain categories of judges, depending on what level and for what duration they had served, was also calculated according to formulas based on the "*reference salary*" (paragraphs 11-14, pp. 7-9). By Law no. 166/2020, the provisions of which were also contested by the applicants, a law which amended and supplemented the legislation on pensions, defined "*reference salary*" as a variable in the formula for calculating the pensions of judges and prosecutors. Amendment and supplement by Law no. 166/2020 defined, among other things, a scaled system for calculating the "*reference salary*", dividing it into three periods and setting as a limitation, the ceiling of the reference salary, the President's salary (paragraph 15, page 9- 10).

250. The Constitutional Court, referring to its previous case law, initially emphasized that the inviolability of the salary and other benefits for judges were established at the constitutional level, that is, they were sanctioned by Article 138 of the Constitution, in order that the rights/benefits arising from exercising the function of a judge, not to be changed with a negative effect (paragraph 49, pp. 26-27). The Court emphasized that the independence of judges in the context of the constitutional principle of the rule of law is not a privilege, but one of the most important obligations of judges and courts that stems from the guaranteed rights of the individual who claims the violation of the rights and freedoms, to have an impartial arbitrator of the dispute, who will solve it fundamentally according to the Constitution and the laws. Therefore, the constitutional guarantees related to the immobility of judges, as well as the inviolability of the salary and other benefits, due to the function, have their impact on the judge exercising his function independently (paragraph 50, p. 27). As this court had assessed in decision no. 26 of 2009 and decision no. 11 of 2008, the level of the judge's salary must be sufficient to ensure a real economic independence and it must not depend on the results of the work and cannot be reduced during his term in office. Security regarding the salary and the stable exercise of the duty creates the necessary conditions for judges to apply the law in a fair and impartial manner (paragraph 51, p. 27). At the same time, the Court emphasized that the determination of state policies and legislative initiatives belongs to the executive and the legislative, but without violating the essence of the rule of law and the independence of the judiciary (paragraph 83, p. 38).

251. The Court further emphasized that Article 138 of the Constitution, amended thanks to the reforms of the justice system in 2016, not without reason exhaustively defined the exceptional circumstances when judges' salaries can be reduced (paragraph 52, p. 27 - 28). As a result, the Court found that regardless of the normative space that the legislative power has, the legal predictions affecting the salary and other benefits of the magistrate must be in accordance with the guarantees of Article 138 of the Constitution, which allows the reduction of the salary and other benefits with effect general only for public interest, the meaning of which is expressly materialized in this provision (paragraph 84, pp. 38-39). Given that in the circumstances of the present case, the reduction of the salary of the magistrates was not a result of the circumstances exhaustively provided for in Article 138 of the Constitution, the Court decided that the contested provision of Law no. 96/2016, was contrary to the Albanian Constitution.

252. Referring to the other constitutional issue, the Court examined the applicant's claim that the changes in pension legislation according to Law no. 166/2020, with reference to the "*basic reference salary*" divided into periods and the setting of the height ceiling with reference to the salary of the President was also contrary to the guarantees of Article 138 of the Constitution. The court initially assessed that for supplementary pensions, as well as for salaries, the standard of their inviolability has been raised at the constitutional level, being a matter directly regulated by Article 138 of the Constitution, which has exhaustively provided for the cases where it is permissible to interfere with them (paragraph 90, p. 40). The court assessed that the contested provisions clearly differentiate the category of magistrates from other categories of beneficiaries and make differences even within the category of magistrates, according to the period of exercise of their function, before and after 1 January 2019, this differentiation by the interested subjects, the Assembly and the Council of Ministers, according to the Court, were not justified that it was done in accordance with the provisions of Article 138 of the Constitution (paragraph 100, p. 43). Finally, the Court assessed that the Assembly, in exercising its law-making powers, must take into account the provisions of Article 138 of the Constitution, guaranteeing, in any case, that the salary and other benefits resulting from the implementation of the reference system of salaries, not be decreased below the standard analyzed in this decision, except when the exception of Article 138 of the Constitution is verified (paragraph 104, p. 44).

(f) CJEU: Judgment of the Court (Grand Chamber) of 27 February 2018 in case C-64/16, request for preliminary assessment under Article 267 of the Treaty on the Functioning of the European Union by the Supreme Administrative Court of Portugal

253. In the Judgment of 27 February 2018, in case C-64/16 referred by the Supreme Administrative Court of Portugal on 5 February 2016, the CJEU Grand Chamber examined the compatibility with European Union law of the relevant Portuguese law, Law no. 75/2014 on establishing mechanisms for the temporary reduction of salaries and conditions on their return, of 12 September 2014, whereby the salaries of a large number of categories of public servants, including members of the Court, were reduced of Auditors of Portugal, who through the trade union that represented them, had initiated the case in the Supreme Administrative Court.

254. More precisely, by Law no. 75/2014, the Portuguese legislator had foreseen the implementation of some interim measures for salary reductions in the public sector. The need for salary reductions, according to the Portuguese Government, stemmed from Portugal's obligation to eliminate the excessive budget deficit and financial aid regulated under EU law. The law in question provided for escalating reductions in the salaries of public officials, depending on the existing salary level, for a wide range of categories of elected and appointed public officials, including judges of the Court of Auditors. However, through another law, Law no. 159-A/2015 on the Repeal of Salary

Reductions in the Public Administration, of 30 December 2015, measures were determined to return salaries to the level they were before the entry into force of the law that had reduced them. The return of salaries to the pre-existing level was foreseen gradually; after ten (10) months, the salaries would return to the original level (see, CJEU case, no. C-64/16, Judgment of 27 February 2018, paragraph 9, page 4-5).

255. According to the decision of the CJEU, the question of the reference court, in essence, was whether the second paragraph of subparagraph 1 of Article 19 [untitled] of the TEU should be interpreted in such a way as to exclude the application of measures for reduction of salaries with general effect, related to the requirements to eliminate the excessive budget deficit and a program of financial assistance from the EU to the members of the judiciary in the member states (paragraph 27, page 7). The CJEU, among other things, emphasized that the effective protection of the rights of individuals in accordance with EU law according to subparagraph 2 of paragraph 1 of Article 19 of the TEU, is a general principle of EU law that derives from the common constitutional traditions of the member states, as sanctioned by Article 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR and reiterated by Article 47 (The right to an effective remedy and to a fair trial) of the Charter (paragraph 35, page 8). Therefore, each member state must ensure that bodies, such as courts or tribunals, which in the sense of EU law are part of the judicial system, must fulfill the requirements for effective judicial protection (paragraph 37, page 8). In order to ensure this effective judicial protection, it is essential to preserve the independence of the courts or tribunals, as confirmed by Article 47 of the Charter, which emphasizes access to an independent tribunal, as a component of the fundamental right to an effective legal remedy (paragraph 41, page 8). The CJEU further states that the concept of independence means in particular that the body in question exercises judicial functions in a completely autonomous manner, without being subject to hierarchical conditions or subordination by another body and without receiving orders or instructions from any source and, consequently, be protected from external influences or pressures that could damage the independent judgment of judges or influence them (paragraph 44, page 9). As the protection from dismissal of members of the judiciary, their remuneration with a salary proportional to the importance of the function they perform, constitutes a fundamental guarantee for judicial independence (see, case of the CJEU, no. C-64/16, cited above, paragraph 45, page 9).

256. The CJEU noted that the salary reduction measures were not only applied to members of the Court of Auditors, but to various public officials, including representatives of the legislative, the executive and the judiciary (paragraph 48, page 9). Thus, it was emphasized that such measures have the nature of general measures that count the contribution of all members of the public administration in the coercive circumstances that have been dictated by the mandatory requirements to reduce the excessive budget deficit of the Portuguese state (paragraph 49, page 9). Moreover, as noted in the law in question, the measures for reduction of salaries according to it are temporary, and that by Law no. 159-A/2015, they were repealed gradually and finally, the measures for salary reduction were repealed on 1 October 2016 (paragraph 50, page 9). Therefore, in conclusion, according to the CJEU and in the context of the circumstances of the case in question, the EU law does not exclude the application of measures with a general and temporary effect for the reduction of salaries to the members of the Court of Auditors, which in the case of Portugal, were undertaken with the aim of eliminating the excessive budget deficit and related to an EU financial aid program (see CJEU case, no. C-64/16, cited above paragraph 53, page 10).

III. Constitutional review of the Contested Law

257. The Court first recalls that based on Article 1 (Purpose) of the contested Law, the purpose of this law is to create a "*uniform system of salaries in the public sector*" that includes the principles and rules for determining salaries in the public sector, as well as create a system of salaries and renumerations, transparent and manageable, where the main element is the basic salary. According to Article 4 (Principles of the salary system) of the contested Law, the salary system is characterized by the principles of legality, transparency, predictability, equality and non-discrimination, with the latter defined as "*equal pay for equal work*" taking into account the nature of the work, the requirements for the workplace, the institution where the task is performed, as well as the qualification.

258. According to Article 5 (Basic salary) of the contested Law, the financial means for salaries, allowances, remunerations and other compensations of the employees who are subject to this law, are provided by and through the budget of the Republic of Kosovo. Moreover, the contested Law in its Article 2 (Scope), also determines that for the employees in (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) independent constitutional institutions, this law applies *"to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution"*.

259. The Court also emphasizes that the contested Law does not determine the initial value of the coefficient. The latter, according to Article 9 (Setting the coefficient value), is determined through another law, namely the *"Law on Annual Budget"*. Whereas, the reduction of the value of the coefficient, namely the reduction of the salary level, based on Article 10 (Lowering the salary level) of the contested Law is limited only in case of (i) a *"macroeconomic shock"* which results in the reduction of income; or (ii) a *"natural disaster"*, according to the meaning of Article 131 of the Constitution of the Republic of Kosovo.

260. Beyond the basic salary, the contested Law also enables allowances, compensations and remunerations, according to the criteria defined in the relevant provisions. The latter can be divided into two categories. In the first category, salaries for additional functions and/or remuneration of part-time officials are included, according to the provisions of Article 8 (Salary calculation in cases of additional function) and Article 12 (Remuneration of part-time functionaries) of the contested Law. The former, in essence, applies to public functionaries and officials, as well as university academic staff, if they are engaged in work in another public institution, when this is allowed by the special law, and who can receive payment, as a salary of up to twenty percent (20%) of the basic salary for engagement in that institution. While the second, in essence, is applied to the members of governing bodies, collegial bodies, constitutional institutions, independent agencies and institutions of the justice system, created by law who do not exercise their mandate full-time and are rewarded at the rate of twenty percent (20%) to thirty percent (30%) of the full-time salary of the President of the collegial body. The Court also notes that Article 38 (Compensation for additional function) of the contested Law also defines compensation for additional function up to thirty percent (30%), when public officials, according to the legislation in force, are appointed to serve in a board, professional commission or other public body that requires professional expertise and constitutes an additional function for the relevant official and who is entitled to additional compensation for this function.

261. The second category includes allowances according to the provisions of Article 22 (Allowances) of the contested Law and which include (i) special allowance for elected officials; (ii) allowance for labor market conditions; (iii) . performance allowance; (iv)

allowance for specific working conditions; (v) overtime allowance; (vi) workload allowance; (vii) allowance for the advanced license for the pre-university education officer; (viii) allowance for the health system employee; (ix) performance allowance for artists and performers of art and culture; and (x) functional allowance.

262. Having said that, these allowances are only applied in specific cases and, in principle, but with certain exceptions as will be elaborated further, are limited from zero point one percent (0.1%) to one percent (1%) of total funds used for the basic salary of public officials of the budget organization in the same financial year.

263. More precisely, the Court notes that, in principle, (i) allowances for labor market conditions specified by Article 24 (Allowance for labor market conditions), are applied only to certain deficit professional positions, where recruitment or retention of female employees in these professions and/or positions is objectively impossible; (ii) the performance allowances specified by Article 25 (Performance allowance), in principle, are applied only to employees who have been assessed with *"Extraordinary Achievement"* in the relevant year; (iii) allowances for specific working conditions specified by Article 26 (Allowance for specific working conditions), in principle, are applied only to public officials and other employees who are exposed to risk in the workplace or have specific conditions of work that endangers their life and/or health; (iv) allowances for the workload specified by Article 28 (Workload allowance), in principle, are applied only in cases of increased volume of work in special circumstances; (v) allowances for advanced license for pre-university education officer specified by Article 29 (Allowance for advanced license for the pre-university education officer); (vi) allowances for the health system employee specified by Article 30 (Allowance for the health system employee); and (vii) performance allowances for artists and performers of art and culture specified by Article 31 (Performance allowance for artists and performers of art and culture).

264. As an exception to the aforementioned restrictions, an additional up to thirty percent (30%) of the basic salary benefit: (i) deputies of the Assembly of the Republic of Kosovo and members of Municipal Assemblies, based on Article 23 (Special allowance for the nominees) of the contested Law; and (ii) cabinet officials who do not have a predetermined work schedule, based on Article 27 (Overtime allowance). Whereas, also the functional allowances specified by articles 32 (Functional allowance for the university education employee), 33 (Functional allowance for the health system employee) and 34 (Functional allowance for art and culture employees) of the contested Law, in the circumstances specified by these articles, include the value of twenty percent (20%) to thirty (30%) of the basic salary. In principle, the latter applies to (i) university professors, in cases where they also perform additional functions; (ii) employees of the health system when they exercise leadership functions, exercise the duties of academic personnel in university education or exercise their duties in a remote location; and (iii) artists and performers of art and culture who exercise leadership functions.

265. The Court also notes that Article 42 (Determining the equivalence) of the contested Law prohibits any change in the structure, components or levels of salary coefficients. According to this article (i) in the case of the creation of new functions, positions or designations, the institution in which the position is created shall request from the ministry responsible for public administration the determination of the salary class that applies to that function, position or designation on the basis of equivalence; and (ii) upon receiving the request, the ministry responsible for public administration shall evaluate the function, position or designation with the equivalence based on the principles of this law and makes a proposal for approval to the Government, for the salary class that applies to that function, position or designation. This article also determines that the creation of new functions, positions, or designations for employees

in: (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) the independent constitutional institutions, "regulated by this law and by a special act approved by the competent bodies of institutions".

266. Beyond the above clarifications, the Court emphasizes that the essence of the contested Law is related to its Articles 41 (Transitional allowance), 44 (Annexes of the Law) and 45 (Repeal). The Court clarifies that the essential effect of the disputed Law is related to the Appendices of the Law. The latter includes the name of the position, the group, the class and the coefficient and in a total of fourteen (14) Annexes, they categorize all the functionaries, officials and employees who fall under the scope of the contested Law. The value of the coefficient determined through the "*law on the annual budget*" and the coefficient determined in the relevant annexes, results in the salary of the corresponding functionary/official/employee.

267. In support of the Annexes specified by Article 44 of the contested Law, Article 45 of the Law repeals the Law in its entirety Law no. 03/L-147 on Salaries of Civil Servants. Moreover, the contested Law also repeals the laws adopted by the Assembly of the Republic of Kosovo for specific institutions, including:

(i) paragraph 2 of Article 11 (Salary of the President of the Republic) of the Law no. 03/L-094 on the President of the Republic of Kosovo, according to which the salary of the President of the Republic must always be at least twenty-five percent (25%) higher than the general income of the President of the Assembly of the Republic of Kosovo and other institutional leaders;
(ii) Article 15 (Salaries of Judges) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, according to which the salary of the judges of the Constitutional Court is 1.3 times that of the judges of the Supreme Court of the Republic of Kosovo;
(iii) paragraphs 1 and 2 of Article 35 (Salary and judicial compensation) of the Law no. 06/L-054 on Courts, according to which the percentages are determined based on which the salary level for judges is determined, namely (a) . the President of the Supreme Court shall receive a salary not less than that of the Prime Minister of the Republic of Kosovo; (b) judges of the Supreme Court shall receive a salary equivalent to ninety percent (90%) of the salary of the President of the Supreme Court; (c) the President of the Court of Appeals shall receive a salary equivalent to that of a judge of the Supreme Court of Kosovo; (d) all other judges of the Court of Appeals shall receive a salary equivalent to ninety percent (90%) of the salary of the President of the Court of Appeals; (e) . the President of a Basic Court shall receive a salary equivalent to the salary of a judge of the Court of Appeals; (f) the Supervising Judge of a Branch of the Basic Court shall receive a salary equivalent to ninety-five percent (95%) of the salary of the President of a Basic Cour; and (g) all judges of the Basic Court shall receive a salary equivalent to eighty (80%) percent of the President of the Basic Court. The Court emphasizes the fact that the contested Law repeals the provision based on which the salary level is guaranteed throughout the term, emphasizing that the salary of a judge will not be reduced during the term in which the judge is appointed, except for the disciplinary sanction imposed under the authority of the Kosovo Judicial Council;
(iv) subparagraphs 1.1. to 1.10 of paragraph 1 of Article 21 (Compensation of State Prosecutors) of the Law no. 03/L-225 on the State Prosecutor, according to which the percentages are determined based on which the salary level for judges is determined, namely (a) the Chief State Prosecutor shall receive a salary equivalent to that of the President of the Supreme Court; (b) prosecutors permanently appointed to the Office of the Chief State Prosecutor shall receive a

salary equivalent to ninety percent (90%) of the salary of the Chief State Prosecutor; (c) The Chief Prosecutor of the Special Prosecution Office shall receive a salary equivalent to ninety-five percent (95%) of the salary of the Chief State Prosecutor; (d) prosecutors permanently appointed to the Special Prosecution Office shall receive a salary equivalent to the salary of the prosecutors in the Office of Chief State Prosecutor; (e) The Chief Prosecutor of the Appellate Prosecution Office shall receive a salary equivalent to that of the president of the Court of Appeals; (f) prosecutors permanently appointed to the Appellate Prosecution Office shall receive a salary equivalent to ninety percent (90%) of the salary of the Chief Prosecutor of the Appellate Prosecution Office; (g) The Chief Prosecutors of Basic Prosecution Offices shall receive a salary equivalent to the salary of presidents of the Basic Courts; (h) each prosecutor permanently appointed to the Basic Prosecution Office shall receive a base salary of not less than seventy percent (70%) of the salary of the Chief Prosecutor of a Basic Prosecution Office. The Court emphasizes the fact that the contested Law repeals the provision based on which the salary level is guaranteed during the mandate, emphasizing that the salary of a prosecutor will not be reduced during the mandate, in which the prosecutor is appointed, except for the disciplinary sanction established under the authority of the Kosovo Prosecutorial Council or the relevant Disciplinary Commission and also the possibility of the Council to (i) issue a scheme for additional compensation that reflects the special responsibilities of the prosecutor who appears before the Department of Serious Crimes at the Basic Court; and (ii) to determine additional compensation for prosecutors for other services as specified by law or rules issued by the Kosovo Prosecutorial Council;

