



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

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Prishtina, on 7 June 2024  
Ref. no.: RK 2418/24

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**case no. KI42/24**

Applicant

**Vasilije Arsić**

**Constitutional review of the Regulation on Cash Operations of the Central Bank  
of the Republic of Kosovo**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

### **Applicant**

1. The Referral was submitted by Vasilije Arsić, a lawyer from the municipality of Ranillug (hereinafter: the applicant).

## **Challenged decision**

2. The applicant challenges the constitutionality of the Regulation on Cash Operations of the Central Bank of the Republic of Kosovo (hereinafter: the CBK Regulation).
3. The applicant requests the imposition of the interim measure in order to “*suspend the validity*” of Article 35 (Euro currency) of the CBK Regulation.

## **Subject matter**

4. The subject matter is the constitutional review of the CBK Regulation through which it is claimed that the applicant’s fundamental rights guaranteed by articles 7 [Values], 11 [Currency], 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality Before the Law], 25 [Right to Life], 46 [Protection of Property], 49 [Right to Work and Exercise Profession], 51 [Health and Social Protection], 57 [General Principles], 58 [Responsibilities of the State] and 59 [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

## **Legal basis**

5. The referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals) and 47 (Individual Requests) of the 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 20 February 2024, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 21 February 2024, the President of the Court by Decision [GJR. No. KI42/24] appointed Judge Enver Peci as Judge Rapporteur and by Decision [KSH. No. KI42/24] the Review Panel, composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci (members).
8. On 23 February 2024, the applicant submitted additional documents, mainly clarifying issues of procedural legitimacy and exhaustion of legal remedies.
9. On 11 March 2024, Judge Jeton Bytyqi took an oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.
10. On 20 March 2024, the applicant was notified about the registration of the referral and a copy was sent to the CBK, with the possibility of providing comments regarding the claims raised by the applicant.
11. On 3 April 2024, the CBK submitted comments regarding the claims raised in the applicant’s referral.
12. Judge Radomir Laban did not participate in the review and decision-making process regarding this case, based on the Decision [No. Ref.: KK280/24] of 8 May 2024 through which his request for recusal from the review and decision-making process related to referral no. KI42/24 was approved.

13. On 14 May 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the referral.

### **Summary of facts**

14. On 27 December 2023, the CBK Board based on the relevant provisions of Law no. 03/L-209 on the Central Bank of the Republic of Kosovo, approved the Regulation on Cash Operations, which entered into force on 1 February 2024.
15. Article 35 (Euro currency) of the aforementioned CBK Regulation, which is the subject of the applicant's allegations, establishes: *"1. The only currency allowed to be used for carrying out cash payment transactions and in the payment system in the Republic of Kosovo is euro, as the only currency also within the meaning of Article 11 of the Constitution of the Republic of Kosovo and Articles 16, 17 and 18 of Law No. 03/L-209 on Central Bank of the Republic of Kosovo. 2. Central Bank of the Republic of Kosovo is the only monetary authority that can decide on the permitted denominations of the euro currency for circulation in the Republic of Kosovo."*

### **Applicant's allegations**

16. The applicant claims that his fundamental rights guaranteed by articles 7 [Values], 11 [Currency], 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality Before the Law], 25 [Right to Life], 46 [Protection of Property], 49 [Right to Work and Exercise Profession], 51 [Health and Social Protection], 57 [General Principles], 58 [Responsibilities of the State] and 59 [Rights of Communities and Their Members] of the Constitution have been violated.
17. The applicant claims that the implementation of Article 35 (Euro currency) of the contested CBK Regulation violates *"a number of human rights guaranteed by the Constitution, as well as by international conventions that are applied directly based on Article 22 of the Constitution"*.
18. In this context, the applicant alleges: (i) with the implementation of rule 35 (Euro currency) of the contested CBK Regulation, the entry of dinars into the territory of Kosovo is confiscated or prohibited, in which case it affects the salaries and pensions of citizens who receive income in dinars; (ii) the CBK has not yet implemented the measures to accept income in euro currency; (iii) the implementation of rule 35 (Euro currency) of the contested CBK Regulation violates the property rights of citizens without compensation; and therefore, (iv) the citizens of Kosovo remain without their income, which is contrary to the fundamental rights guaranteed by the Constitution.
19. The applicant claims that Article 35 (Euro currency) of the contested CBK Regulation is not proportionate, stating that *"Although the holders of public authority in Kosovo justify the implementation of the contested regulation in its entirety in the above manner with the fact that it has a legitimate purpose, the legitimate purpose must not be applied in a disproportionate manner, in accordance with Article 18 of the European Convention on Human Rights and Fundamental Freedoms, which applies directly on the basis of Article 22 of the Constitution, and such an application, which seriously infringes upon the fundamental human rights, is certainly disproportionate and it is indisputable that Article 35 of the Regulation is implemented in precisely such a manner."*
20. The applicant claims that Article 35 (Euro currency) of the contested regulation is indirectly discriminatory against the Serb community in Kosovo and adds that its

