



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

---

Prishtina, on 26 June 2023  
Ref. no.: AGJ 2459/23

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

## **JUDGMENT**

in

**case no. KO157/23**

Applicant

**Vlora Dumoshi and 11 other deputies**

**Constitutional review of Decision no. 08-V-583 of the Assembly of the Republic of Kosovo, of 13 July 2023, on the dismissal of the member of the Board of the Procurement Review Body**

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

composed of:

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

#### **Applicant**

1. The Referral was submitted by 12 (twelve) deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), namely deputies: Vlora Dumoshi, Ariana Musliu-Shoshi, Rrezarta Krasniqi, Driton Selmanaj, Duda Balje, Valentina Bunjaku-Rexhepi, Ferat Shala, Enver Hoxhaj, Ramush Haradinaj, Besnik Tahiri, Pal Lekaj and Time Kadrijaj (hereinafter: the applicants).

2. The applicants are represented before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) by deputy Vlora Dumoshi.

### **Challenged act**

3. The Applicants challenge Decision [no. 08-V-583] of 13 July 2023 of the Assembly of the Republic of Kosovo (hereinafter: contested Decision) on the dismissal of Ms. Kimete Gashi, from the position of member of the Board of the Procurement Review Body (hereinafter: PRB Board).

### **Subject matter**

4. The subject matter of the referral is the constitutional review of the contested Decision, which the applicants claim is not in compliance with Article 3 [Equality Before the Law], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], paragraph 1 of Article 65 [Competencies of the Assembly] as well as Article 142 [Independent Agencies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
5. The applicants also request the imposition of an interim measure related to the present case, claiming that *“Failure to impose the interim measure would have irreparable consequences because the termination of the mandate of PRB member Ms. Kimete Gashi, would make the PRB dysfunctional until the selection of new members.”*

### **Legal basis**

6. The Referral was submitted based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals), 27 (Interim Measures), 42 (Accuracy of the Referral) and 43 (Deadlines) of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and rules 25 (Filing of Referrals and Replies), 44 (Request for Interim Measures), 45 (Decision-making Regarding the Request for Interim Measure), 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) and 44 (Request for Interim Measures) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

### **Proceedings before the Court**

7. On 20 July 2023, the applicants submitted the referral to the Court.
8. On 26 July 2023, the President of the Court by Decision [No. KO157/23] appointed Judge Enver Peci as Judge Rapporteur and the Review Panel composed of judges: Selvete Gërzhaliu-Krasniqi (Presiding), Radomir Laban and Nexhmi Rexhepi (members).
9. On 31 July 2023, the Court notified the General Secretary of the Assembly of the Republic of Kosovo (hereinafter: the Secretary of the Assembly) about the registration of the referral and requested that by 14 August 2023 submit to the Court all relevant documents related to the contested Decision.
10. On 31 July 2023, the applicants were notified about the registration of the referral, who were also asked to submit the power of attorney proving that they are represented before the Court by Ms. Vlora Dumoshi.

11. On the same date, the Court notified about the registration of the referral (i) the President of the Assembly of the Republic of Kosovo (hereinafter: the President of the Assembly), who was asked to send a copy of the referral to all deputies of the Assembly; (ii) the Ombudsperson; and (iii) Procurement Review Body (hereinafter: PRB). The Court notified the interested parties mentioned above that their comments, if any, should be submitted to the Court within the 15 day deadline, namely until 14 August 2023, to the electronic address of the Court or by personal delivery.
12. On the same date, the Court also notified (i) the President of the Republic of Kosovo (hereinafter: the President); as well as (ii) the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister).
13. On 2 August 2023, the Secretary of the Assembly submitted the following documents to the Court:
  1. *Invitation with agenda for holding the plenary session on 13.07.2023;*
  2. *Report with recommendation of the functional Committee on Budget, Labor and Transfer regarding the proposal-Decision of the Government of the Republic of Kosovo for the dismissal of Ms. Kimete Gashi from the position of the Board member in the Procurement Review Body of 10 July 2023;*
  3. *Minutes of the meetings of the functional Committee on Budget, Labor and Transfer, on 17 and 24 May and 10 July 2023;*
  4. *Decision of the Assembly of the Republic of Kosovo, no.-08-V-583 of 13 July 2023, for the dismissal of Ms. Kimete Gashi from the position of Board member in the Procurement Review Body;*
  5. *Parts of the transcript of the plenary session of the Assembly of the Republic of Kosovo, held on 13 July 2023.*
14. On 3 August 2023, the President of the Assembly requested the Court to postpone the deadline for submission of comments because the Assembly has closed the spring work session on 28 July 2023 and that the deputies are on vacation until the start of the autumn session, namely on 11 September 2023.
15. On 14 August 2023, Mrs. Mimoza Kusari-Lila, as the chairperson of the Parliamentary Group of the VETËVENDOSJE! Movement, submitted comments regarding referral KO157/23.
16. On 15 August 2023, the Court notified the President of the Assembly of the approval of the request to postpone the deadline for submission of comments and at the same time set a new deadline for submission of comments until 26 September 2023.
17. On 14 September 2023, the applicants submitted the authorization with signatures authorizing Ms. Vlora Dumoshi as their representative in the procedure at the Constitutional Court.
18. On 2 October 2023, the Court notified (i) the applicants; (ii) the President; (iii) the President of the Assembly; (iv) the Prime Minister; (v) the Ombudsperson; and (vi) the PRB, regarding the comments received by the Parliamentary Group of the VETËVENDOSJE! Movement! with the opportunity to submit comments until 11 October 2023.
19. On 4 October 2023, the applicants submitted responses regarding the comments submitted by the Parliamentary Group of the VETËVENDOSJE Movement!.