(v) paragraph 1 of Article 18 (The salary of the Chair and the Council members) of Law no. 06/L-055 on Kosovo Judicial Council, according to which the salaries of the Chair and members of the Council are determined;

268. The Court also notes that Article 45 of the contested Law also repeals the provisions of special laws as follows:

(i) Article 9 (Salary of Director) of the Law no. 03/L-159 on Anti-Corruption Agency, according to which, the Director of the Agency has a salary equal to the salary of the President of the Parliamentary Committee of the Assembly of Kosovo;

(ii) paragraph 2 of Article 4 (Deputy Managing Directors) of the Law no. 03/L-222 on Tax Administration and Procedures, according to which, (i) Deputies of Director General and Directors shall be responsible for the functions that are assigned to them and will assist the Director General with these functions; and (ii) The Director General shall determine the level of co-efficient of each of these positions in accordance with applicable law or sub-legal act;

(iii) paragraph 1 and 2 of Article 28 (The right to salary and reward) of Law no. 03/L-231 on the Police Inspectorate of Kosovo, according to which, (i) basic salary, salary supplements, allowances and benefits including pension scheme and insurance of the PIK employees, shall be determined in an sub legal act issued by Minister, which shall include, but is not limited to, hazard pay, pay for overtime and holiday work, , meal and clothing allowances; and (ii) PIK employees who have received a satisfactory evaluation and who have not been the subject of any disciplinary action shall receive a reward of one month's salary at the end of the financial year;

(iv) Article 80 (No Additional Compensation) of Law no. 03/L-048 on Public Financial Management and Accountability, according to which, if an employee, , civil servant or official of a public authority or public undertaking is required by an act of the Government to serve on any commission, board or other public body or authority, such employee, civil servant or official shall not be entitled to

receive, and shall not receive, any additional compensation for such service. Such service shall instead be deemed to be part of the mandatory duties of the current position held by such employee, civil servant or official;

(v) Article 97 (Compensation for work i special conditions) of the Law no. 04/-L-027 for Protection against Natural and Other Disasters, according to which compensation rates are determined for civil servants in the field of protection from natural and other disasters who are obliged to work under special conditions;

(vi) paragraphs 2 and 3 of Article 20 (The rights of employees of KAF) of the Law no. 04/L-064 on Kosovo Agency on Forensic, according to which the basic salary, increases in salaries, allowances and other benefits including pension and insurance scheme for employees of KAF will be determined by an administrative by the Minister, where are not included allowances, but are not limited to payment for the risk at work, payment for overtime work and work during holidays, payment for daily meals, payment for clothes, payment for special duties and special skills; and (ii) KAF employees who received a satisfactory evaluation and who were not subject to any disciplinary action will benefit as a reward 50 % of a monthly salary and that just once a year;

(vii) paragraph 4 of Article 47 (Salary and Compensation for police personnel) of the Law no. 04/L-076 on Police, according to which, (a) the basic salaries and any authorized supplemental payment shall be determined and paid in accordance with procedures defined in relevant applicable law and sub legal acts; and (b) The General Director, with the approval of the Minister may include in the annual budget of the Police the proposal for the amounts that are needed to be used for the payment of any supplemental payments authorized by law;

(viii) paragraph 2 of Article 23 of Law no. 06/L-021 on Public Internal Financial Control, according to which the salaries for the staff of the Central Harmonization Unit and the Internal Audit Units shall be treated separately and should be harmonized with the salaries of the National Audit Office auditors;

(ix) Article 26 (Additional payment) of the Law no. 06/L-046 on Education Inspectorate of in the Republic of Kosova, according to which, the education inspector is entitled to the right to receive additional salary on the basic salary in the name of risk for the specific working conditions;

(x) subparagraphs 1.1., and 1.2., of paragraph 1 and paragraph 4 of Article 29 (Rights of KCS Personnel) of the Law no. 08/L-131 on Kosovo Correctional Service, according to which a) the specific rights and obligations of the KCS personnel are defined, including . the right to risk allowance on salary and (b) the right to three (3) gross salaries in the case of regular retirement;

(xi) paragraph 5 of Article 28 (Secretariat) of the Law on Law no. 08/L-056 on Protection of Competition, according to which the salaries, risk allowances and other allowances of the Secretariat employees are based on special working conditions and are paid according to the applicable legislation.

269. Finally, paragraph 2 of Article 45 of the contested Law also repeals the provision of the law or other by-law that regulates the issue of salary, compensations, allowances, bonuses or other categories in the field of salaries and that is not expressly authorized to be derived from the provisions of this law.

270. The Court further emphasizes that the reduction of salaries in the public sector, through the relevant Annexes of Article 44 and the repeal of the aforementioned provisions of the laws by Article 45 of the contested Law, is addressed by Article 41 (Transitional allowance) of the contested Law.

271. This article defines three categories of functionaries/officials and employees that come under the scope of the contested Law. The first category is related to

functionaries/officials and employees whose salary has been reduced based on Articles 44 and 45 of the contested Law. Regarding this category, a two (2) year transition period is defined, which during the first year after the entry into force of this law, benefit one hundred percent (100%) of the special transitional allowance and throughout this year are not affected by the reduction of salary; while during the second year after the entry into force of this law, they benefit fifty (50%) of the special transitional allowance.

272. The second category is related to the members of the foreign service of the Republic of Kosovo and who do not enjoy the right to the transitional allowance and are therefore affected by salary reductions with the entry into force of the contested Law. While, the third category, relates to all persons who can be employed in the positions that fall within the scope of this Law, who after its entry into force, do not enjoy the right to the transitory allowances and benefit from the specified salary based on the categories and coefficients specified in the relevant Annexes of Article 44 of the contested Law.

273. The Court recalls that the Applicant, respectively the Ombudsperson, challenges the constitutionality of the Law on Salaries in the Public Sector , claiming that the latter is not in compliance with: (i) paragraph 2 of Article 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], Article 7 [Values], Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution; and (ii) the Judgment of the Court, in the case KO219/19, whereby the previous Law on Salaries in the Public Sector, namely Law no. 06/L-111 on Salaries in the Public Sector was declared contrary to the Constitution and, therefore, invalid. In essence, the Ombudsperson before the Court raises allegations, which are related to (i) the principle of separation and interaction of powers, including the principle of the rule of law; and (ii) equality before the law and respective property rights of functionaries, officials and civil and public servants. The Court also recalls that one hundred and four (104) institutions of the Republic of Kosovo have submitted relevant complaints to the Ombudsperson Institution, raising claims that include, but are not limited to, the violation of constitutional rights for (i) equality before the law; (ii) non-discrimination; and (iii) the right to property.

274. The Court also recalls the fact that by the Judgment KO219/19, it specifically noted that (i) based on constitutional principles, applicable laws in the Republic of Kosovo and applicable international principles, the salaries of judges and prosecutors cannot be reduced during the exercise of their function, unless the relevant reduction is made in proportional way for the purposes of officially recognized economic crises and that otherwise the constitutional principle of their independence would be violated; (ii) based on constitutional principles, applicable laws in the Republic of Kosovo and applicable international principles, the functional, organizational and budgetary/financial independence of independent institutions must be taken into account and respected; (iii) the Government, as the proposer of the laws, and the Assembly, as the legislator that ultimately adopts the laws proposed by the Government, during the drafting of legislation related to salaries in the public sector, either through a general law or through several special laws or even the amendment of existing laws, must take into account the principles of equality before the law and the equal treatment of all persons whose rights are affected by any type of legal supplement or amendment and that any possible reduction of existing salaries must be justified and respect human rights and freedoms and be in accordance with the principle of predictability, legal certainty and the rule of law and ensure that the right to property is respected in every circumstance.

275. After the aforementioned clarifications and taking into account the allegations of the Ombudsperson and the arguments presented to the Court, including the responses of

the parties and the connection of the respective articles with each other, the Court, in the circumstances of the present case, will assess the constitutionality of: (i) Article 2 (Scope) in conjunction with Articles 22 (Allowances), 42 (Determining the equivalence) and 45 (Repeal); (ii) Article 41 (Transitional allowance) in conjunction with Articles 44 (Annexes of the Law) and 45 (Repeal); and (iii) paragraph 6 of Article 6 (Basic salary) of the contested Law.

276. The Court will assess the abovementioned articles of the contested Law each one separately, by (i) first summarizing the essential allegations of the Ombudsperson, the arguments and counter-arguments of the parties before the Court; and (ii) applying the general principles elaborated above, namely the case law of the Court, the ECtHR and the CJEU and the relevant principles arising from the relevant Reports and Opinions of the Venice Commission.

1. Constitutional review of Article 2 (Scope) in conjunction Article 22 (Allowances), 42 (Determining the equivalence) and 45 (Repeal) of the contested Law

A. The essence of allegations/arguments and counter-arguments of parties

277. As elaborated in detail in the part of this Judgment that is related to the allegations of the Ombudsperson, the latter, in essence, claims the violation of the constitutional independence of the independent constitutional institutions by the respective provisions of the contested Law and through which the functional independence, their organizational and budgetary/financial, is conditioned only on the issuance of sub-legal acts in implementation of the provisions of the contested Law. More specifically, according to the Ombudsperson, while Article 2 (Scope) of the contested Law stipulates that for employees in (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) independent constitutional institutions, this law *"applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution"*, the contested Law limits all the aforementioned institutions only to the issuance of sub-legal acts under the limitations determined only by the contested Law, contrary to the constitutional guarantees and the case law of the Constitutional Court. More precisely, the Ombudsperson, in essence, claims that (i) the contested Law limits the right of independent institutions to issue the relevant sub-legal acts only under the limitations set out in the contested Law and, moreover, does not recognize financial/budgetary independence of independent constitutional institutions; and (ii) Article 42 (Determining the equivalence) of the contested Law, conditions all independent constitutional institutions in the approval by the Government of any change in the structure, components or levels of salary coefficients, contrary to functional, organizational and budgetary /financial independence of independent constitutional institutions and therefore in violation of the principle of separation and interaction of powers specified in Article 4 [Form of Government and Separation of Power] of the Constitution. In support of his claims, the Ombudsperson refers to the case law of the Court in the context of the separation and interaction of powers and independent constitutional institutions.

278. On the other hand, the MIA objects the allegations of the Ombudsperson, claiming, among other things, that the contested Law is in accordance with: (i) the constitutional principle of the separation and balancing of powers; and (ii) the case law of the Court, including the Judgment KO219/19. Moreover, and in the context of allegations of violation of the principle of budgetary/financial independence, the MIA refers to (i) paragraph 5 of Article 93 [Competencies of the Government] of the Constitution, according to which the Government proposes the state budget; and (ii) paragraph 5 of

Article 65 [Competencies of the Assembly] of the Constitution, according to which the Assembly adopts the state budget, also emphasizing that independent constitutional institutions only propose their budget, while no institution has absolute discretion in determining and managing its own budget.

B. Court's assessment

279. The Court recalls once again that the purpose of the contested Law is to create a uniform system of salaries in the public sector that includes the principles and rules for determining salaries in the public sector. Among other things, the latter also determines that (i) it applies to employees in the public sector whose salaries are financed by and through the state budget, with the exception of the Kosovo Intelligence Agency; and (ii) that the rules and conditions for determining the salary of employees in the public sector are exclusively regulated by this law and "*may be regulated by other by-laws, only when explicitly provided for by this law*". In context, of the employees in (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) independent constitutional institutions, the contested Law specifies that the *latter "applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution"*.

280. In support of such a position, the contested Law in (i) Article 8 (Salary calculation in cases of additional function); (ii) Article 22 (Allowances); (iii) Article 24 (Allowances for labor market conditions); (iv) Article 25 (Performance allowance); (v) Article 28 (Workload allowance) and (vi) Article 42 (Determining the equivalence), also specifies that the further regulation of the procedures that entail the abovementioned articles, for the abovementioned institutions, "*are regulated by this law and by a special act approved by the competent bodies of the institutions.*"

281. As elaborated above, the aforementioned articles in principle determine the conditions under which the corresponding allowances can be granted and the corresponding budget ceilings. The latter, with the exception of the salary for additional function according to Article 8 (Salary calculation in cases of additional function) of the contested Law, have the value of zero point one percent (0.1%) to zero point five percent (0.5 %) of the total funds used for the basic salary of public officials of the budgetary organization in the same financial (fiscal) year, for the purposes of which, the Government of the Republic of Kosovo will be treated as one (1) budgetary organization. By contrast, in the context of the deputies of the Assembly and/or members of the Municipal Assemblies, the possibility of the respective allowances is determined at the value of thirty percent (30%), based on Article 23 (Special allowance for the nominees) of the contested Law.

282. The Court notes that the contested Law, in addition to determining the possibility of benefiting from the respective allowances, also contains budget ceilings of funds that can be used for these allowances, foreseeing the percentage limitation of the total funds used by the institution for the basic salary of officials in the same financial year. The Court considers that determining the budget ceilings for certain categories of allowances, in principle, pursues a legitimate purpose. However, it also emphasizes that it is essential that the determined percentage has a significant value for the institution in question, in order to enable the fulfillment of the purpose of the legal provision. In the context of conditioning the budget ceilings with the value of the total funds used by the institution for the basic salary of officials in the same fiscal year, the Court assesses that the determining factor for fulfilling the purpose of the norms that determine the allowances is the totality of the funds for the basic salary which the relevant institution has. In the context of the legal regulation that for the purposes of budget ceilings for

allowances, the Government will be treated as one (1) budgetary organization and taking into account that the total funds available to it are incomparably more favorable than those of independent constitutional institutions, the Court cannot fail to point out that the Government is placed in a diametrically more favorable position compared to other institutions, in terms of the amount available which it can use for allowances, and which for independent constitutional institutions are limited by zero point one percent (0.1%) to zero point five percent (0.5%) of the total funds used for the basic salary of officials in the same fiscal year who, of course, operate with incomparably lower budgets.

283. Furthermore, less than two months after the entry into force of the contested Law, through the Law no. 08/L-213 on Amending and Supplementing Law no. 08/L-193 on Budget Appropriations for the Budget of the Republic of Kosovo for year 2023, by Article 15A, the Government has been enabled to exceed the ceilings of allowances and compensations determined through the contested Law, by decision of the Minister. This practice of changing the budget ceilings through the amendment of another law, which exclusively applies only to the relevant ministries of the Government, not only creates ambiguity and unpredictability regarding the applicable law in the constitutional order, but also places the independent constitutional institutions in the position diametrically more unfavorable in relation to (i) the Government, which has determined the legal basis on which it can exceed the budget ceilings for the purposes of allowances and compensations by decision of the minister of the relevant ministry; and (ii) the Assembly, and which has determined allowances up to thirty percent (30%) for deputies and members of municipal assemblies.

284. Furthermore, the Court recalls that based on the provisions of Article 42 (Determining the equivalence) of the contested Law, in the case of the creation of new functions, positions or designations, the institution in which the position is created is subject to the approval of the Government. For employees in (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) the Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) independent constitutional institutions, the creation of new functions, positions, or designations "*shall be regulated by this law and by a special act approved by the competent bodies of institutions*".

285. In the context of the aforementioned clarifications, and while paragraph 3 of Article 2 (Scope) of the contested Law specifies that with regard to the aforementioned institutions, the contested Law "*applies to the extent that it does not infringe on their functional and organizational independence guaranteed by Constitution"*, the latter in paragraph 2 of its Article 2, specifies that the rules and conditions for determining the salary of employees in the public sector, "*are exclusively regulated by this law and may be regulated by other by-laws, only when explicitly provided for by this law"*, while the latter defines for the same institutions the possibility of further regulation of allowances, compensations and the determination of equivalence, through special acts *"approved by the competent bodies of the institutions"*. The latter are sub-legal acts. The latter, based on the principle of the hierarchy of norms, must be in accordance with the law, and in terms of the wording of the relevant paragraphs of the contested Law, they must be in accordance with the contested Law. Moreover, paragraph 2 of Article 45 (Repeal) of the contested Law, states *that "with the entry into force of this law, any provision of the law or other by-law that regulates the issue of salary, compensations, allowances, bonuses or other categories in the field of salaries and that is not expressly authorized to be derived from the provisions of this law is also repealed"*, repealing not only the relevant provisions of the special laws of independent constitutional institutions approved by the Assembly, but also the sub-legal acts of independent constitutional institutions. Therefore, the latter have the authority to determine the procedures in implementation of the contested Law with special acts, namely sub-legal

acts, but always under the limitations set by the same law, including (i) the conditions under which allowances can be determined ; (ii) the limitation of such allowances, namely from zero point one percent (0.1%) to zero point five percent (0.5%) of the total funds used for the basic salary of public officials for a financial year of the relevant institution; and (iii) for any change in their structure, including *"the creation of new functions, positions, or designations"*, are subject to the approval of the Government.