application constitutes indirect discrimination, despite the fact that it does not contain expressly any discriminatory provision.

21. The applicant alleges that Article 35 (Euro currency) of the contested Regulation is contrary to the jurisprudence of the ECtHR which establishes that limitations on human rights must be based on law and if they are based on law, the limitations must also have a legitimate purpose, be proportionate and necessary in a democratic society. In this regard, the applicant emphasizes that Article 1 of Protocol no. 1 of the ECHR defines “*expressis verbis*” that interference with property rights can only be done in the manner provided by law.
22. The applicant claims that the contested CBK Regulation regulates issues which, according to the Constitution, should have been regulated by a law approved by the Assembly of the Republic of Kosovo. The applicant emphasizes that the contested Regulation of the CBK is expressly contrary to the Constitution and, as such, cannot be part of the legal-constitutional order of the Republic of Kosovo.
23. The applicant alleges that the implementation of Article 35 of the contested Regulation affects pensions that are protected by guarantees for the right to property and emphasizes: (i) the implementation of the contested CBK Regulation affects legally acquired rights such as salaries and pensions; (ii) based on the case law of the ECtHR, salaries and pensions are protected by Article 1 of Protocol no. 1 of the ECHR; consequently, (iii) Article 1 of Protocol no. 1 of the ECHR is applicable in the circumstances of the present case.
24. The applicant alleges that the contested Regulation is neither a formal law nor a substantive law and adds that the implementation of rule 35 (Euro currency) of the contested CBK Regulation affects the rights acquired through contributions and other social benefits enjoyed by protection from article of Protocol no. 1 of the ECHR.
25. The applicant states that the contested Regulation of the CBK was not adopted in consultation with the community and alleges: (i) the contested CBK Regulation mainly affects members of the Serb community; (ii) the contested regulation of the CBK was adopted contrary to the provisions of articles 57-59 of the Constitution and article 15 of the Framework Convention of the Council of Europe for the Protection of Minorities, which are directly applicable based on article 22 of the Constitution.
26. The applicant claims that he has the procedural legitimacy to submit the referral to the Court and adds that the latter is competent to decide on this referral. In this regard, the applicant claims that based on Article 112 of the Constitution: (i) the Court is the final authority for the interpretation of the Constitution and the compatibility of laws with the Constitution; and (ii) the Court has jurisdiction and it is within its scope to review the referral.
27. The applicant emphasizes that the Court is a protector of the rule of law and adds: (i) the contested CBK regulation violates the rule of law and fundamental human rights; and, (i) the Court being the final authority in the interpretation of the Constitution, has indisputable jurisdiction to consider the allegations raised in this referral.
28. Regarding the obligation to exhaust legal remedies, the applicant claims: “*There is no prior legal remedy against the acts that affect the applicant, as they are factual actions, taken on the basis of Article 35 of the Regulation on cash operations, which violate the fundamental human rights guaranteed by the Constitution, which cannot be appealed, namely, it is not possible to effectively eliminate the violation of human rights mentioned in the referral by other legal remedies, and the applicant can only*

*turn to the Constitutional Court as the supreme protector of constitutionality and the guardian of the Constitution.”*