286. In the context of the aforementioned clarifications, the Court emphasizes that it is not disputed that such a solution that reflects the contested Law in the context of independent institutions, completely violates the functional, organizational and budgetary independence of independent constitutional institutions and the constitutional principles of separation of powers and the balance between them. This is completely clear, based on the respective provisions of the Constitution and the consistent case law of the Constitutional Court.

287. More precisely, the Court recalls that the constitutional principles regarding the separation and balancing of powers and the *"functional, organizational and budgetary"* independence of the independent constitutional institutions are detailed in the part of this Judgment that is related to the General Principles. These principles stem from Articles 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], 7 [Values], 16 [Supremacy of the Constitution], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 102 [General Principles of the Judicial System], 103 [Organization and Jurisdiction of Courts], 108 [Kosovo Judicial Council], 109 [State Prosecutor], 110 [Kosovo Prosecutorial Council], 112 [General Principles], 115 [Organization of the Constitutional Court], 133 [Office of Ombudsperson], 136 [Auditor-General of Kosovo], 139 [Central Election Commission], 140 [Central Bank of Kosovo], 141 [Independent Media Commission] and 142 [Independent Agencies] of the Constitution.

288. The Court has consistently emphasized that the constitutional independence of independent constitutional institutions should not be interpreted as constitutional interference to act in isolation and vacuum from other powers defined by the Constitution. Having said that, the exercise of these public duties also includes the obligation of each power to ensure that, while performing its constitutional duties, it respects the independence of the power in which it is creating an "*interference*" to the detriment of the constitutional balance. In defense of this principle, the Court has continuously emphasized that, although the Government and the Assembly have the competence to propose and vote on laws, respectively, they must ensure that during the drafting of their legal initiatives until their finalization by vote of the Assembly, to preserve the constitutional independence of the sister power, respectively the judiciary and other state institutions, which the Constitution has provided with constitutional guarantees of "*functional, organizational and budgetary independence"*.

289. In the context of the contested provision, the Court also emphasizes that it is not disputed that the independent constitutional institutions also have budgetary independence, namely the administration of the respective budgets, in support of their functional and organizational independence. The Court also points out that it is not disputed that based on paragraph 5 of Article 93 [Competencies of the Government] of the Constitution, the Government proposes the budget of the Republic of Kosovo, which, based on paragraph 5 of Article 65 [Competencies of the Assembly] of the Constitution, is approved by Assembly.

290. Having said that, the guarantees in the context of the independent budget proposal and administration for the independent constitutional institutions are established in the Constitution and the special laws that regulate these institutions. More specifically and

among others: (i) based on Article 14 (Budget) of the Law no. 03/L-121 on the Constitutional Court, the Constitutional Court independently manages its budget and is subject to internal audit, as well as external audit by the Auditor General of the Republic of Kosovo; (ii) based on Article 108 [Kosovo Judicial Council] of the Constitution, among others, the Judicial Council of Kosovo is responsible for drafting and supervising the budget for the judiciary; (iii) based on Article 17 (Annual budget) of the Law no. 06/L-056 on the Prosecutorial Council, the Prosecutorial Council manages the annual budget for the council and the prosecution offices independently and is responsible for the overseeing of expenditures, the allocation of funds, the maintenance of accurate and current accounts and financial audits; (iv) based on Article 133 [Office of Ombudsperson] of the Constitution, the Office of the Ombudsperson is independent, and proposes and administers its own budget, in accordance with the law; (v) based on Article 13 (Budget) of the Law no. 05/L-055 on the Auditor General and the National Audit Office of the Republic of Kosovo, the National Audit Office must have financial, managerial and administrative independence as well as sufficient human, material and financial resources; and (vi) based on Article 142 [Independent Agencies] of the Constitution, Independent Agencies have their own budget, which is administered independently, in accordance with the law. The Court emphasizes the fact that all the aforementioned institutions, in the independent management of the respective budgets, are subject to specified obligations related to the management of public finances and the control of the Auditor General of the Republic of Kosovo.

291. Moreover, the *"functional, organizational and budgetary"* independence of independent constitutional institutions has been elaborated and specified consistently through the case law of the Constitutional Court. The Court reiterates that the basic principles in the context of the organizational independence of independent institutions and the limitations of the Government to interfere with their powers in this context, have been elaborated since 2016, by Judgment KO73/16, in which the Court assessed the constitutionality of Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo and which it declared contrary to the Constitution. These principles are further consolidated through Court's Judgments in the cases (i) KO171/18; (ii) KO203/19; (iii) KO219/19; and (iv) KO216/22_KO220/22.

292. The case law of the Court is clear and has consistently emphasized, among other things, that (i) *"it could not be expected that the staff of the constitutionally independent institutions should conform in an identical manner to the system of recruitment, job classification, categorization and remuneration provided for by a legal act of general nature of the Government, or any act of the executive branch, without first taking into due account the specificities and uniqueness of the institutions in question"* (see Judgment KO73/16, cited above, paragraph 100); (ii) *"according to the Constitution and the special laws on the staff of independent constitutional institutions, the rules of civil service apply unless they do not violate their independence. This also means the laws that regulate the oversight of the implementation of these laws such as the challenged Law. However, as it derives from the Constitution and the special laws, the independent institutions, in particular, the Applicant and the Court, are authorized to issue regulations, orders and other legal acts to regulate the specifics regarding the employment relationship of staff which differ from the general norms set by other laws, including the challenged Law, in such a way as to ensure their functional and organizational independence. These special norms should be respected by all institutions including the Board"* (see Judgment KO171/18, cited above, paragraph 144*); (iii). taking into account their independence – violates the essence of the independence of the Independent Constitutional Institutions guaranteed by Article 115 of Chapter VIII of the Constitution and Articles 132, 136, 139, 140, 141 of Chapter XII of the Constitution, as State public authorities separated from the Legislature, the Executive authority, and the regular Judiciary. Therefore, the Court finds that the*

above-mentioned violations make the disputed Law inconsistent with the Constitution in relation to the Judiciary and Independent Institutions and that it cannot be applied to them as long as it does not respect their institutional and organizational independence" (see, Judgment KO203/19, cited above, paragraph 208); (iv) "*the Constitution and the special laws authorize and oblige the independent institutions, in particular the Applicant and the Court, to issue regulations, orders and other legal acts to regulate the specifics related to the employment relationship of their staff, which differ from the general norms set by other laws, including the challenged Law, in such a way as to ensure their functional and organizational independence, but only to the extent necessary to ensure their independence as provided for by the Constitution and special laws*" (see, Judgment KO203/19, cited above, paragraph 150 (c)); and (v) "*the regulations and other legal acts of the independent constitutional institutions that regulate the specifics related to the employment relationships of the staff of independent institutions deriving from the Constitution and the special laws must be respected by all institutions including the executive and other institutions, such as the Board, and have priority over other laws"* (see Judgment KO203/19, cited above, paragraph 150 (d)).

293. Moreover, the issues related to the scope of Article 42 (Determining the equivalence) of the contested Law regarding the determination of equivalence, have already been addressed and declared contrary to the Constitution through the Court's Judgment in case KO219/19. Similar regulations have also been declared contrary to the Constitution, recently through the Judgment in case KO216/22_KO220/22. By Judgement KO219/19, the Court specifically emphasized (i) "*This article also presents a serious conceptual and practical problem, especially for the Judiciary and Independent Institutions. If this provision were to be declared constitutional, it would mean that whenever the Judiciary, the Constitutional Court, the Ombudsperson and other Independent Institutions need to create a new position within their organization chart or change the internal organizational structure, depending on the need that may arise in the future - they should turn to the Government to seek permission and approval for the creation of a new position and to seek permission and approval to change the internal organizational structure. The challenged Law in this regard states that it is the MPA which "will evaluate the function, position or title" and will make the "proposal for approval in the Government for the salary class that will be applied for that function, position or title". Meanwhile, in the decisive and final decision-making chain is the Government which must "approve" every proposal of the Judiciary. In other practical terms this means that every new position, every new naming, every new function deemed necessary by the Judiciary - must be approved by the executive, namely the Government" (*see case of the Court KO219/19, cited above, paragraph 287*);* and (ii) *"The Court finds that this legal regulation is in a flagrant way contrary to the notion of "institutional, functional and organizational" independence of the Judiciary and Independent Institutions. As such it is unacceptable and contrary to the Constitution and the key principle of separation of powers as a constitutional model of governance in the Republic of Kosovo."* (see case of the Court KO219/19, cited above, paragraph 288).

294. Following this, it is worth noting that in its Judgment KO216/22_KO220/22 regarding the constitutional review of Law no. 08/L-197 on Public Officials, the Court, among other things, declared contrary to the Constitution in the context of the separation and balancing of powers and the independence of independent institutions (i) sub-paragraph 1.5 of Article 13 (Ministry responsible for public administration) of the Law on Public Officials, which determined the supervisory competence of the Ministry responsible for Public Administration, namely the MIA, to draft acts from other institutions that deal with the employment relationship of public officials, through the determination that the latter prepares a statement of compliance with this law in

relation to any draft act of other institutions; (ii) sub-paragraph 1.9 of Article 13 (Ministry responsible for public administration) of the Law on Public Officials, according to which the MIA had the right to request and obtain any necessary information in the field of employment from the institutions of the Republic of Kosovo; and (iii) paragraph 2 of Article 104 (Repeal) of the Law on Public Officials and which repealed *"any other provision in contradiction with this law"* was repealed, including regarding independent constitutional institutions.

295. Having said this, the Court recalls that unlike the contested Law, the Law on Public Officials, the employees in: (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) the Justice System; (iv) the Assembly of the Republic of Kosovo; and (v) the independent constitutional institutions, in Article 6 (A civil servant with special status), qualified them as *"civil servant with special status"*, whose regulation is made not only by a special act, respectively sub-legal act, but also a special law, also emphasizing that in case of regulation by a special law, the prevailing provisions are the provisions of the special law.

296. This is not the case with the contested Law, namely Article 2 thereof. As noted above, despite the fact that paragraph 3 of Article 2 of the contested Law expressly states that the latter for independent constitutional institutions *"applies to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution"*. none of the provisions of this Law enables the independent constitutional institutions, in function of their organizational and budgetary independence, to define any procedure beyond the precise limitations defined by the contested Law (i) nor in the context of the applicable allowances according to the provisions of Article 22 (Allowances) of the contested Law; and (ii) neither in the context of the change and/or creation of new functions, positions, or designations of the employees of the independent constitutional institutions according to the provisions of Article 42 (Determining the equivalence) of the contested Law.

297. In addition, the Court emphasizes paragraph 2 of Article 45 (Repeal) of the contested Law, which states that "*with the entry into force of this law, any provision of the law or other by-law that regulates the issue of salary, compensations, allowances, bonuses or other categories in the field of salaries and that is not expressly authorized to be derived from the provisions of this law is also repealed"*. In the context of this provision, the Court first emphasizes the principles related to legal certainty embodied in Articles 3 and 7 of the Constitution, including those defined in the case law of the Court, the ECtHR, but also the principles of the Venice Commission and which have already been elaborated in a number of Court's Judgments, including but not limited to: (i) Judgment KO219/19 (paragraphs 218-232 and 234-251); (ii) Judgment KO203/19 (paragraphs 132-152); (iii) Judgment KO216/22_KO220/22 (paragraphs 227-237); and (iv) the Judgment KO100/22_KO101/22 (paragraph 347).

298. In the context of the aforementioned principles, the Court emphasizes that such a provision of a very generalized and vague character, including in the context of the laws of the Assembly that have been issued: (i) related to independent constitutional institutions; and (ii) based on Article 142 [Independent Agencies] of the Constitution regarding the Independent Agencies, violates the constitutional independence of the same, and moreover, results in "*unpredictability*" contrary to the principle of legal certainty, thus the rule of law , in the context of the provisions applicable to the relevant employees of the institutions of the Republic of Kosovo. The Court recalls that such wording has been declared contrary to the Constitution at least two more times by the Court, namely (i) through the Judgment in case KO203/19 (see, paragraph 196); and (ii) Judgment in case KO216/22_KO220/22(see, paragraph 278).

299. Furthermore, the Court recalls that the Constitutional Court of the Republic of Albania, by Decision no. V-19/07, of 3 May 2007, declared as incompatible with the Constitution the Law "*on salaries, rewards and structures of independent constitutional institutions and other independent institutions, created by law"*, among others, precisely for the reason that the definition of functions, designations, positions for officials of independent constitutional institutions, was subject to approval by the Government and/or the Assembly. Such an approach was declared by the Constitutional Court of Albania as inadmissible in entirety, emphasizing that: (i) organizational independence is also expressed in the right of independent institutions to draft and appoint themselves, in accordance with certain criteria, their structure and organization, including the right to appoint directors and advisors, the number and composition of officials of auxiliary cabinets, the appointment of lower level officials, the recruitment of personnel at different levels, etc. (see Decision no. V-19/07, cited above, p. 9); and (ii) financial independence should be understood as such financing of constitutional bodies and institutions, which should enable them to normally exercise their activity to fulfill the functions assigned to them by the Constitution, without the intervention or influence of the government, politics or other factors external with this activity, which could seriously affect the exercise of their competencies (see Decision no. V-19/07, cited above, p. 10). The relevant judgment also states that the classification and categorization of employees, apart from being closely related to the tasks that will be assigned to each of the employees appointed to the relevant position, since this is the purpose of this classification, also contains the amount of remuneration that will be benefit these employees for the task they perform. According to the Judgment, it is difficult to separate the concept of remuneration from that of the position of the workplace or structure in the public administration, since one of the principles on which the public administration relies is that the civil service constitutes a service or work that is performed for a salary and consequently, the administration of these issues is within the competence of independent constitutional institutions (see Decision no. V-19/07, cited above, p. 13).

300. Based on the above clarifications, the Court, in the context of Article 2 (Scope) of the contested Law, reiterates that while its paragraph 3, determines the applicability of the contested Law regarding independent constitutional institutions *"to the extent that it does not infringe on their functional and organizational independence guaranteed by the Constitution"*, the same article through its paragraph 2 and according to which *"the rules and terms for determining the salary of the public sector employees are exclusively regulated by this law, and may be regulated by other by-laws, only when explicitly provided for by this law"*, it also violates this independence. This is because, as elaborated above, the *"functional and organizational independence guaranteed by the Constitution"* of independent constitutional institutions is conditional only on the issuance of sub-legal acts under the specific limitations of the contested Law, including: (i) the limitation of institutions independent to operate only within the budget ceilings determined through the contested Law in the context of allowances and/or compensations, namely up to the value of zero point five percent (0.5%) of the funds for the basic salaries of public officials of the relevant institution, while the exception to this rule has been expressly specified for deputies of the Assembly, while the Law no. 08/L-193 on Budgetary Appropriations has been amended, after the entry into force of the contested Law, to define an exception regarding the budgetary ceilings for the Government as well; (ii) control of the executive power over any creation/change of new functions, positions or designations based on Article 42 (Determining the equivalence) of the contested Law; and (iii) the repeal of any provision of special laws of independent constitutional institutions, including their sub-legal acts that regulate *"the issue of salary, compensations, allowances, bonuses or other categories in the field of salaries"* based on paragraph 2 of the article 45 (Repeal) of the challenged Law. The impossibility of independent constitutional institutions to function based on the constitutional

guarantees for their functional, organizational and budgetary independence, by special laws, the approach which the Assembly, as noted above, has followed in the case of the Law on Public Officials, violates flagrantly the independence of independent constitutional institutions and, as a consequence, the principles of the separation and balancing of powers.

301. Therefore, based on the above clarifications, the Court finds that paragraph 2 of Article 2 (Scope), paragraph 2 of Article 45 (Repeal) in conjunction with paragraph 2 of Article 24 (Allowance for labour market conditions), paragraph 5 of Article 25 (Performance allowance) and paragraph 4 of Article 28 (Workload allowance) and paragraphs 2 and 3 of Article 42 (Determining the equivalence) of the contested Law, are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution in relation to: (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) Kosovo Judicial Council ; (iv) Kosovo Prosecutorial Council of; (v) the Assembly of the Republic of Kosovo; and (v) independent constitutional institutions established in Chapter XII [Independent Institutions] of the Constitution.

302. As established in the enacting clause of this Judgment, and in order to have clarity, predictability and legal certainty regarding the provisions of the contested Law, the Assembly is obliged to supplement and amend paragraph 2 of Article 2 (Scope) of the contested Law, enabling the aforementioned institutions to fulfill the constitutional guarantees for their independence, to function through special organic laws, in accordance with the Constitution and this Judgment.

303. The Court also emphasize that until the completion and amendment of paragraph 2 of article 2 (Scope) of the contested Law by the Assembly of the Republic of Kosovo, (i) paragraph 2 of Article 22 (Allowances); (iii) paragraph 5 of Article 24 (Allowance for labour market conditions); (iv) paragraph 8 of Article 25 (Performance allowance); (v) paragraph 7 of Article 28 (Workload allowance); and (vi) paragraph 4 of Article 42 (Determining the equivalence), interpreted and applied in accordance with the Constitution and this Judgment.

2. Constitutional review of provisions of Article 41 (Transitional allowance) in conjunction with Article 44 (Annexes of the Law) and 45 (Repeal) of contested Law

A. The essence of allegations/arguments and counter-arguments of parties

304. Based on the elaborations given in detail by this Judgment, in essence the Ombudsperson claims that the reduction of salaries in the public sector through the contested Law is arbitrary and contrary to the fundamental rights and freedoms guaranteed by the Constitution, including the right to property, non-discrimination and equality before the law. Moreover, the Ombudsperson claims that the contested Law is in full contradiction with the principle of separation and balancing of powers in the Republic of Kosovo, including the principles established in the Court's Judgment in the case KO219/19, the case law of the ECtHR, as well as the standards defined through the relevant Opinions of the Venice Commission. Among other things, the Ombudsperson more precisely claims that the contested Law is "*unpredictable*", because the determination of the value of the coefficient is determined through another law, namely the Law on Budgetary Appropriations for the Budget of the Republic of Kosovo, resulting in *"ambiguity and unpredictability*" regarding the amount of salary of all functionaries/officials/public servants. Moreover, determining the value of the coefficient through the Law no. 08/L-193 on Budgetary Appropriations, which was

adopted/entered into force after Law no. 08/L-196 on Salaries in the Public Sector, is in contradiction with the latter , because it results in an extraordinary reduction of the salaries of an overwhelming part of the public sector, in contradiction with the principles of the contested Law, defined in its Article 10 (Lowering the salary level), according to which, salary reduction in the sector can only occur if one of the following two criteria are met, namely (i*) "a macroeconomic shock resulting in reduced income"*; or (ii) *'a natural disaster pursuant to Article 131 of the Constitution"*.

305. Further, the Ombudsperson claims selective reduction of salaries in the public sector, namely: (i) reduction of the salary of judges and prosecutors in contradiction to the Constitution, the applicable laws of the Republic of Kosovo, international standards and the Court's Judgment in case KO219/19; (ii) direct violation of the independence of the judiciary and independent constitutional institutions, including those defined in Article 142 [Independent Agencies] of the Constitution, in full contradiction to the constitutional guarantees and the case law of the Constitutional Court; (iii) arbitrary and unequal treatment of the foreign service of the Republic of Kosovo, as the only category of the public sector, which the contested Law excludes from the transitional period and which, as a result, has suffered an immediate and unpredictable decrease in salary; (iv) arbitrary and unequal treatment of all new functionaries/officials/employees in the public sector and who, during the transitional period, do not receive *"equal pay for equal work"* contrary to the very principles of the contested Law; and (v) that the contested Law has failed to ensure *"equal pay for equal work"* in the entire public sector, because it has created divergences for equivalent positions due to the fact that in different institutions the same or comparable positions have been evaluated at different salary levels.

306. The Ombudsperson also points out that the approach followed by the Government and the Assembly in adopting the challenged Law is contrary to the right to property, namely Article 46 [Protection of Property] of the Constitution, Article 1 (Protection of property) of Protocol no. 1 of the ECHR and the case law of the ECtHR. In essence, referring to the case law of the ECtHR, the Ombudsman, among other things, argues that: (i) *"salary"* represents an *"asset"*, including *"legitimate expectations"* for the purposes of property rights, and consequently, can be violated only in the realization of a *"legitimate and proportionate purpose"*; and (ii) while public authorities may *"interfere"* with these rights in certain circumstances, they are obliged to maintain a fair and necessary balance for the public interest and for the protection of the fundamental rights of citizens, and this balance is not achieved when citizens have to carry a large and disproportionate burden.

307. On the other hand, the MIA challenges the allegations of the Ombudsperson, emphasizing that the contested Law is in accordance with the Constitution and the Court's Judgment in case KO219/19. Initially, according to the MIA, the purpose of the Law on Salaries in the Public Sector is *"the harmonization of salaries in the public sector"* and moreover, it has not resulted in a reduction of salaries in the public sector because (i) the value of the coefficient has not been determined through the Law on Salaries, but through the Law on Budgetary Appropriations and the latter, has not been challenged before the Court; (ii) The contested Law is foreseeable because it determines the circumstances in which the salary reduction can be done in the future; (iii) determines a two (2) year transition period during which the salary level will be maintained during the first year after the entry into force of the contested Law, in the amount of one hundred percent (100%), while during the second year, in the amount of fifty percent (50%); and (iv) the salaries of judges and prosecutors have not been reduced, but have been raised. In the context of the latter, the MIA emphasizes that (i) the decision of Haradinaj Government's of 2017, which resulted in the increase of the salaries of judges and prosecutors, was rendered in violation of the applicable law; and

as a result (ii) the latter was repealed by the Kurti Government by Decision [No. 02/109] on 23 November 2022, returning the salaries of the justice system to the level they were in 2017 and subsequently, increased the salaries of judges and prosecutors through the contested Law in relation to the value they had in 2017.

308. The MIA also (i) referring to the case law of the ECtHR claims that *"future income"* does not constitute property in the sense of Article 1 of Protocol no. 1 of the ECHR and Article 46 of the Constitution; and among other things, states that (ii) Law no. 08/L-193 on Budget Appropriations for the Budget of the Republic of Kosovo for the year 2023, has determined that for salaries and allowances, the state budget can afford an allocation up to the value of 745,528,136 euro, this determination originates from the Law on Public Finance Management, of which determines exactly how the total salary bill is calculated in relation to the Gross Domestic Product, taking into account the fact that *"any increase in this allocation directly affects the reduction of budget opportunities to cover other needs and priorities, such as defense and country security to basic health services*".

B. Court's assessment

309. The Court first reiterates that the essence of the contested Law is related to its Articles 41 (Transitional allowance), 44 (Annexes of the Law) and 45 (Repeal). The essential effect of the contested Law is related to the Annexes of the Law, which categorize all functionaries, officials and public employees that fall within the scope of the contested Law. Moreover, and as explained above, Article 45 of the contested Law specifically repeals provisions of other applicable laws that, among other things, determine the ratios between the level of salaries of the judicial power in relation to the executive power, including the provisions based on which salaries of judges and prosecutors cannot be reduced during the term during which the judge and/or prosecutor is appointed, namely: (i) paragraph 2 of Article 35 (Salary and judicial compensation) of the Law on Courts; and (ii) point 1.10 of paragraph 1 of article 21 (Compensation of state prosecutors) of the Law on the State Prosecutor. The value of the coefficient determined through the Law on Budget Appropriations and the level of the coefficient determined in the relevant Annexes of the contested Law, results in the salary of the relevant functionary/official/employee.

310. The effect of Articles 44 and 45 of the contested Law has affected the vast majority of civil and public officials and civil employees who fall within the scope of the contested Law. The latter has resulted in increases, including substantial, salaries for some sectors, while decreases, including substantial, for others. Neither the increase nor the decrease has a specified percentage or uniform/consistent formula applied. Certain sectors have experienced salary increases in different percentages, while also, other sectors have experienced reductions in different percentages. Differences in the ratio between the increase and decrease of the salary level may have resulted even within the same institution.

311. The Court also notes the allegation of the MIA, that the salaries of judges and prosecutors have not been reduced but have been raised, with the argument that the Decision [no. 04/20] of the Government of 20 December 2017, which resulted in raising the salaries of judges and prosecutors, has been repealed as unlawful by the current Government, namely by Decision [03/109] of 23 November 2022 of the Government. In this context, the Court recalls that (i) the Government's Decision of 23 November 2022, was rendered after the adoption of the contested Law on Salaries, which was approved on 22 December 2022 and decreed on 4 January 2023; (ii) Decision [no. 20/14] of 20 December 2017 of the Government has been subject to constitutional review through the Court Judgment in case KO12/18 and the Court has found that the

latter is not contrary to the Constitution (see, Court's Judgment in the case KO12/18 , Applicant *Albulena Haxhiu and thirty (30) other deputies of the Assembly*, regarding the constitutional review of Decision no. 04/20of the Government of the Republic of Kosovo, of 20 December 2017); (iii) the documentation submitted to the Court by the MIA, reflects a significant reduction in the salaries of judges and prosecutors by the contested Law; and moreover, (iv) the decrease in the salaries of judges and prosecutors is evidenced by the fact that the latter receive the transitional allowance precisely because, before the entry into force of the contested Law, they received a salary significantly higher than the salary provided by the contested Law.

312. Based on the payrolls submitted to the Court by the MIA, in principle it follows that the salary increases benefited, among others: (i) the Government's Cabinet and a part of the administration; (ii) a part of public employees of pre-university education; (iii) public employees of the health system; and (iv) a part of the Police of the Republic of Kosovo. Meanwhile, salary reductions have been suffered by, among others, (i) the judicial system; (ii) prosecutorial system; (iii) independent constitutional institutions; and (iv) the foreign service of the Republic of Kosovo. Further and for illustration, the basic salary of (i) the Prime Minister has been raised up to 19%; (ii) of a deputy, marked an increase of up to 11.25%; (iii) of a senior police officer, has increased up to 58.07%; (iv) of a specialist doctor/specialist dentist, has increased by 57.54%; while (v) of a teacher in a lower secondary school, has increased by 22.62%. Further and for illustration, and based on the data submitted to the Court by the MIA, the basic salary of (i) the President has been reduced by up to 36.74%; (ii) of the President of the Assembly has been reduced for 10.36%; (iii) of the President of the Constitutional Court has been reduced by 52.08%; (iv) of the President of the Supreme Court, has been reduced by 34.68%; (v) of the Chief Prosecutor of the Special Prosecution, suffered a reduction of 41.92%; (vi) a judge of the Basic Court, suffered a reduction of 34.08%; (vii) of a special prosecutor, suffered a reduction of 38.70%; while (viii) of an ambassador has suffered reduction up to 65.52%.

313. The reduction of salaries in the public sector, through the relevant Annexes of Article 44 and the repeal of the above provisions of special laws by Article 45 of the contested Law, is further addressed by Article 41 (Transitional allowance) of the contested Law.

314. This article defines three categories of functionaries/officials and employees who come under the scope of the contested Law and who are affected by the salary reduction. The first category is related to all functionaries/officials and employees, whose salary has been reduced based on articles 44 and 45 of the contested Law. In relation to this category, a two (2) year transition period is defined, during which, during the first year after the entry into force of this law, one hundred percent (100%) of the transitional allowance will be benefited and consequently, during this year, they will not be affected by salary reduction; while during the second year after the entry into force of this law, they benefit from fifty percent (50%) of the transitional allowances. The second category is related to the members of the foreign service of the Republic of Kosovo, who do not enjoy the right to the transitional allowance and are therefore affected by an immediate reduction of salaries through the entry into force of the contested Law. While, the third category, relates to all persons who can be employed in the positions that fall within the scope of this Law, after its entry into force, and who do not enjoy the right to the transitional allowance and benefit from the specified salary based on categories and coefficients defined in the relevant Annexes of Article 44 of the contested Law.

315. The Court, in the context of the above clarifications, as well as the arguments and counter-arguments of the parties, must assess whether the reduction of salaries in the public sector through the contested Law has affected the corresponding fundamental rights and freedoms, namely whether it has been violated (i) the right to property

guaranteed by Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR; and (ii) the right to equality before the law guaranteed through Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Article 1 of Protocol no. 12 (General prohibition of discrimination) of the ECHR.

2.1 Peaceful Enjoyment of Property - guarantees of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR

316. For the purpose of assessing the right to property, the Court must first determine whether the latter is applicable in the circumstances of the present case, and if this is the case, based on the provisions of Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution and its case law of the ECtHR, to proceed with the assessment of whether the *"interference"*, namely the limitation of the latter is "*prescribed by law",* may have followed a *"legitimate aim"* and if it is *"proportional"* with the aim pursued.

(i) Applicability of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR

317. The Court first recalls that through its case law, it has already established the principles on the basis of which fundamental rights and freedoms can be limited based on the principles stipulated by Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution. In the context of the limitations on the right to property defined through Article 46 [Protection of Property] of the Constitution, the applicable principles have recently been elaborated in the Court's Judgment KO216/22_KO220/22 (see, among others, paragraphs 340 to 347). Through Judgement KO216/22_KO220/22, it was clarified that based on the case law of the ECtHR, *"future income"* and *"pension and social benefits"* also enjoy the protection of Article 1 (Protection of property) of Protocol no. 1 of the ECHR, under the conditions and principles determined by the case law of the ECtHR.

318. The Court also clarifies that Article 1 of Protocol no. 1 of the ECHR, does not mean the right to acquire property. It applies only in the context of existing *"assets",* and in certain circumstances, in connection with a *"legitimate expectation"* to acquire *"assets"*. In the context of the latter, there must be a right, which must be concrete, namely stem from a basis in the applicable law and/or a court decision. In principle, this scope also includes salaries and/or social benefits, but this does not mean that the right to salaries and/or social benefits means a guarantee for a certain amount of them. Having said that, based on the aforementioned case law, if the applicable legislation defines such a right, then it should be considered that the same results in a right that is subject to the scope of Article 1 of Protocol no. 1 of the ECHR, namely the test that originates from this article, but also from Article 55 of the Constitution, according to which, it must be assessed whether the "*interference/restriction"* of the peaceful enjoyment of property, (i) is *"prescribed by law"* ; (ii) pursues a *"legitimate aim";* and (iii) is "*proportional"* to the aim pursued.

319. More specifically, the issues related to salaries and/or social benefits, which are relevant in the circumstances of the present case, have been examined in a number of cases by the ECtHR, in the context of the economic measures taken by the respective states to address the crises financial/economic and/or budget deficits. The reviewed cases relate to the reduction of salaries/social benefits and/or the determination of taxes, designed to address an economic/financial crisis and, among others, include ECtHR cases: (i)

Mockiene v. Lithuania, which is related to the adoption of the Law on the Recalculation and Payment of Social Benefits, and which had temporarily reduced pensions, but also salaries in order to address the economic crisis and stabilize the budget deficit (see, *Mockiene v. Lithuania*, no. 75916, Decision of 4 July 2017); (ii) *Silva Carvalho Rico v. Portugal* and *Conceicao Matues and Santos Januario v, Portugal* which, among other things, are related to the temporary reduction of the values of social benefits, including benefits for holidays during the economic crisis in Portugal, which was under the financial support of the European Union and the International Monetary Fund (see ECtHR cases: *Silva Carvalho Rico v. Portugal,* no. 13341/14, Decision of 1 September 2015 and *Conceicao Matues and Santos Januario v, Portugal*, no. 62235/12 and 57725/12, Decision of 8 October 2013); (iii) Savickas v. Lithuania, which, among other things, is related to the adoption of the Law on the Salaries of Judges and State Officials, through which the salary calculation factor was temporarily reduced in order to address the financial and economic crisis (see the ECtHR case: *Savickas v, Lithuania* no.66365/09, Decision of 15 October 2013); (iv) *Koufaki and Adedy v. Greece*, which is related to the adoption of a number of laws, related to the urgent measures necessary to address the financial crisis and the protection of the national economy in Greece, and which had resulted in a temporary reduction of the salaries of public officials and social benefits (see the ECtHR case -*Koufaki and Adedy v. Greece*, nr.5788/12 and 57657/12, Decision of 7 May 2013); (v) *Zegarac v. Serbia*, which is related to the adoption of the Law on the Temporary Regulation of the Payment Method of Pensions, and which had resulted in the temporary reduction of pensions in order to address the budget deficit (see the ECtHR case: *Zegarac v. Serbia*, Decision of 17 January 2023); and (vi) *MIHĂIEŞ and Adrian Gavril SENTEŞ v. Rumania*, which is related to the implementation of Law no. 118/2010 in Romania and which provided for measures to balance the deficit of the state budget, resulting in the temporary reduction of the salaries of public officials in the amount of twenty-five percent (25%), for a period of six (6) months, in order to address the relevant economic crisis (see the ECtHR case: *MIHĂIEŞ and Adrian Gavril SENTEŞ v. Rumania,* no. 44232/11 and 44605/11, Decision of 6 December 2011).

320. The Court notes that in all these cases, the ECtHR applied the principles of Article 1 of Protocol no. 1 of the ECHR, considering that if the relevant state has an applicable law based on which a right related to salary/social benefits originates, then that legislation should be considered to generate an interest that falls within the scope of the article 1 of Protocol no. 1 of the ECHR (see, among others, the cases of the ECtHR: *Silva Carvalho Rico v. Portugal*, cited above, paragraph 31; *Savickas v, Lithuania*, cited above, paragraph 91; *Conceicao Matues and Santos Januario v, Portugal* , cited above, paragraph 18; and *Zegarac v. Serbia*, cited above, paragraph 79).

321. Based on the above clarifications, in the assessing and determining of whether the salaries of public functionaries/officials/employees in the Republic of Kosovo constitute "*assets"* subject to "*legitimate expectations"* for the purposes of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, the Court, based on the case law of the ECtHR, must first determine whether there is a right to salary, including the relevant conditions, in the legislation applicable in the Republic of Kosovo. In this context, the Court first emphasizes that Article 35 (Salary and Judicial Compensation) of the Law no. 06/L-054 on Courts, determines the salary levels of judges, including legal guarantees that a judge's salary will not be reduced during the term in which the judge is appointed, except for disciplinary sanctions imposed under the authority of the Kosovo Judicial Council. Secondly, the Court emphasizes that Article 21 (Compensation of State Prosecutors) of the Law no. 03/L-225 on the State Prosecutor, determines the salary levels of prosecutors, including legal guarantees that the salary of state prosecutors will not be reduced during the period of their service unless this is set as a sanction by the Prosecutorial Council or the Disciplinary Commission of the Council

based on the determination that the prosecutor of the state has committed improper behavior or any criminal offense. The Court notes that after the entry into force of the contested Law, the Assembly adopted the new Law on the State Prosecutor, namely the Law no. 08/L-167 on the State Prosecutor, of 20 April 2023, published on 17 May 2023, through which the previous Law no.03/L-225 on the State Prosecutor was repealed in entirety, thus eliminating the guarantees for maintaining the salary of prosecutors, determining in Article 33 (Remuneration of state prosecutors) that *"salaries and remuneration of state prosecutors shall be regulated according to the relevant legislation into force on salaries in public sector"* . Thirdly, the Court notes that the Law nr. 03/L-147 on Salaries of Civil Servants, and which is repealed in its entirety by Article 45 of the contested Law, in its Article 28 (Protection of Basic Salary), determines that the civil servants whose basic salary on implementation of this Law would be lower than their current basic salary as applicable prior to the entry into force of this Law, shall retain their current salary until their basic salary comes into compliance with the provisions of this Law, the provisions on the general classification of work positions in the Civil Service and the standards and procedures for the classification of each position in its relevant grade. Fourthly, the Court notes the list of special laws listed in Article 45 of the contested Law for special institutions and which have specific provisions regarding the functionaries/officials/employees of the respective institutions regarding salaries and rights related to them.