29. The applicant requests the Court to render a decision: *“IT IS FOUND THAT Article 35 of the Regulation on cash operations was not rendered in accordance with Articles 7, 11, 22, 23, 24, 25, 46, 49, 51, 57, 58 and 59 of the Constitution of Kosovo, as well as Article 16 of Law 03/L-209 on the Central Bank of the Republic of Kosovo, therefore, it is declared UNCONSTITUTIONAL and is repealed.”*
30. In this regard, the applicant claims that the implementation of the contested Regulation causes irreparable damage to the citizens of Kosovo and requests the imposition of an interim measure: *“In accordance with Article 27 of the Law on the Constitutional Court, the validity of Article 35 of the Regulation on cash operations is SUSPENDED until the final decision on its constitutionality is taken. This decision enters into force immediately after it is rendered.”*

### **Comments submitted by CBK**

31. In the comments submitted on 3 April 2024, the CBK emphasized: *“the CBK, after examining the submitted referral, assesses that the Constitutional Court should: (i) consider the submitted referral inadmissible due to non-exhaustion of regular legal remedies; and (ii) only if the Constitutional Court considers the referral admissible, then it should reject it as ungrounded because Article 35 of the Regulation on Cash Operations is in compliance with the constitutional provisions, and (iii) reject the request for an interim measure.”*
32. In the context of the obligation to exhaust legal remedies, the CBK emphasized: (i) the Court in the case law has assessed that the rule for exhausting legal remedies is of a binding nature for individuals who submit individual referrals against the acts of public authorities; (ii) compliance with the obligation to exhaust legal remedies, allowing the regular courts to correct flaws through the regular court process; (iii) the protection mechanism of the Constitutional Court is of a subsidiary nature; (iv) the standards established by the Court in cases KI16/11 and KI130/22, sub-legal acts such as the contested Regulation of the CBK through the relevant law for initiating administrative conflicts; and, (v) as a consequence, the applicant has available effective legal remedies which he has failed to prove to be ineffective.
33. In the context of the compatibility of the contested Regulation of the CBK with the Constitution, the CBK emphasizes: (i) the CBK is an independent constitutional institution, established in accordance with Article 11 [Currency] and Article 140 [Central Bank of Kosovo] of the Constitution, as the only central banking authority; (ii) Article 11 of the Constitution stipulates that in the Republic of Kosovo a single currency is used as a valid means of payment, and that the Central Banking Authority is the Central Bank of the Republic of Kosovo; (iii) this provision affirms the fact that the organic function of a central banking authority is to ensure the implementation of a single currency in the Republic of Kosovo; (iv) the organic function of CBK is further elaborated by Law No. 03 /L-209 on the Central Bank of the Republic of Kosovo; (v) articles 7, 8 and 22 of Law No. 03 /L-209 on the Central Bank establishes: a) the primary objective of the CBK is to maintain and foster the safe, stable and efficient payment system; b) ensuring the appropriate supply of banknotes and coins in the Republic of Kosovo; and c) CBK approves Regulations for the oversight and issuance and quality of payment instruments.
34. In the context of the legitimate purpose for issuing the contested Regulation of the CBK, the CBK emphasizes: *“The adoption of the Regulation was an action in the*

*achievement of legitimate goals and in proportion to the events that took place especially during 2023, such as the appearance of counterfeit money with the two (2) euro coin, followed by the suspicions about banknotes, as well as the danger that came from not controlling currency inflows and outflows in the country. All these negative phenomena have endangered the integrity of the financial system and the euro itself in the Republic of Kosovo, and as a result, the CBK, in accordance with its legal objectives and duties, has interfered with the adoption of the Regulation. The effects of the regulation in its entirety have been made public by the CBK and can be found on its official website.”*

35. In the context of allegations of discrimination, the CBK emphasizes: (i) Article 35 of the Regulation is of a universal nature and does not affect any particular community, but affects all communities living in the Republic of Kosovo equally; (ii) the applicant’s allegation that the CBK would have to conduct special consultations only with a certain community is not grounded, nor it is the work practice of Central Banks; (iii) the CBK has developed the legislative process in accordance with Article 65 of the Law on CBK, and has determined the deadline of 1 February 2024 as the date of entry into force, while the Regulation has been approved on 27 December 2023; and, (iv) also, it is worth noting that the use of the euro currency as the only valid means of payment is not a legislative innovation in the Republic of Kosovo stipulated by Article 35 of the Regulation, since this was predetermined by the Law of CBK and other legislative acts.