322. In the context of the above, the Court notes that the laws applicable in the Republic of Kosovo have specific provisions regarding salaries in the public sector, including guarantees for *"equal pay for equal work"* and, in principle, maintenance of the basic salary, and therefore, it is not disputable that there is a *"asset"* regarding which there can be a *"legitimate expectation"* in the context of the right to property guaranteed by Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR. Furthermore, the Court recalls the cases reviewed by the ECtHR and explained above, through which the claims of violations of fundamental rights and freedoms were dealt with as a result of the laws/acts adopted and which resulted in salary reductions and/ or social benefits in different countries, which the ECtHR has also examined from the point of view of the guarantees of Article 1 of Protocol no. 1 of the ECHR. Therefore, based on the provisions of (i) Article 55 of the Constitution; (ii) Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR; and (iii) the case law the Court and the ECtHR, the Court must further assess whether the contested Law has resulted in "*interference/restriction"* with the aforementioned rights, and if this is the case, to assess whether a "*such interference/restriction*, (i) is *"prescribed by law";* (ii) pursues *"a legitimate aim"*; and (iii) is *"proportional"* to the aim pursued.

(ii) If the contested Law "restricts/interferes" with the right to the peaceful enjoyment of property

323. In the context of establishing the "*interference/restriction"* of the right to the peaceful enjoyment of the property of public functionaries/officials/employees through the contested Law, according to the above clarifications, the Court emphasizes that it is not disputable that a part of significantly of the functionaries/officials/employees who fall within the scope of the contested Law, their salary was reduced, while for another part, their salary was raised. In addition, the Court emphasizes that Article 45 of the contested Law, repeals the provisions of all special laws that have determined salary levels/ratios and/or certain rights of state functionaries/officials/employees, including the right of judges and prosecutors to maintain their salary during the term during which they were elected. In the aforementioned context, the Court emphasizes that it is not disputed that the contested Law has *"interfered/restricted"* the rights of state functionaries/officials/employees defined by the laws of the Republic of Kosovo and which are repealed upon the entry into force of the contested Law.

324. As the Court has already clarified through its case law, the determination and/or finding that there may be *"interference/restriction"* on a right, does not mean that the same has also resulted in a violation of the corresponding constitutional rights. These rights, in principle, are not absolute, and may be subject to *"interference/restriction"* according to the provisions of Article 55 of the Constitution, respectively and according to the clarifications above, insofar as the latter is "*prescribed by law",* follows a *"legitimate aim"* and is *"proportional"* to the aim pursued.

(iii) if the "restriction/interference" with the right to the peaceful enjoyment of property is "prescribed by law"

325. In the circumstances of the present case, it is not disputed that the *"legitimate expectations"* related to the relevant *"assets",* namely the rights related to the salary in the public sector, according to the provisions of the laws applicable before the entry into force of the contested Law, are limited through the latter. As explained above, the contested Law in its articles 41, 44 and 45, establishes: (i) the categorization of functionaries/officials/employees in certain classes/categories/coefficients through its respective Annexes; (ii) repeals the provisions related to salary rights defined by special laws approved over the years by the Assembly of the Republic of Kosovo; and (iii) establishes a transitional period during which the relevant salary reduction will be applied. Consequently, the Court must find that the "*interference/restriction"* of the peaceful enjoyment of property according to the provisions of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, is *"prescribed by law"*, and therefore the Court must assess whether the relevant *"restriction/intervention"* also *"pursues a legitimate aim"*.

(iv) if the "restriction/interference" with the right to the peaceful enjoyment of property pursues a "legitimate purpose"

326. In this context, the Court first recalls that the list of purposes for which *"interference/restriction"* in individual rights would fall within the scope of the concept of general public interest, according to the case law of the ECtHR, is extensive and can involve different goals subject to public policy considerations in different factual contexts. In the context of the contested Law, the Court refers to its Article 1 (Purpose), which states: "*The purpose of this law is to create a uniform system of salaries in the public sector, which includes the principles and rules for determining the salary in the public sector, as well as to create a transparent and manageable system of salaries and bonuses where the main element is the basic salary."* Moreover, the Court recalls the justification of this goal by the MIA, which on behalf of the Government submitted comments to the Court, where it is emphasized that *"The goal of this law is to create a uniform system of salaries in the public sector which includes the principles and rules for determining the salary in the public sector as well as to create a system of salaries and bonuses, transparent and manageable where the main element is the basic salary".*

327. Having said that, the Court must emphasize that none of the cases reviewed by the ECtHR, in the context of property rights stipulated by Article 1 of Protocol no. 1 of the ECHR, regarding the reduction of salaries or social benefits, was not the result of such a legitimate aim and that is related to the uniformity, harmonization and/or levelling of salaries in the public sector. On the contrary, in all the reviewed cases of the ECtHR and which are listed, among others, in paragraphs 247, 245, 246 and 256 of this Judgment, the reduction of salaries and/or social benefits was a consequence of economic crisis and /or measures taken to address budget deficits. Also, the Court cannot fail to emphasize the fact that based on the contested Law itself, namely in Article 10 (Lowering the salary level), where it is provided that the monetary value of the

coefficient can be reduced only by law in circumstances of (i) a macroeconomic shock which results in a reduction of income; or (ii) a natural disaster within the meaning of Article 131 of the Constitution of the Republic of Kosovo.

328. However, taking into account the case law of the Court according to which, in all cases where a law of the Assembly is challenged before the Court by the authorized parties, the focus of the assessment is always the respect of constitutional norms and human rights and freedoms - and never assessment of the selection of public policy that has led to the adoption of a certain Law and consequently, it never assessed whether it is a law based on good public policies or not (see, among others, Court cases: Judgment KO73/16, paragraph 52; Judgement KO72/20, paragraph 357; KO12/18, paragraph 117; Judgement KO219/19, paragraph 259; and Judgement KO216/22_KO220/22, paragraph 312). The Court will find that in the circumstances of the present case, it can be said that the *"interference/restriction"* in the right to the peaceful enjoyment of property, follows a *"legitimate AIM",* namely the need for applicable legislation that regulates/harmonizes the salary in the public sector and the corresponding rights of functionaries/officials/employees in the public sector.

(v) if the "restriction/interference" with the right to the peaceful enjoyment of property is "proportional" to the aim pursued

329. Based on the above-mentioned findings, to determine whether the contested Law has resulted in a violation of the right to peaceful enjoyment of property according to the provisions of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR, the Court, further, must assess if the *"restriction/interference*" with the aforementioned right is "*proportional"* to the legitimate aim pursued. The principles on the basis of which this assessment is made are defined in the case law of the Court and the ECtHR. In principle, it is important to assess whether there is a "*fair balance*" between the general interest and the obligation to protect fundamental rights and freedoms, and this balance will not exist if the individual bears a greater burden in realizing this purpose (see, among others, the ECtHR case: *Savickas v. Lithuania* cited above, paragraph 91).

330. The Court also brings to attention that in the context of proportionality, it must take into account that: (i) based on the case law of the ECtHR, an "*interference/restriction"* in the influence of acquired rights is possible, if it is done by law, provided that such a measure is necessary for a temporary period, to avoid a momentary economic/financial crisis, which may threaten the state from external factors in extraordinary conditions; (ii) regarding the interference of the state through law-making, with the individual rights of the , the Venice Commission, through the Rule of Law Checklist CDL-AD (2016)007-e, has emphasized, among other things, that: *"Instability and inconsistency of legislation or executive action may affect a person's ability to plan his or her actions. However, stability is not an end in itself: law must also be capable of adaptation to changing circumstances. Law can be changed, but with public debate and notice, and without adversely affecting legitimate expectations."* (see Rule of Law Checklistt CDL-AD (2016)007-e,); and (iii) uncertainty, whether legislative, administrative or arising from practices applied by public authorities, is a factor taken into account when evaluating the actions of a state and the corresponding "*interference/restriction*" in fundamental rights and freedoms (see, *inter alia*, the case of the ECtHR: *Bronioëski v. Poland*,, paragraph 151 and the Court's case, KI185/21, Applicant *JSC "Co Colina",* paragraph 212).

331. The Court also recalls the requirements of paragraph 4 of Article 55 of the Constitution, which, among other things, determines that in the event of the limitation of human rights, all institutions of public power have the duty to pay attention to (i) the essence

of the right that is limited, (ii) the importance of the purpose of the limitation, (iii) the nature and extent of the limitation; (iv) the relationship between the limitation and the purpose to be achieved; and most importantly (v) review the possibility of achieving the purpose with a lesser limitation.

332. In the aforementioned context, the Court must assess whether the measures defined in Article 41 of the contested Law are "*proportional*" to the aim pursued. This is because, as explained above, this article defines a transition period for all functionaries/officials/employees who are affected by the salary reduction through the contested Law. More precisely and as elaborated above, (i) paragraph 2 of Article 41 of the contested Law, determines that employees, public officials or public functionaries, who have been affected by a salary reduction, will benefit from the new salary at one hundred percent (100%) of the transitional supplement, during the first year after the entry into force of this law and fifty percent (50%) of the transitional supplement, during the second year after the entry into force of this law; (ii) paragraph 3 of article 41 of the contested Law, excludes the members of the foreign service of the Republic of Kosovo from the right to the transitional allowance; while (iii) paragraph 4 of article 41 of the contested Law also excludes from the right to the transitional allowances any person who is employed after the entry into force of the contested Law.

333. In assessing whether the provisions of paragraph 2 of article 41 of the contested Law, which defines the transitional period of two (2) years until the final reduction of salaries in the public sector, are *"proportional"* to article 1 of the contested Law, respectively *"creating a uniform system"* of salaries in the public sector, the Court will first analyze the category of the justice system, and then the category of all functionaries/officials/public employees who have been affected by the reduction of salaries.

(a) proportionality related to category of judges and prosecutors

334. The Court first emphasizes that: (i) regarding the salary level of judges and prosecutors, there are international and constitutional and legal guarantees in the Republic of Kosovo; (ii) the applicable laws of the Republic of Kosovo, namely the Law on Courts and the Law on the State Prosecutor, guarantee the maintenance of the same salary level during the mandate of a judge and/or prosecutor; (iii) judges and prosecutors of the Republic of Kosovo, are the category that has been affected the most through the contested Law, namely up to fifty percent (50%) of the salary value; (iv) The contested Law repeals the provisions of the applicable laws, based on which judges and prosecutors have legal guarantees for maintaining their salary during the relevant mandate; and (v) the constitutional and international standards in the context of the independence of the justice system, have already been elaborated, over the years, through the case law of the Court, included in detail in the Judgment of the Court in the case KO219/19. Such circumstances not only raise issues related to individual rights and freedoms of judges and prosecutors, but also raise serious issues of the independence of the judiciary, the separation and balancing of powers and the preservation of the constitutional balance and values of the Republic of Kosovo.

335. Moreover, in its previous Judgment, respectively in the case KO219/19, the Court specifically clarified that the salaries of judges and prosecutors cannot be reduced during the exercise of their mandate, except in exceptional circumstances, and which, based on international standards and the case law of the ECtHR, are related to economic/financial crises/deficits budgetary. Moreover, the above-mentioned Judgment, in circumstances in which the previous Law on Salaries in the Public Sector provided for the same circumstances of reducing the salaries of judges and prosecutors during a transitional period, declared the relevant law contrary to the Constitution,

among other things, precisely due to the violation of the independence of the judiciary and the separation and balancing of powers in the Republic of Kosovo. The Court specifically emphasized that: (i) such a scenario through which, after the specified transitional period, the salary level for judges and prosecutors would suffer a drastic reduction, violates the independence of the judicial power, and "*would place undesirable pressure on the Judiciary versus Legislative and Executive power"* (see, the case of the Court KO219/19, cited above, paragraph 319); (ii) judges' salaries cannot be reduced during the mandate, unless the reduction in salary is justified by "*an exceptional situation of proven financial difficulty*", adding at the end also that (iii) the burden of reducing salaries, if already considered as necessary due to the economic crisis, it must be proportional and involve everyone equally so that no particular sector takes over the main burden (see, the case of the Court KO219/19, cited above, paragraphs 271 and 293).

336. The Court emphasizes that international standards, including the judicial practices of international courts, the relevant Opinions of the Venice Commission, but also the judicial practices of the Constitutional Courts, clearly define (i) the principle that the salaries of the judiciary (judges and prosecutors) cannot be reduced during their mandate because such an issue is also directly related to the independence of the judiciary and, consequently, the separation and balancing of powers in a democratic order; while (ii) that such an exception is possible in exceptional circumstances, which include an economic/financial crisis, during which comprehensive measures to stabilize the economy are necessary and when judges also bear the proportional responsibility to eliminate the consequences of an economic/financial crisis of a country, placing on them an equal burden as on other public officials in the name of solidarity and social justice.

337. These principles, first of all, originate from (i) Recommendation (94) 12 of the Committee of Ministers of the Council of Europe; (ii) Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe; (iii) Opinion 1 [CCJE (2001) OP N°1] of the Consultative Council of European Judges; (iv) United Nations Human Rights Committee; and (v) Magna Carta of Judges approved by the Consultative Council of European Judges.

338. Moreover, the same principles are strongly consolidated by the case law of the Constitutional Courts, including: (i) the Constitutional Tribunal of Poland; (ii) the Constitutional Court of Lithuania; (iii) the Constitutional Court of Slovenia; (iv) the Constitutional Court of the Czech Republic; (v) the Constitutional Court of Latvia; (vi) the Constitutional Court of Portugal; (vii) the Supreme Court of Cyprus; (viii) the Supreme Court of Canada; (ix) the Constitutional Court of Bosnia and Herzegovina; and (x) the Constitutional Court of Albania. In addition, the same standard is determined by the case law of the ECtHR, and which in the case of Portugal, had not found a violation in the context of the reduction of the salaries of judges, under the conditions of the relevant case, namely: (i) the relevant reduction was applied to all public officials, including representatives of the legislative, executive and judiciary in order to fulfill Portugal's obligation to eliminate the excessive budget deficit and financial aid regulated under European Union law; and (ii) the corresponding reduction was temporary and escalating, including conditions on the return of salaries to the pre-existing level gradually.

339. The Court, in Judgement KO219/19, specifically, he emphasized that (i) in case of new legislation in this field, the Government and the Assembly are obliged to take into account the principles highlighted in Judgment KO219/19 and other Judgments from the judicial practice of the Constitutional Court in the interpretation of the respective articles of the Constitution; and (ii) the Government and the Assembly must ensure that

during the drafting of their legal initiatives until their finalization by the Assembly's vote, the constitutional independence of the sister power, respectively the judiciary, is preserved and the same care and sensitivity, the Government and the Assembly, must also indicate the other state actors that the Constitution has provided with constitutional guarantees of functional, organizational and budgetary independence.

340. In these circumstances, it is completely clear that the contested Law, in the context of reduction of salaries of judges and prosecutors, is not *"proportional"* to the aim pursued. First, because based on the aforementioned international standards, the salaries of judges and prosecutors can be exceptionally reduced only in circumstances of economic/financial/extraordinary crises and during which judges and prosecutors are treated equally with other categories of state officials and share the burden of measures necessary to address the respective crisis. In the circumstances of the contested Law and firstly, the salaries of judges and prosecutors have not been reduced either as a result of an economic/financial crisis, nor have they been treated equally with all other categories of state functionaries/officials. On the contrary and secondly, judges and prosecutors are the category that has been affected the most in the context of the salary reduction in relation to all other state functionaries/officials, as their salaries would be drastically reduced during the second (2) year of the entry into force of the contested Law. The mechanism chosen by the executive and legislative power, namely the Government and the Assembly, to achieve the goal of *"uniformity of salaries"* in the public sector, has treated the judicial power in a completely not in an uniformed and disproportionate manner, which, as a result, is the category that carries mostly the burden of achieving the goal of the contested Law. Furthermore and thirdly, the contested Law, apart from the fact that it disproportionately reduces the salaries of judges and prosecutors, it also repeals the guarantees of maintaining the salary during the relevant mandate, despite the fact that such a standard is an international standard, namely, through Article 45 thereof, repeals (i) paragraph 2 of Article 35 (Salary and Judicial Compensation) of the Law no. 06/L-054 on Courts; and (ii) paragraph 1.10 of Article 21 (Compensation of state prosecutors) of the Law no. 03/L-225 on State Prosecutor, which, moreover, has already been repealed by the Law no. 08/L-167 on State Prosecutor, adopted on 20 April 2023 and published on 17 May 2023. Fourth, the transitional period defined in paragraph 2 of Article 41 of the contested Law is not sufficient/proportional to avoid the aforementioned effects of the contested Law. Such an approach followed through the contested Law is in full contradiction with the obligation of the institutions of public power that stem from paragraph 4 of Article 55 of the Constitution, according to which, in achieving the relevant purpose, the possibility of achieving the purpose with a lesser limitation on fundamental rights and freedoms should be reviewed. Moreover, such an approach does not only violate the right to peaceful enjoyment of property of judges and prosecutors, contrary to the guarantees of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, but also directly violates the values of the Republic of Kosovo, including the rule of law and the separation and balancing of powers.

(b) proportionality related to the other categories of functionaries, officials and employees affected by contested Law

341. Beyond the judges and prosecutors, the Court also recalls that the contested Law, (i) while it has increased the salaries of a part of functionaries/officials/employees, including but not limited to a part of the Government, deputies, employees of the health sector, a part of the Kosovo Police and of the pre-university education, (ii) has negatively affected the rest of them, including but not limited to, the President of the Republic, the independent constitutional institutions, a part of the local government and the foreign service of the Republic of Kosovo. In the application of this salary reduction for the affected categories, and the determination of the corresponding transitional period of

two (2) years, with the exception of foreign service, no uniform reduction has been applied and/or through a consistent formula, resulting in a salary reduction up to fifty percent (50%) for certain categories, and equally high increases for others.

342. The Court recalls that the Judgement of the Court in case KO219/19 addressing the issue of salary reduction in the public sector, among other things, had emphasized that the Assembly, while exercising its constitutional competence for lawmaking, is within its right to take any type of step (i) to increase salaries in the public sector so that to meet any public policy goals for salary increases in certain sectors; and (ii) to reduce salaries in the public sector because there is no absolute prohibition not to reduce salaries in the public sector. Having said the latter, the Judgment also emphasizes that (i) it must be taken into account that any reduction in salaries, for each existing position, must be strongly justified and not arbitrary; (ii) any salary reduction must be such that it does not place the burden of the salary reduction on only certain persons or certain sectors of the public sector; (iii) the reasons for salary reduction must be many times more stable than the reasons for salary increase; (iv) as long as the sustainability of public finances is of interest to all, the achievement of this goal must be applied universally, namely the sacrifices must be distributed equally among all officials; and (v) the burden of reducing salaries, if it is already considered necessary due to the economic crisis, should be proportionate and include everyone equally so that no particular sector takes over the main burden (see , in this context the case of the Court: KO219/19, cited above, paragraphs 271 and 293).

343. Such a position of the Court in Judgement KO219/19, is also supported by international standards, including the case law of the ECtHR. In the context of the latter, the Court reiterates that cases related to the reduction of salaries/social benefits and/or the determination of taxes, designed to address an economic crisis, among others, include ECtHR cases (i) *Mockiene v. Lithuanua*; (ii) *Silva Carvalho Rico v. Portugal* and *Conceicao Matues and Santos Januario v. Portugal*; (iii) *Savickas v. Lithuania*; (iv) *Koufaki and Adedy v. Greece*; (v) *Zegarac v. Serbia*; and (vi) *MIHĂIEŞ and Adrian Gavril SENTEŞ v. Romania.* In these cases, the ECtHR did not find a violation of the right to peaceful enjoyment of property according to the provisions of Article 1 of Protocol no. 1 of the ECtHR. However, these cases have some common characteristics and which are substantively different from the circumstances contained in the contested Law, namely (i) salary reductions/benefits and the imposition/increase of taxes were related to the establishment of measures to address economic crises or budget deficits in the respective states; (ii) reductions were always temporary, sometimes including mechanisms through which salary levels gradually returned to the previous level; and (iii) were uniformly applied to the entire state administration.

344. None of these circumstances create a situation in which, the significant reduction of salaries for only part of the public sector was made for the purposes of the policies of the Government and/or the Assembly to create a "*uniform system*" of salaries, and which is not related under any circumstances to an economic crisis, budget deficit or extraordinary circumstances. Moreover, and despite the fact that the declared legitimate aim for the reduction of salaries of a part of the public sector is to create a "*uniform system*" of salaries in the public sector, the mechanisms used namely the reduction of salaries only for some sectors within a extremely short period of time, is not proportional, since the two (2) year transitional period defined in paragraph 2 of Article 41 of the contested Law is not sufficient/proportional to avoid the aforementioned effects of the contested Law in order to not to create a disproportionate burden of the reform only in certain sectors, contrary to the determinations of the Court's Judgment in case KO219/19, but also the standards that stem from the case law of the ECtHR. Moreover, based on the principles stemming from the case law of the ECtHR, the Court emphasizes the fact that when the individual carries a greater burden

than the public authority, there cannot be a *"fair balance"* between the general interest and the obligation to protect fundamental rights and freedoms.

345. Furthermore, and in the context of the relationship between the public interest, namely the definition of a *"uniform salary system"* in the public sector and individual rights and freedoms, namely the right to the peaceful enjoyment of property, the Court cannot but note that the contested Law follows a selective approach with regard to the harmonization or uniformity of salaries in the public sector, but also with the treatment of fundamental rights and freedoms. This is because the contested Law does not apply the reduction of salaries uniformly over reasonable periods of time until the levelling or *"harmonization"* of salaries according to its Annexes, but selectively, namely by increasing salaries for some sectors and reducing them for some others, has placed a disproportionate burden on certain sectors within a period of two (2) years, with an emphasis on the justice system. Moreover, the contested Law disproportionately affects the foreign service of the Republic of Kosovo, excluding this category entirely and without any justification from the rights that the transitional period specified in paragraph 2 of Article 41 of the contested Law entails, the category which has also been affected with significant, and unlike all other categories, immediately reduction of salary.

346. The Court further recalls the case law of the ECtHR through which issues related to the reduction of salaries/social benefits in the public sector were dealt with. In all cases, the respective reductions of salaries/social benefits were related to an economic crisis/budget deficit, while the reduction of the level of salaries and/or social benefits was uniformed/scaled, reflecting a proportional sharing of the burden for all officials affected and moreover, it was temporary. This is clearly not the case in the circumstances of the contested Law.

347. The Court, as it emphasized above in the general principles, reiterates once again that it had drawn attention regarding the necessary balance between the public interest and fundamental rights and freedoms in the context of salaries in the public sector, as of 2020, by Judgment KO219/19. Through the latter, among other things, it emphasized the fact that the Government, as the proposer of the laws, and the Assembly, as the legislator that finally adopts the laws proposed by the Government, during the drafting of the legislation related to salaries in the public sector, either through a general law or through some special laws or even the amendment of existing laws, must (i) take into account the principles of equality before the law and the equal treatment of all persons whose rights are affected by any type of legal supplement or amendment, emphasizing that the Government and the Assembly must ensure that the constitutional values of equality before the law and non-discrimination are respected in all circumstances and that any legal regulation is in accordance with Articles 3 and 24 of the Constitution in conjunction with Article 14 of the ECHR as and in accordance with the case law of the Constitutional Court and that of the ECtHR (see case of the Court KO219/19, cited above, paragraph 302); and (ii) take into account the relevant aspects of property rights and (legitimate) expectations of all persons whose rights are affected by any type of amendment, supplement or legal change, also emphasizing that any possible reduction of existing salaries, must be reasoned and respect human rights and freedoms and be in accordance with the principle of predictability, legal certainty and that of the rule of law and ensure that the right to property is respected in each circumstance and that any legal regulation "*to be in accordance with Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR*", as well as in accordance with the case law of the Constitutional Court and that of the ECtHR (see, in this regard, case KO219/19, cited above, paragraph 303).

348. Moreover, the Court in the previous Judgment had specifically addressed the issue of the principle of legal certainty, including the concept of "*predictability*" of the law, based on the case law of the Court, the ECtHR and the relevant Opinions of the Venice Commission. In this context, the Court emphasizes that the contested Law in its article 4 (Principles of the salary system), among other things, defines the "*principle of predictability*", which means that means that the salary level, determined under this Law, can be reduced, only based on the Law. The circumstances in which this can happen, as elaborated above, are established in Article 10 (Lowering the salary level) of the contested Law, namely only in cases of (i) a macroeconomic shock which results in the reduction of income; and (ii) a natural disaster within the meaning of Article 131 of the Constitution of the Republic of Kosovo, namely the declaration of a state of emergency. The Court notes that the legislator has rightly taken care that the reduction of salaries in the public sector is predictable in the future. Having said that, and similarly as in the circumstances of the previous case for salaries in the public sector assessed by the Judgment KO219/19, the legislator did not follow such an approach regarding the reduction of salaries in the public sector through the contested Law. This, among others, because: (i) Article 9 (Setting the coefficient value) of the contested Law specifies that the monetary value of the coefficient is determined by the law on annual budget ; while (ii) the latter, namely, the Law no. 08/L-213 on Amending and Supplementing the Law no. 08/L-193 on Budgetary Appropriations for the Budget of the Republic of Kosovo for the Year 2023, entered into force on 28 February 2023, unlike the contested Law which entered into force on 5 February 2023. In the context of the latter, the Court simply recalls found by the Judgment of 2020, reiterating that the Assembly, even with the new legal regulation, did not take into account the rights acquired by the existing "*law*" of public sector employees who receive a higher salary than it has determined the contested Law. The legislator, again, considers the principle of "*predictability*" important only for the future, but not for the present, knowing that the provisions of Article 41 of the contested Law directly affect the existing rights of public sector employees. Even in the circumstances of the contested Law, as in those of the repealed Law on Salaries by the Judgment KO219/19, the legislator has foreseen that salaries can be *"reduced"* only in situations of *"financial difficulty"* and in *"extraordinary*" situations, while the selective "*reduction"* of salaries through the contested Law did not take place on these premises, but in the name of the goal of "*uniformity of the salary system"* in the public sector, the goal which turns out not to have been achieved either. Such a selective approach to the principle of *"predictability",* which is an integral part of the principle of legal certainty and the rule of law as an essential value of the Constitution of the Republic of Kosovo, is unacceptable and should be avoided in future lawmaking (see, regarding this case KO219/19, cited above, paragraphs 269 and 270).

349. In the aforementioned context, the Court recalls the Government and the Assembly that, based on paragraph 4 of Article 55 of the Constitution, in the case of the limitation of human rights and the interpretation of those limitations, all institutions of public power, and especially the courts, have the duty to pay attention to the essence of the right that is limited, the importance of the purpose of the limitation, the nature and volume of the limitation, the relationship between the limitation and the purpose that is intended to be achieved, as well as to consider the possibility of achieving that purpose with the lesser limitation. In determining the mechanisms for achieving the purpose of the contested Law, namely the creation of a "*uniform salary system"* in the public sector, the Government and the Assembly, through the contested Law (i) resulted in a reduction of salaries in the public sector, in not *"uniformed"* and only for a category of functionaries/officials and public sector employees, *"interfering/restricting"* their rights to peaceful enjoyment of property and placing *"disproportionate burden"* only on certain individuals/sectors; (ii) by defining *"uniform"* transitional periods despite the fact that the salary reduction does not follow this principle and/or by not adjusting

the transitional period depending on the level of the effect of the salary reduction in certain categories; and moreover, (iii) by excluding whole categories from the corresponding transitional period, such as the foreign service, they have not placed the "*right balance*" between the sharing of the burden between the state and the fundamental rights and freedoms guaranteed by the Constitution. The Court once again recalls the findings of the Judgment KO219/19, according to which, among other things: (i) it must be taken into account that any salary reduction, for each existing position, must be strongly justified and not arbitrary; (ii) any salary reduction must be such that it does not place the burden of the salary reduction on only certain persons or certain sectors of the public sector; (iii) as long as the sustainability of public finances is of interest to all, the achievement of this goal should be applied universally, namely the sacrifices should be distributed equally among all officials; and (iv) the burden of reducing salaries, if it is already considered necessary due to the economic crisis, should be proportional and include everyone equally so that no particular sector takes over the main burden (see in this context, the case of the Court KO219/19, cited above, paragraphs 271 and 293).

350. Based on the above, supported by the principles stemming from the case law of the ECtHR and the case law of the Court, but also from good international practices, the Court notes that the solution determined through the provisions of paragraph 2 of Article 41 of the contested Law, does not present a *"fair balance"* between the stated legitimate purpose and the fundamental rights and freedoms of the individual. Therefore, the "*interference/restriction*" in fundamental rights and freedoms is not "*proportional*" to the aim pursued, because the legitimate aim could be achieved through less restrictive mechanisms, including but not limited to (i) periods of reasonably transitory and/or adapted for different categories depending on the level of effect of the contested Law; and/or (ii) the increasing the value of the coefficient for each fiscal year in relation to the proportional reduction of the transitional allowance, maintaining the existing salary level for the categories that have suffered a reduction until full *"harmonization/levelling"* with the salary level which is determined by the contested Law.

351. Therefore, the Court finds that (i) paragraph 2 of Article 41 (Transitional allowance), is not compatible with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR and paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution; and (ii) paragraph 3 of Article 41 (Transitional allowance), is not compatible with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

2.1 Equality Before the Law – guarantees of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Article 1 of Protocol no. 12 (General prohibition of discrimination) of the ECHR

352. The Court further, based on the Ombudsperson's allegations, notes that paragraphs 3 and 4 of Article 41 of the contested Law also raise issues related to equality before the law guaranteed by Article 24 of the Constitution. The former, namely paragraph 3, excludes the members of the foreign service of the Republic of Kosovo from the rights defined by the transitional period, while the second, namely paragraph 4, also excludes any person who is employed after the adoption of this law from the right to the transitional allowance.

353. In the aforementioned context, the Court firstly recalls that Article 24 [Equality Before the Law] of the Constitution establishes that everyone is equal before the law and that everyone enjoys the right to equal legal protection. Protection against discrimination established in Article 14 (Prohibition of discrimination) and Article 1 (General prohibition of discrimination) of Protocol no. 12 of the ECHR prohibits discrimination not only against the rights defined by the ECHR, but also against the rights which are defined through the applicable laws. The Court also emphasizes that based on the case law of the ECtHR, it notes that the latter, in principle, has concluded that Article 14 of the ECHR does not have an autonomous existence, but in order for this article to be applicable, it must to be related to the claim of a violation of another right or freedom guaranteed by the provisions of the ECHR. Having said that, Article 1 of Protocol no. 12 of the ECHR has expanded the scope of protection against discrimination at the level of the ECHR, defining a general prohibition of discrimination, and therefore including the rights defined by law. More precisely, the scope of Article 1 of this Protocol includes four categories of circumstances when *"an individual is discriminated against",* as follows: (i) the enjoyment of any right specifically guaranteed to an individual under domestic law; (ii) the enjoyment of rights, which stem from a clear obligation of the public authority under domestic law, where the public authority is obliged to behave in a certain way; (iii) by the public authority in the exercise of discretionary power; and (iv) by virtue of an act or failure to act of a public authority. Moreover, and in the sense of Article 24 of the Constitution, the Court also notes that the scope of this Article is broad and extends to the guarantee of the prohibition of discrimination, not only in terms of the rights guaranteed by the Constitution, but also those by law. Therefore, the assessment of allegation of violation of this article should be made beyond the guarantees of Article 14 of the ECHR, and also include the guarantees established in Article 1 of Protocol no. 12 of the ECHR (see, in this regard, case of the Court, KO93/21, Applicant: *Blerta Deliu-Kodra and twelve (12) other deputies of the Assembly of the Republic of Kosovo*, Judgment of 23 December 2021, paragraphs 283-293).

354. The principles regarding equality before the law and non-discrimination have been elaborated, recently, in two Court cases, namely, (i) Judgment KO93/21, regarding the constitutional review of the Recommendations of the Assembly of the Republic of Kosovo, no. 08-R-01, of 6 May 2021 (see, paragraphs 283-364 regarding the general principles); and (ii) Judgment KO190/19 regarding the constitutional review of Article 8, paragraph 2, of the Law no.04/L-131 on Pension Schemes Financed by the State in conjunction with article 5 and 6 of the Administrative Instruction (MLSW) no. 09/2015 on the Categorization of Beneficiaries of Contribute Paying Pensions according to Qualification Structure and Duration of Payment of Contributions (see paragraphs 180-230 regarding the general principles). Based on the aforementioned principles, in order to raise the issue of discrimination, according to Article 24 of the Constitution, it must first be determined if there was a *"difference in treatment"* between persons or groups of persons who are in "*similar or analogous situations"* and if this is the case, it must be assessed (i) whether the difference in treatment is *"prescribed by law"*; (ii) whether the difference in treatment pursued a *"legitimate aim";* and (iv) whether there is a relationship of *"proportionality"* between the difference in treatment and the aim sought to be achieved.

(i) the difference in treatment related to the category of Foreign Service of the Republic of Kosovo

355. In the context of the aforementioned principles, the Court recalls that based on paragraph 3 of Article 41 of the contested Law, the only category which is subject to salary reduction through the contested Law and at the same time is excluded from the application of the transitional period, is the service of the Republic of Kosovo. In this context, the Court first notes that the foreign service of the Republic of Kosovo is the

category proportionally more affected by the salary reduction together with the category of judges and prosecutors, but unlike the latter, this category is also excluded from the right to the transitional allowance. The Court emphasizes that beyond the violation of the right to peaceful enjoyment of property according to the provisions of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, the category of the foreign service of the Republic of Kosovo, which is not disputed and stands in a *"similar and/or analogous*" position with all the categories that have been affected by the salary reduction through the contested Law, also reflects *"difference in treatment",* being excluded from specified rights through the transitional period. Having said that, and according to the clarifications above, it must also be assessed whether the *"difference in treatment"* is *"prescribed by law",* follows *"a legitimate aim"* and is "*proportional"* to the aim pursued. In this context, the Court emphasizes that (i) it is not disputed that the *"difference in treatment"* is stipulated by paragraph 3 of Article 41 of the contested Law; but also (ii) it is not disputed that no *"legitimate aim"* was pursued. There is no single justification in the context of this *"difference in treatment"* related to the foreign service of the Republic of Kosovo, in the comments submitted before the Court, moreover, that such an approach contradicts the very purpose of the contested Law and the principles that it specifies, including the principle of transparency, foreseeability, equality before the law and non-discrimination according to the specifications of its Article 4.