## **Relevant constitutional and legal provisions**

### **Constitution of the Republic of Kosovo**

#### **Article 11 [Currency]**

*“1. The Republic of Kosovo uses as legal tender one single currency.  
2. The Central Banking Authority of Kosovo is independent and is called the Central Bank of the Republic of Kosovo.”*

#### **Article 46 [Protection of Property]**

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

#### **Article 53 [Interpretation of Human Rights Provisions]**

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

## **European Convention on Human Rights**

### **Article 1 of Protocol no. 1 (Protection of property)**

*“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.*

*. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

## **LAW No. 03/L-202 ON ADMINISTRATIVE CONFLICTS**

### **Article 13 Administrative conflict**

*“1. An administrative conflict can start only against the administrative act issued in the administrative procedure of the court of appeals.*

*2. An administrative conflict can start also against the administrative act of the first instance, against which in the administrative procedure, complain is not allowed.”*

### **Article 14 No title**

*“An administrative conflict can also start when a competent body has not issued the relevant administrative act according to the request or complain of the party, under the conditions foreseen by this law.”*

## **LAW No. 03/L-209 ON CENTRAL BANK OF THE REPUBLIC OF KOSOVO**

### **Article 16 Issuance of currency**

*“1. The currency of Kosovo shall be determined by Law in accordance with Article 11 of the Constitution.*

*2. No other legal or natural person other than the Central Bank shall have the right to issue banknotes and coins.*

*3. The Central Bank shall be responsible for maintaining an appropriate supply of banknotes and coins in Kosovo.”*

## **REGULATION ON CASH OPERATIONS**

### **Article 35 Euro currency**

*“1. The only currency allowed to be used for carrying out cash payment transactions and in the payment system in the Republic of Kosovo is euro, as the*

*only currency also within the meaning of Article 11 of the Constitution of the Republic of Kosovo and Articles 16, 17 and 18 of Law No. 03/L-209 on Central Bank of the Republic of Kosovo.*

*2. Central Bank of the Republic of Kosovo is the only monetary authority that can decide on the permitted denominations of the euro currency for circulation in the Republic of Kosovo.”*

### **Admissibility of the Referral**

36. The Court first examines whether the applicant’s referral has met the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

37. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

*“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*[...]*

*7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.*

38. In addition, the Court refers to Article 47 (Individual Requests) of the Law and item (b) of paragraph (1) of Rule 34 of the Rules of Procedure, which establish:

#### Article 47 (Individual Requests)

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

#### Rule 34 (Admissibility Criteria)

*“1. The Court may consider a referral as admissible if:*

*[...]*

*(b) All effective remedies foreseen by law against the challenged act have been exhausted.”*

39. Based on the aforementioned provisions, the Court recalls that based on the Constitution of the Republic of Kosovo, all individuals are authorized to raise violations by public authorities of their individual rights and freedoms, guaranteed by the Constitution, but only after they have exhausted all legal remedies established by law. Moreover, according to paragraph 1 of Article 47 (Individual Requests) of the Law, every individual has the right to seek legal protection from the Constitutional Court in case he considers that his rights and freedoms guaranteed by the Constitution have been violated by any public authority. According to paragraph 2 of the same article, the individual can submit the referral in question only after exhausting all legal remedies established by law.