(ii) *difference in treatment related to the category of functionaries/officials/employees employed after entrance into force of the contested Law*

356. The Court also recalls paragraph 4 of Article 41 of the contested Law, according to which, every person who is employed after the adoption of this law benefits from the salary according to this law and does not enjoy the right to the transitional allowance. Based on this provision, all persons who are employed in the institutions that fall under the scope of the contested Law from the moment of its entry into force and until the end of the transitional period determined by Article 41 of the contested Law, except for the foreign service and who is exempted from the transitional period, will benefit from a salary according to the definitions of the Annexes specified in Article 44 of the contested Law and consequently, for a period of two (2) years, a lower and different salary for equal work despite the provisions of the law in its article 4. Based on the above principles, the Court emphasizes that in order to determine whether such a provision results in "*difference in treatment*" of functionaries/officials/servants who were employed before and after the entry into force of the contested Law, it must first determine whether , these two categories are in *"similar and/or analogous" situations".*

357. In this context, the Court first emphasizes that unlike the category employed before the entry into force of the contested Law, the category employed after its entry into force does not enjoy the right to peaceful enjoyment of property in the context of "*legitimate expectations"*, in relation to *"assets",* namely the certain level of salary. The employees after the entry into force of the contested Law, had a clear salary level based on paragraph 4 of Article 41 and the Annexes specified by Article 44 of the contested Law. In this context, it should be emphasized that Article 14 of the ECHR does not have an autonomous existence, but in order for this article to be applicable, it must also be related to the claim of a violation of another right or freedom guaranteed by the provisions of the ECHR, while in the circumstances of this category, Article 1 of Protocol no. 1 of the ECHR is not applicable. Having said that, and as explained above, Article 1 of Protocol no. 12 of the ECHR expands the scope of protection against discrimination including the rights defined by law. The contested Law in its paragraph 4, defines the principle of equality and non-discrimination in relation to all categories of functionaries/officials/public servants that come under the scope of the contested Law,

including the right to receive equal pay for equal work, taking into account the nature of the work, the requirements for the workplace, the institution where the task is performed, and the qualification.

358. Therefore, considering that both categories, namely those specified in paragraphs 2 and 4 of Article 41 of the contested Law, are subject to the same principles, rights and obligations based on the contested Law and other applicable laws of the Republic of Kosovo and, moreover, enjoy the right defined by point 1.4 of Article 4 of the contested Law to be treated equally under the conditions specified by this provision, the Court finds that for the purposes of the contested Law, these two categories are in *"similar and/or analogous"* situations, moreover, it is not disputed that there is a *"difference in treatment"* between them. This is because during a period of up to two (2) years, namely during the transitional period determined through Article 41 of the contested Law, the functionaries/officials/servants who enter the scope of this law, but who were employed after the entry into force of the latter, will not have the same and/or equal salary as their colleagues who were employed before the entry into force of the contested Law.

359. Considering that the Court assesses that the categories defined through paragraphs 2 and 4 of Article 41 of the contested Law, are in *"similar and/or analogous"* situations for the purposes of this Law, and reflect *"difference in treatment",* it must further assess whether this *"difference in treatment"* is *"prescribed by law",* pursues a *"legitimate aim"* and is "*proportional"* to the purpose pursued.

360. In the context of "*prescribed by law",* the Court notes that it is not disputed that the *"difference in treatment"* is established in paragraph 4 of Article 41 of the contested Law and therefore "*is prescribed by law*". Moreover, and in the context of the general purpose of the contested Law, namely the achievement of *"uniformity"* or harmonization of the salary system in the public sector, it can be said that this *"difference in treatment"* follows a *"legitimate aim"*. Having said that, the Court assesses that this relevant difference in treatment is not "*proportional*" to the aim pursued. This, because (i) the exclusion of all functionaries/officials/servants who were employed after the entry into force of the contested Law, during a period of two (2) years, results in complete inequality between the same categories of functions and the rights arising from the employment relationship in the public sector, contrary to the principles of the contested Law itself, namely the principle of equality and non-discrimination specified by Article 4 thereof; and (ii) the exclusion of this category in the rights that defines the transitional period and the inequality between the exercise of the same functions for a period of two (2) years, does not take into account the effect on the functioning of the institutions of the Republic of Kosovo. More precisely, and beyond the principles of equality before the law in the context of fundamental rights and freedoms, such a provision substantively affects, among other things, the functioning of collective decision-making bodies, including courts and which lead with the principles of individual independence of each judge and equality between them.

361. Consequently, and based on the above clarifications, the Court finds that: (i) paragraph 3 of Article 41 (Transitional allowance) of the contested Law, is not compatible with paragraph 1 of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR; and (ii) paragraph 4 of Article 41 (Transitional allowance) of the contested Law, is not compatible with paragraph 1 of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 1 (General prohibition of discrimination) of Protocol no. 12 of the ECHR.

3. Constitutional review of Article 6 (Basic salary) of contested Law

A. The essence of allegations/arguments and counter arguments of parties

362. As detailed in the part of this Judgment that is related to the Ombudsperson's allegations, that paragraph 6 of Article 6 (Basic salary) of the contested Law is contrary to Article 46 [Protection of Property] of the Constitution, among other things , because (i) it has affected the *"legitimate expectations"* related to the *"assets",* namely the acquired right to the annual salary increase based on work experience based on Article 18 (Allowances on salary for work experience) of Law no. 03/L-147 on Salaries of Civil Servants, this law which is repealed through the contested Law; (ii) affects rights acquired in connection with work experience retroactively contrary to the principle of legal certainty; and (iii) in determining different values based on the number of years of work experience, respectively in less and more than fifteen (15) years of work experience, does not follow any *"legitimate aim"* in interfering with acquired rights through the previous law in force.

363. On the other hand, the MIA opposes the Ombudsperson's allegations, stressing that the aforementioned provision does not have a retroactive effect, moreover, such a provision does not affect equality before the law, because (i) every employee based on the number the same number of years of work benefits the same value of the allowance of experience in relation to the salary he enjoys in the relevant position; and (ii) the scaling of the value of the additional work experience is a *"legitimate aim"* of the legislator to *"support and stimulate the contribution as a service to the state and society"*.

B. Court's assessment

364. In the context of the aforementioned allegations, arguments and counter-arguments, the Court first emphasizes that paragraph 6 of Article 6 (Basic salary) of the contested Law, determines that the basic salary increases based on work experience, to the extent (i) zero point twenty-five percent (0.25%) for each full year of work, up to fifteen (15) years of work; and (ii) zero point five percent (0.5%) for each full year of service over fifteen (15) years of service. As explained above, the contested Law, by its Article 45, *inter alia*, also repeals Law no. 03/L-147 on Salaries of Civil Servants. The latter, in its article 18 (Allowances on salary for work experience), determines that for each year of work experience spent in the civil service and outside of it, in addition to the experience spent in practical work, civil servants according to this law are entitled to an increase in the basic salary of zero point five percent (0,5%).

365. The Court, in the above parts of this Judgment, has already emphasized that the *"assets"* with respect to which there can be a "*legitimate expectation",* enters the scope of Article 1 of Protocol No. 1 of the ECHR, insofar as derives from a concrete right, based on the applicable law and/or a court decision. It is not disputed that the right to an increase in the basic salary of zero point five percent (0.5%), for each year of work experience spent in the civil service stems from Article 18 of the Law no. 03/L-147 on the Salaries of Civil Servants and consequently, the "*interference/restriction*" in this right through the contested Law, is subject to the control of the guarantees established in Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

366. In this context, the Court notes that the reduction/deduction of the work experience allowance from zero point five percent (0.5%) to zero point twenty five percent (0.25%) per year, directly affects the amount of the allowance of all categories of the public sector, by halving the work experience allowance for the first fifteen (15) years, consequently the salary level for all categories of functionaries/officials/servants that fall within the scope of the contested Law, namely by determining the experience allowance twice lower compared to the previous legislation regarding the first fifteen (15) years of work experience.

367. In the context of the right to the salary allowance, based on work experience, the contested Law has as a consequence the loss of the acquired right, which also results in the reduction of the salary allowance for work experience, by fifty percent (50 %) of the allowance for work experience on an annual basis, regarding the first fifteen (15) years of work experience. Such deduction in the allowance for years of work experience in the civil service (i) is not subject to any transition period and/or does not determine its application only to the category of functionaries/officials/servants who assume functions and/or are employed after entry into force of the contested Law as is the case with the category defined in paragraph 4 of Article 41 of the contested Law; but (ii) the corresponding deduction has been applied with immediate effect to the entire category of functionaries/officials/servants for the first fifteen (15) years of work experience. In the context of halving the allowance for work experience on an annual basis, with the impact on the salary level, the Court once again recalls the principles detailed in the Court's Judgment in the case KO219/19, regarding the conditions on the basis of which the salary can be reduced, including the obligation of the law maker that for any "i*nterference/restriction"* of the acquired rights, there should be due attention to (i) the values defined in Article 7 [Values] of the Constitution, including the rule of law and the principle of legal certainty and foreseeability; and (ii) the rights defined by Articles 24 and 46 of the Constitution, regarding equality before the law and the peaceful enjoyment of property. As explained above, in the Court's Judgment in case KO219/19, it was also emphasized that the Assembly "*during the drafting of laws should have taken care of the rights of persons whose salaries are reduced*" and that "*the reasons for salary reductions should be many times more sustainable than the reasons for salary increases because, the former reduces an existing right while the latter add to an existing right*".

368. While it is not disputed that the contested Law, by paragraph 6 of its Article 6, "*interferes/restricts"* the acquired rights, namely the peaceful enjoyment of property according to the provisions of Article 46 of the Constitution in conjunction with Article 1 of the Protocol no. 1 of the ECHR, the Court must further assess whether the relevant *"interference/restriction",* (i) is *"prescribed by law";* (ii) pursues a *"legitimate aim";* and (iii) is "*proportional"* to the purpose pursued.

369. In the context of the assessment of *"prescribed by law",* the Court notes that the *"interference/restriction"* of the right to the peaceful enjoyment of property, namely the right acquired in the salary allowance for work experience according to Article 18 of Law no. 03/L-147 on Salaries of Civil Servants, is *"prescribed by law",* namely paragraph 6 of Article 6 of the contested Law. Having said that, the Court must also assess whether the relevant "*interference/restriction"* pursues a *"legitimate aim"*.

370. In the context of the latter, the Court recalls the comments of the MIA, according to which, the intention of the legislator in the context of reducing the level/amount of the annual allowance for work experience, from zero point five percent (0.5%) to zero twenty-five percent (0.25%) point for the first fifteen (15) years of work experience, is to "*support and stimulate the contribution as a service to the state and society"*. The Court notes that such a goal is not related in any way (i) to the goal of the contested Law, specified through its Article 1, to create a *"uniform system of salaries in the public sector"*; and (ii) nor with the comments submitted to the Court by the MIA on behalf of the Government, according to which, the purpose of reducing salaries in the public sector is to *"harmonize/level"* salaries in this sector.

371. In the above context, it is important to say that the *"interference/restriction"* of the acquired rights of all categories of functionaries/officials/servants of the public sector for the first fifteen (15) years of work experience, resulted in the reduction of their salary, beyond the deduction which results as a result of the Annexes specified in Article

44 of the contested Law, is not in accordance with the purpose of the contested Law, namely the creation of a *"uniform"* salary system in the public sector. Moreover, the purpose according to which such an *"interference/restriction" "supports and stimulates the contribution as a service to the state and society"*, is contrary to the very purpose of determining the allowance for work experience. In the context of the possibility of restricting fundamental rights and freedoms, the Constitution in its Article 55 specifically determines that the limitations of fundamental rights and freedoms guaranteed by this Constitution, (i) cannot be made for other purposes, except to those for which they are defined; and (ii) that in the case of the limitation of human rights, the institutions of public power have the duty to pay attention, first of all, to the relationship between the limitation and the goal that is intended to be achieved, as well as to examine the possibility of achieving that purpose with the lesser possible limitation. In the circumstances of the present case, none of these criteria have been met, and the *"interference/restriction"* of the right to peaceful enjoyment of property for the entire category of functionaries/officials/public servants for the first fifteen (15) years of work experience, by paragraph 6 of Article 6 of the contested Law, has not been argued and does not follow any *"legitimate aim"*. As it has already been elaborated several times through the case law of the Court, in circumstances where it is not established that the *"interference/restriction"* of fundamental rights and freedoms does not follow a *"legitimate aim",* it is not necessary to continue with the analysis if the latter was also "*proportional*", because without the need for additional elaboration, it results in the finding of a violation of the relevant right.

372. As a result, and based on the above clarifications, the Court finds that paragraph 6 of Article 6 (Basic salary) of the contested Law is not compatible with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

IV. Effects of the Judgement

373. The Court initially recalls that the basic principles regarding the effect of the Court's decisions, based on the relevant Opinions of the Venice Commission and the case law of other Constitutional Courts, among others, have been addressed in the Court's Judgment in case KO190/19. In principle, the Court recalls that: (i) retroactive effects of judicial decisions should be avoided because they may have consequences on the principle of legal certainty; (ii) in the service of the principle of legal certainty, a norm despite the fact that it has been declared unconstitutional, may continue to be in force and continue to be applied, until the legislator has amended the corresponding norm in accordance with the Court's Judgment and with the deadline given by it; but (iii) nevertheless, the Constitutional Courts must have sufficient flexibility to establish the appropriate balance, depending on the circumstances of concrete cases, regarding individual rights, on the one hand, and the principle of legal certainty, on the other. In principle, the relevant laws/provisions which have been assessed as contrary to the Constitution should be immediately repealed and eliminated from the relevant legal system. But, in order to avoid the unpredictable consequences of an immediate annulment of the contested law/provision, it is sometimes necessary that for a reasonable period of time, those provisions remain in force, leaving the possibility to other powers, namely the executive and legislative, to take the necessary measures for the amendment of the norm declared unconstitutional in accordance with the Constitution and the relevant Judgment of the Constitutional Court. The Court has followed this approach in at least two (2) cases, namely (i) the Court's Judgment in case KO54/20 regarding the constitutional review of Decision no. 01/15 of the Government of the Republic of Kosovo; and (ii) the aforementioned Judgment of the Court, namely KO190/19.

374. In the circumstances of the present case, based on the clarifications given in this Judgment, in the constitutional review of Law no. 08/L-196 on Salaries in the Public Sector, the Court has found that: (i) paragraph 2 of Article 2 (Scope) and paragraph 2 of Article 45 (Repeal) in conjunction with paragraph 2 of Article 24 (Allowance for labour market conditions), paragraph 5 of Article 25 (Performance allowance), paragraph 4 of Article 28 (Workload allowance) and paragraphs 2 and 3 of Article 42 (Determining the equivalence) of the contested Law, are not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution; (ii) paragraph 6 of Article 6 (Basic salary) of the contested Law, is not in compliance with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights; (iii) paragraph 2 of Article 41 (Transitional allowance) of the contested Law, is not in compliance with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights and paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 1 of Article 7 [Values] of the Constitution; (iv) paragraph 3 of Article 41 (Transitional allowances) of the contested Law, is not compatible with paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights and paragraph 1 of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the European Convention on Human Rights; (v) paragraph 4 of Article 41 (Transitional allowance) of the contested Law, is not compatible with paragraph 1 of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 1 (General prohibition of discrimination) of Protocol no. 12 of the European Convention on Human Rights; (vi) paragraphs 2, 3 and 4 of Article 41 (Transitional allowance) and paragraph 2 of Article 45 (Repeal) of the contested Law, are declared invalid upon entry into force of the Judgment; (vii) in accordance with paragraph 1 of Article 116 [Legal Effect of Decisions] of the Constitution, to order the Assembly of the Republic of Kosovo, within six (6) months from the entry into force of the Judgment, to take the necessary actions to supplement and amend paragraph 2 of Article 2 (Scope) and paragraph 6 of Article 6 (Basic salary) of the contested Law, in accordance with the Constitution and this Judgment; (viii) until supplementation and amendment of paragraph 2 of Article 2 (Scope) of the contested Law, paragraph 3 of Article 2 (Scope), paragraph 2 of Article 22 (Allowances), paragraph 5 of Article 24 (Allowance for labour market conditions), paragraph 8 of article 25 (Performance allowance), paragraph 7 of Article 28 (Workload allowance) and paragraph 4 of Article 42 (Determining the equivalence), are applied in accordance with the Constitution and this Judgment.

375. In the context of the findings above, the Court recalls that the contested Law before the Court was challenged based on subparagraph (1) of paragraph 2 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, after its entry into force, respectively according to Article 46 (Entry into force) of the contested Law, one (1) month after publication in the Official Gazette of the Republic of Kosovo. On 4 January 2023 the contested Law was decreed by the President of the Republic of Kosovo, on 5 January 2023 it was published in the Official Gazette, while it entered into force on 5 February 2023. Consequently, the contested Law has already produced its effects on the categories to which the salary level has been increased, as well as to the categories whose salary level has been reduced and which have not been subject to protection through the transitional period, namely (i) for all functionaries/officials /servants for the first fifteen (15) years of work experience, because the amount of the allowance for work experience has been halved with the entry into force of the contested Law; and (ii) the foreign service of the Republic of Kosovo, which is exempted from the right to transitory allowance. With the end of the one (1) year period of the transitional period/allowance,

namely from 5 February 2024, with a deduction of fifty percent (50%) of the transitional allowance, all functionaries/officials/servants who come under the scope of the contested Law and whose salary level was reduced according to the provisions of the contested Law would be affected .