40. In that way, the regular courts must be afforded the opportunity to correct their errors through a regular judicial proceeding before the case arrives to the Constitutional Court. The rule is based on the assumption, reflected in Article 32 of the Constitution and Article 13 of ECHR that under the domestic legislation there are available legal remedies to be used before the regular courts in respect of an alleged breach regardless whether or not the provisions of the ECHR are incorporated in national law (see cases of the Court [KI179/20](#), applicant *Kosovo Telecom J.S.C.*, Resolution on Inadmissibility, of 27 January 2021, paragraph 94; and [KI19/20](#) applicant *Lutfi Shantir*, Resolution on Inadmissibility of 22 July 2020, paragraph 36; see also ECtHR case *Aksoy v. Turkey*, no. 21987/93 Judgment of 18 December 1996, paragraph 51). Furthermore, the principle is that that the protection mechanism established by the Constitutional Court is subsidiary to the regular system of judiciary safeguarding human rights (see the case of the Court [KI19/20](#) applicant *Lutfi Shantir*, cited above, paragraph 37; and see also the ECtHR case, *Handyside v. the United Kingdom*, no. 5493/72, Judgment of 7 December 1976, paragraph 48).
41. Based on Article 113.7 of the Constitution, the Applicant should have a regular way to the legal remedies which are available and sufficient to ensure the possibility to put right the alleged violations. The existence of such legal remedies must be sufficiently certain not only in theory but also in practice, and if this is not so, those legal remedies will lack the requisite accessibility and effectiveness (see cases of the Court [KI57/22](#) and [KI79/22](#), applicant *Shqipdon Fazliu and Armend Hamiti*, Resolution on Inadmissibility, of 4 July 2022, paragraph 74; and [KI221/19](#) applicant *Hashim Gashi, Selajdin Isufi, B.K., HZ., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I. and S.R.*, Resolution on Inadmissibility, of 11 November 2020, paragraphs 56-57; see also cases of the ECtHR *Akdivar and others v. Turkey*, no. 21893/93, Judgment, of 1 April 1998, paragraph 69; *Öcalan v. Turkey*, no. 46221/99, Judgment of 12 May 2005, paragraphs 63-72; and *Kleyn and others v. the Netherlands*, no. 39343/98 and 3 others, Judgment of 6 May 2003, paragraphs 155-162).
42. It falls to the Court to examine whether the legal remedies have been exhausted, and whether the legal remedy was effective, available in theory and practice at the relevant time, that is, that the remedy was accessible, and that it could redress the violations in relation to the objections of the Applicant and that it enables reasonable prospect for success (see cases of the Court [KI57/22](#) and [KI79/22](#), applicants *Shqipdon Fazliu and Armend Hamiti*, cited above, paragraph 74; [KI221/19](#) applicants *Hashim Gashi, Selajdin Isufi, B.K., HZ., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I. and S.R.*, cited above, paragraphs 56-57; and [KI19/20](#) applicant *Lutfi Shantir*, cited above, paragraph 39; see also case of the ECtHR, *Civet v. France* no. 29340/95, Judgment of 28 September 1999, paragraphs 42-44).
43. However, when a legal remedy is provided by law, it is up to the Applicant to prove that the legal remedy provided by law has in fact been exhausted, or that for any reason it was not available and effective in the particular circumstances of the case, or that there have been special circumstances due to which he or she is exempted from the requirements of exhaustion of legal remedies (see cases of the Court [KI130/22](#), applicant *Florina Jerliu*, Resolution on Inadmissibility of 12 April 2023, paragraph 43; and [KI19/20](#) applicant *Lutfi Shantir*, cited above, paragraph 40).
44. The Court recalls the reasoning of the applicant for non-exhaustion of legal remedies: *“There is no prior legal remedy against the acts that affect the applicant, as they are factual actions, taken on the basis of Article 35 of the Regulation on cash operations, which violate the fundamental human rights guaranteed by the Constitution, which cannot be appealed, namely, it is not possible to effectively eliminate the violation of human rights mentioned in the referral by other legal remedies, and the applicant can*

*only turn to the Constitutional Court as the supreme protector of constitutionality and the guardian of the Constitution.”*