376. The findings of the Court, according to the clarifications given in this Judgment, affect the effects of this Law, in two ways. The first is related to the findings of the Court regarding the system of salaries and remunerations and related procedures insofar as they affect the functional, organizational and budgetary independence of independent constitutional institutions; while the second one is related to the findings of the Court regarding the reduction of the salary level of functionaries/officials/servants who enter the scope of the contested Law according to the provisions of the Annexes of the contested Law, according to the following clarifications:

(i) rules and requirements for determining the salary level that are related to the justice system and independent constitutional institutions

377. The Court has found that paragraph 2 of Article 2 (Scope) and paragraph 2 of Article 45 (Repeal), in conjunction with paragraph 2 of Article 24 (Allowance for labour market conditions), paragraph 5 of Article 25 (Performance allowance) and paragraph 4 of Article 28 (Workload allowance) and paragraphs 2 and 3 of Article 42 (Determining the equivalence) of the contested Law, are not in compliance with the Constitution, in terms of functional, organizational and budgetary independence of independent constitutional institutions, with emphasis on the institutions defined through Chapter VII [Justice System], Chapter VIII [Constitutional Court] and Chapter XII [Independent Institutions]. According to the clarifications given in this Judgment, (i) paragraph 2 of Article 2 of the contested Law prevents the independent constitutional institutions from fulfilling their constitutional independence to function with special laws, and limits their functional , organizational and budgetary independence only in the issuance of sub-legal acts in the circumstances specifically determined according to the contested Law; (ii) paragraph 2 of Article 45 of the contested Law repeals any provision of the law and sub-legal act that regulate the issue of salary, compensations, allowances, bonuses or other categories in the field of salaries, including all provisions of special laws related to independent constitutional institutions and their sub-legal acts; and (iii) paragraphs 2 and 3 of Article 42 of the contested Law read together with paragraph 2 of its Article 2, oblige the independent constitutional institutions to subject to the control of the executive power regarding the determination of equivalences, namely the creation of functions, positions and designations in their institutions contrary to the relevant constitutional guarantees and the consolidated case law of the Court.

378. Having said that, according to the clarifications given above in relation to the effect of the Court's Judgments, the latter will not declare invalid paragraph 2 of Article 2 (Scope) of the contested Law, but in the service of the principle of legal certainty, namely avoiding the creation of a legal gap that could affect the implementation of the contested Law in its entirety, will leave the latter in force for the period of six (6) months after the entry into force of this Judgment, determining the obligation of the Assembly, to amend and/or supplement the aforementioned article within this period, in accordance with the principle of legal certainty and the clarity and foreseeability of the norm, so that it is expressly clarified that the independent constitutional institutions regulate and implement the relevant procedures of the contested Law, not only through sub-legal acts, but also special laws in full accordance with their functional, organizational and budgetary independence guaranteed by the Constitution. The legislator followed such an approach in the case of the Law no. 08/L-197 on Public Officials. Whereas, paragraph

2 of Article 45 (Repeal) of the contested Law is declared invalid and repealed by this Judgment.

379. Until the supplement and amendment of the aforementioned article by the Assembly of the Republic of Kosovo, (i) paragraph 2 of article 22 (Allowances); (ii) paragraph 5 of Article 24 (Allowance for labour market conditions); (iii) paragraph 8 of Article 25 (Performance allowance); (iii) paragraph 7 of Article 28 (Workload allowance); and (iv) paragraph 4 of Article 42 (Determining the equivalence) of the contested Law, are interpreted and applied in accordance with the Constitution and this Judgment. More precisely, regarding the employees in (i) the Presidency of the Republic of Kosovo; (ii) the Constitutional Court; (iii) the Justice System; (iv) The Assembly of the Republic of Kosovo, their internal acts are not limited to the determination of the provisions which have been declared contrary to the Constitution. However, and as has been consistently emphasized by the Court in its case law, regardless of functional, organizational and budgetary independence, all institutions of the Republic of Kosovo are subject to the obligation to implement the relevant laws regarding the management of public finances, procedures of the internal audit according to the provisions of the Law no. 06/L-021 on Public Internal Financial Control and the control of the Auditor General of the Republic of Kosovo according to articles 136 and 137 of the Constitution, respectively and the Law no. 05/L-055 on the Auditor General and the National Audit Office of the Republic of Kosovo.

(ii) reduction of the salary level of the functionaries/officials/servants who fall within the scope of the contested Law

380. The Court found that paragraph 6 of Article 6 (Basic salary) and paragraphs 2, 3 and 4 of Article 41 (Transitional allowance) of the contested Law, are contrary to the Constitution, respectively with the right to the peaceful enjoyment of property and equality before the law. This, according to the clarifications given in the Judgment, among other things, because (i) the disproportionate reduction of the salary level of judges and prosecutors in the Republic of Kosovo is in full contradiction with the constitutional and legal principles, the relevant international principles and the case law of the Constitutional Court and beyond the infringement of the respective individual rights, it also results in the infringement of the separation and balancing of powers and values of the Republic of Kosovo; (ii) the reduction of the salary level and the exemption from the rights of the transitional period of the foreign service category of the Republic of Kosovo is completely disproportionate and beyond violating the right to peaceful enjoyment of property, it also violates the principle of equality before the law; (iii) the mechanisms chosen by the Government and the Assembly for the reduction of the salary level of the functionaries/officials/servants that fall within the scope of the contested Law, are not proportional to the goal pursued, and consequently contrary to the criteria established in Article 55 of the Constitution; (iv) determining the difference between functionaries/officials/servants who were employed before or after the entry into force of the contested Law, in the context of the rights defined through the transitional period, affects the rights to equality before the law because it is not proportional to the aim pursued; while (v) the halving of the allowance for work experience for the entire category of functionaries/officials/servants for the first fifteen (15) years of work experience, restricts their fundamental rights and freedoms, without any legitimate aim contrary to the provisions of Article 55 of the Constitution.

381. Having said that, according to the clarifications given above in relation to the effect of the Court's Judgments, the latter (i) will not repeal paragraph 6 of Article 6 (Basic salary) of the contested Law, while (ii) will repeal paragraphs 2, 3 and 4 of Article 41 of the contested Law.

382. This is because, in relation to paragraph 6 of Article 6 of the contested Law, which is related to the salary supplement for work experience, the contested Law in paragraph 1 of its Article 45, has also repealed Law no. 03/L-147 on Salaries of Civil Servants, which includes Article 18 (Allowances on salary for work experience) according to which, for each year of work experience spent in the civil service and outside it, in addition to experience spent in practical work, civil servants according to this law, he is entitled to the additional right to the basic salary of zero point five percent (0.5%). The invalid declaration of paragraph 6 of Article 6 of the contested Law combined with the fact that the Law no. 03/L-147 on Salaries of Civil Servants is also repealed by paragraph 1 of Article 45 of the contested Law, it would result in a legal vacuum, regarding the right to salary allowance for work experience. Consequently, balancing the principle of legal certainty and fundamental rights and freedoms, the Court will leave in force paragraph 6 of Article 6 of the contested Law in the period of six (6) months after the entry into force of this Judgment, determining the obligation of the Assembly to amend and/or supplement paragraph 6 of Article 6 of the contested Law within this period, in accordance with the findings of this Judgment. In amending and/or supplementing paragraph 6 of Article 6 of the contested Law, the Assembly must take into account that the effects of its amendment/supplement in the context of the amount of the allowance for work experience stem from the entry into force of this judgment.

383. Whereas, in the balance between fundamental rights and freedoms and the principle of legal certainty and foreseeability, the Court, through this Judgment, will declare invalid and repeal paragraphs 2, 3 and 4 of Article 41 of the contested Law. The repeal of the paragraphs related to the transitional period, based on paragraph 1 of Article 41 of the contested Law, has the consequence of (i) maintaining the existing level of salaries in the public sector, namely the impossibility of salary deductions until the new salary is made equivalent to the current salary; (ii) the return of the salary at least to the level before the entry into force of the contested Law for the category of the foreign service of the Republic of Kosovo and who did not benefit from the transitory allowance of one hundred percent (100%) during the year 2023, unlike all other categories; and (iii) levelling the salaries of functionaries/officials/servants who were employed after the entry into force of the contested Law according to the provisions of point 1.4 of article 4 (Principles of salary system) of the contested Law.

384. The Court emphasizes that the repeal of paragraph 4 of the aforementioned article, which is related to the category of employees in the public sector after the entry into force of the contested Law, and especially considering the fact that this category has not benefited from the right to property, according to the provisions of Article 46 of the Constitution, is not subject to retroactive effect. In balancing the principle of legal certainty and fundamental rights and freedoms, the Court acted in the same way in similar cases, including in Judgments: (i) KO157/18 regarding the constitutional review of Article 14, paragraph 1.7 of the Law no.03/L-179 on Red Cross of the Republic of Kosovo; and (ii) KO190/19 regarding the constitutional review of Article 8, paragraph 2, of the Law no. 04/L-131 on Pension Schemes Financed by the State in relation to article 5 and 6 of the Administrative Instruction (MLSW) no. 09/2015 on the Categorization of Beneficiaries of Contribute Paying Pensions according to Qualification Structure and Duration of Payment of Contributions . Whereas, the repeal of paragraph 3 of Article 41 of the contested Law, which is related to the category of foreign service as a category whose rights fall within the scope of Article 46 of the contested Law, and as the only category that is excluded from the rights of the transitional period, as far as they are affected by the entry into force of the contested Law and until the entry into force of this Judgment, enjoy the right to legal remedies according to the provisions of Articles 32 and 54 of the Constitution, respectively.

385. Based on the claims and arguments presented before it, the Court did not deal with the Annexes that are an integral part of Article 44 of the contested Law. Despite the fact that (i) based on the contested Law itself, the salary reduction can only be done as a result of a macroeconomic shock which results in a reduction of income and/or a natural disaster within the meaning of Article 131 of the Constitution, namely the proclamation of the state of emergency in the Republic of Kosovo; and (ii) the common denominators of the case law of other Constitutional Courts, the ECtHR and the CJEU, that the salary reduction, in principle, can only be done in circumstances of economic and/or financial crises, the Court has assessed the purpose of the contested Law to create *"a uniform system of salaries in the public sector"*, as a legitimate aim. As a result, it has not declared contrary to the Constitution, Article 44 of the contested Law with respect to the Annexes in relation to paragraph 1 of Article 45 of the contested Law, which include the repeal of a number of provisions of special laws and which regulate the salary of a number of institutions in the Republic of Kosovo. According to the clarifications given in the Judgment, "*a uniform system of salaries in the public sector*", is achieved through paragraph 1 of Article 41 of the contested Law and according to which, if a public official or functionary, before the entry into force of this law was receiving a salary that is higher than the full salary provided for by this law, she/he will receive the new salary according to the provisions of this law and the transitional allowance equal to the difference between the current salary and the new basic salary.

386. Furthermore, the Court notes that, in accordance with the international standards as elaborated through the case law of the ECtHR, the CJEU, but also a considerable number of decisions of other Constitutional Courts, the deduction/reduction of the salary level in public sector in the future, is protected and determined through Article 10 (Lowering the salary level) of the contested Law. According to the clarifications given in the aforementioned practice and standards, any possible reduction of salaries, including in the circumstances allowed by Article 10 of the Law itself, must be proportional to the aim pursued, including by determining *the "fair balance"* between the state and individual rights and freedoms, and the proportional sharing of the burden between them, including not placing a disproportionate burden on only certain sectors.

387. Furthermore, the Court reiterates that the salaries of judges and prosecutors are subject to guarantees arising from international standards and also legal guarantees in the Republic of Kosovo, according to which, they cannot be reduced during the term for which they were elected with the exception of extraordinary circumstances, which are sufficiently justified by economic crises, moreover, that the deduction should be temporary and the same should be reviewed and last only as long as necessary. The Court clarifies that the salaries of the justice system must be preserved and given to them in accordance with the dignity of their work. The same should be subject to evaluation on a regular basis in the context of maintaining the real value of their salary, the same should be adjusted to inflation rates, as well as be subject to linear increase in accordance with the economic development of the country. In this context, the Court also notes that through paragraph 1 of Article 45 of the contested Law, the guarantees of maintaining the salary of judges and prosecutors during the mandate for which they were appointed are also abolished. More precisely, the Court notes that the aforementioned article, among other things, repeals (i) paragraph 2 of article 15 (Salary and judicial compensation) of the Law no. 06/L-054 on Courts and which determines that a judge's salary will not be reduced during the term in which the judge is appointed, except for disciplinary sanctions imposed under the authority of the Kosovo Judicial Council; and (ii) point 1.10 of article 21 (Compensation of state prosecutors) of the Law no. 03/L-225 on the State Prosecutor, which determines that regardless of any other provision of the law, the salary of state prosecutors will not be reduced during their service period unless this is determined as a sanction by the Prosecutorial Council or the Council Disciplinary Commission based on the determination that the state

prosecutor has committed misconduct or any criminal offense, this guarantee in the context of prosecutors, which has now been repealed by the Law no. 08/L-167 on the State Prosecutor, which was approved after the adoption of the contested Law. That said, and taking into account that the contested Law, by paragraph 1 of Article 10 (Lowering the salary level), contains in itself the same guarantees for maintaining the salary level of the judge and the prosecutor, as determined by the special laws for this category of public officials, except for the circumstances of macroeconomic shocks and the declaration of a state of emergency, always under the condition of proportionality and a fair balance, the Court does not consider it necessary to declare paragraph 1 of Article 45 [Repeal] of the contested Law contrary to the Constitution.

388. Finally, the Court considers it important to reiterate the findings of its previous Judgment KO219/19 regarding salaries in the public sector, namely the obligation of the Government, as the proposer of the laws, and of the Assembly, as the legislator that ultimately adopts the laws proposed by the Government, that during the drafting of legislation related to salaries in the public sector, either through a general law or through some special laws or even the amendment of existing laws, take into account the principles of equality before the law and the equal treatment of all persons whose rights are affected by any type of legal supplement or amendment. The Government and the Assembly must ensure that (i) the constitutional values of equality before the law and non-discrimination are respected in all circumstances and that any legal regulation is in accordance with Articles 3 and 24 of the Constitution in conjunction with Article 14 of the ECHR and in accordance with the case law of the Constitutional Court and that of the ECtHR; and (ii) that the right to property is respected in all circumstances and that any legal regulation is in accordance with Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, as well as in accordance with the case law of the Constitutional Court and that of the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with subparagraph (1) of paragraph 2 of Article 113 and paragraph 2 of Article 116 of the Constitution, in accordance with articles 22, 27, 29 and 30 of the Law and based on Rule 48 (1) (a) of the Rules of Procedure, on 26 December 2023, unanimously:

DECIDES

I. TO DECLARE, the Referral admissible;

II. TO HOLD, that paragraph 2 of article 2 (Scope) and paragraph 2 of article 45 (Repeal) in conjunction with paragraph 2 of article 24 (Allowances for labor market conditions), paragraph 5 of article 25 (Performance Allowance), paragraph 4 of article 28 (Allowance for labor market conditions) and paragraphs 2 and 3 of article 42 (Determining the equivalence) of Law no. 08/L-196 on Salaries in the Public Sector, are not in compliance with paragraph 1 of article 4 [Form of Government and Separation of Power] and paragraph 1 of article 7 [Values] of the Constitution of the Republic of Kosovo;

III. TO HOLD, that paragraph 6 of article 6 (Basic Salary) of Law no. 08/L-196 on Salaries in the Public Sector, is not in compliance with paragraphs 1 and 2 of article 46 [Protection of Property] of the Constitution, in conjunction with article 1 (Protection of property) of Protocol no.1 of the European Convention on Human Rights;

IV. TO HOLD, that paragraph 2 of article 41 (Transitional allowance) of Law no. 08/L-196 on Salaries in the Public Sector, is not in compliance with paragraphs 1 and 2 of article 46 [Protection of property] of the Constitution, in conjunction with article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights and paragraph 1 of article 4 [Form of Government and Separation of Power] and paragraph 1 of article 7 [Values] of the Constitution;

V. TO HOLD, that paragraph 3 of article 41 (Transitional allowance) Law no. 08/L-196 on Salaries in the Public Sector, is not in compliance with paragraphs 1 and 2 of article 46 [Protection of Property] of the Constitution, in conjunction with article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights and paragraph 1 of article 24 [Equality Before the Law] of the Constitution, in conjunction with article 14 (Prohibition of discrimination) of the European Convention on Human Rights;

VI. TO HOLD, that paragraph 4 of article 41 (Transitional allowance) of Law no. 08/L-196 on Salaries in the Public Sector, is not in compliance with paragraph 1 of article 24 [Equality Before the Law] of the Constitution, in conjunction with article 1 (General prohibition of discrimination) of Protocol no.12 of the European Convention on Human Rights;

VII. TO DECLARE, invalid, paragraphs 2, 3 and 4 of article 41 (Transitional allowance) and paragraph 2 of article 45 (Repeal) of Law no. 08/L-196 on Salaries in the Public Sector, upon entry into force of this Judgment;

VIII. TO ORDER, in accordance with paragraph 1 of article 116 [Legal Effect of Decisions] of the Constitution, the Assembly of the Republic of Kosovo, within six (6) months from the entry into force of the Judgment, to

undertake the necessary actions for the supplementation and amendment of paragraph 2 of article 2 (Scope) and paragraph 6 of article 6 (Basic Salary) of Law no. 08/L-196 on Salaries in the Public Sector, in compliance with the Constitution and this Judgment;

IX. TO HOLD, that until the supplementation and amendment of paragraph 2 of article 2 (Scope) of Law no. 08/L-196 on Salaries in the Public Sector by the Assembly of the Republic of Kosovo, paragraph 3 of article 2 (Scope), paragraph 2 of article 22 (Allowances), paragraph 5 of article 24 (Allowances for labor market conditions), paragraph 8 of article 25 (Performance allowance), paragraph 7 of article 28 (Workload allowance) and paragraph 4 of article 42 (Determining the equivalence), shall be applied in compliance with the Constitution and this Judgment;

X. TO REQUEST, the Assembly and the Government of the Republic of Kosovo, that in accordance with paragraph (5) of rule 60 (Enforcement of Decisions) of the Rules of Procedure, to notify the Constitutional Court of the Republic of Kosovo regarding the measures taken to implement this Judgment;

XI. TO NOTIFY, this Judgement to the parties;

XII. TO PUBLISH, this Judgment in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 4 of Article 20 (Decisions) of the Law;

XIII. This Judgment, based on paragraph 5 of Article 20 (Decisions) of the Law, enters into force on 1 February 2024.

Judge Rapporteur	**President of Constitutional Court**
Safet Hoxha	Gresa Caka Nimani

This translation is unofficial and serves for informational purposes only.