45. The Court notes that in the circumstances of the present case, the applicable laws refer to the legal remedies provided by Law no. 03/L-202 on Administrative Conflicts (hereinafter: LAC). The Court emphasizes that articles 13 and 14 of the LAC, which are related to the possibility of initiating an administrative conflict, establish: (i) an administrative conflict can only be initiated against the administrative act issued in the administrative procedure in the second instance; (ii) the administrative conflict can also be initiated against the administrative act of the first instance, against which in the administrative procedure the appeal is not allowed; and, (iii) the administrative conflict can be initiated even when the competent body has not issued a relevant administrative act according to the party's request or complaint, under the conditions provided by this law (see, among others, the cases of the Court [KI130/22](#), applicant *Florina Jerliu*, cited above, paragraph 45; and [KI147/18](#), applicant *Arbër Hadri*, Resolution on Inadmissibility, of 4 September 2019, paragraphs 52 and 53).
46. The Court considers that the burden of proof falls on the applicant, namely, he must prove why the available legal remedies are not sufficiently certain not only in theory but also in practice and why they are not accessible and effective. In the circumstances of the present case, the Court considers that the Applicant has not provided any argument regarding the above-mentioned legal remedies and has not argued why those legal remedies are unable to provide a solution or do not offer any reasonable prospect of success regarding his claims for constitutional violation (see Court cases [KI130/22](#), applicant *Florina Jerliu*, cited above, paragraph 46; and [KI147/18](#), applicant *Arbër Hadri*, cited above, paragraphs 56 and 57).
47. The Court, based on Article 113.7, puts into operation its revisional and subsidiary jurisdiction for all individual requests on the respect of constitutional rights, which also have normative sub-legal act as the subject of dispute. Revisional jurisdiction as such is activated after the exhaustion of legal remedies. According to the Court's point of view, the border where the jurisdiction of judicial control over normative sub-legal acts begins and ends and where the jurisdiction of the Constitutional Court begins is well defined when it comes to the exercise of the Court's subsidiary (revision) jurisdiction. In this regard, as the applicants have received a final answer from the regular courts, on the basis of their lawsuit on their dispute against the legality of the sub-legal normative act, such as the contested CBK Regulation, then the latter is legitimized to articulate claims for violation of the fundamental rights and freedoms in the individual constitutional complaint. (see case of the Court [KI10/22](#) applicant, *Trade Union of the Institute of Forensic Medicine*, Judgment of 18 July 2022, paragraph 77).
48. Therefore, the Court also emphasizes the study of the Venice Commission, which assesses that in relation to the types of norms that can be presented for constitutional review, the constitutional court should be tasked only with verifying the constitutionality of legal acts, leaving in principle the control of sub-legal acts to regular courts, in order to avoid its backlog. (see Court's case [KI10/22](#) applicant, *Trade Union of the Institute of Forensic Medicine*, cited above, paragraph 79; also, see study no. 538/2009 [CDL-AD(2010)039rev.] on the individual approach to the constitutional judiciary, adopted by the Venice Commission at its 85th session (December 17-18 2010), paragraph 6).
49. The Court assesses that in the circumstances of the present case, the applicant - in accordance with the subsidiary nature of the individual constitutional complaint - should have first challenged the contested Regulation of the CBK in the procedure before the regular courts as provided by the law in force. The Court in its case law has held the position that regular courts have jurisdiction to assess the legality of sub-legal acts such

as the contested CBK Regulation (see the case of the Court [KI10/22](#) applicant, *Trade Union of the Institute of Forensic Medicine*, cited above, paragraphs 76-82; and [KI130/22](#), applicant *Florina Jerliu*, cited above, paragraph 47).

50. The Court finds that the applicant has failed to justify why the regular legal remedies before the regular courts for some reason were not available to him or were ineffective in special circumstances of the case or that there were special circumstances due to which he would be released from the obligation to exhaust all legal remedies.
51. From the above, the Court concludes that the applicant's referral should be declared inadmissible because all legal remedies have not been exhausted in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 34 (1) (b ) of the Rules of Procedure.

### **Request for interim measure**

52. The Court notes that the Applicant requests the Court to impose an interim measure, in order to "*suspend validity*" of Article 35 (Euro currency) of the CBK Regulation.
53. Given that the Court has already found that the applicant's referral is premature, the latter finds that the request for an interim measure should be rejected in accordance with rules 44 and 45 of the Rules of Procedure (see, among others, the case of the Court [KI65/22](#) applicant, *company "Fitorja" l.l.c.*, Resolution on Inadmissibility of 23 February 2023, paragraph 71).
54. For this reason, the request for interim measure is to be rejected.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Articles 113 (1) and (7) and 116 (2) of the Constitution, Articles 20, 27 and 47 of the Law and Rule 48 (1) (b) of the Rules of Procedure, in the session held on 14 May 2024, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for imposition of the interim measure;
- III. TO NOTIFY this decision to the parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law.

**Judge Rapporteur**

**President of the Constitutional Court**

Enver Peci

Gresa Caka-Nimani

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