20. On 17 October 2023, the Court notified (i) the President; (ii) the President of the Assembly; (iii) the Prime Minister; (iv) the Ombudsperson; and (v) the PRB, about the response of the applicants to the comments submitted by the Parliamentary Group of the VETËVENDOSJE! Movement.
21. 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.
22. On 17 May 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral. On the same date, the Court decided (i) unanimously to declare the referral admissible; and (ii) with eight (8) votes for and one (1) against that Decision [no. 08-V-583] of 13 July 2023 of the Assembly of the Republic of Kosovo on the dismissal of the PRB Board member, is not in compliance with paragraph 9 of article 65 [Competencies of the Assembly] and paragraph 1 of article 142 [Independent Agencies] of the Constitution.
23. In accordance with Rule 56 (Dissenting Opinions) of the Rules of Procedure, Judge Radomir Laban has prepared a dissenting opinion which will be published together with this Judgment.

### **Summary of facts**

24. From the case file, it turns out that the Ministry of Health, as the Contracting Authority, had started the procurement procedure with procurement number 206-20-8397-1-1-1. In this procurement procedure, the Contracting Authority, namely the Ministry of Health, on 12 August 2022, issued the Notice on the decision of the Contracting Authority, by which it canceled the procurement activity entitled “*Supply of Insulin Analogues from the Essential List Lot 1 and Lot 3*”.
25. On 26 August 2022, the economic operators “*Pharma Leader l.l.c*” and “*Meditech*”, submitted a complaint against the aforementioned notice of the Ministry of Health, in the capacity of the Contracting Authority. As a result of these complaints, the PRB assigned the expertise of the procurement expert, which was submitted on 15 September 2022, and which recommended (i) the cancellation of the notice of the Contracting Authority, namely the Ministry of Health, of 12 August 2022; and (ii) the re-evaluation of bids for this procurement activity.
26. On 11 October 2022, the PRB Board, consisting of Ms. Kimete Gashi, president and Nita Bejta, Vedat Potërqoi, Vjosa Gradinaj-Mexhuani and Agon Ramadani, members, unanimously issued the Decision [PSH. 397/409/22], by which they canceled the notice of the Contracting Authority, namely the Ministry of Health, returning the case to re-evaluation.
27. The Contracting Authority, namely the Ministry of Health, submitted a lawsuit and a proposal for postponement of the execution of the aforementioned Decision of the PRB to the Department for Administrative Matters of the Basic Court in Prishtina (hereinafter: the Basic Court), which was registered under number [A. no. 2953/2022]. The Basic Court, by the Decision [A. no. 2953/2022] of 10 January 2023, rejected as inadmissible the lawsuit and the proposal of the Contracting Authority, namely the Ministry of Health. The decision of the Basic Court was upheld by the Court of Appeals by Decision [AA. no. 85/2023] of 9 February 2023.
28. Decision [PSH. 397/409/22] of 11 October 2022 of the PRB Board, was also contested before the Department for Administrative Matters of the Commercial Court of Kosovo (hereinafter: the Commercial Court), by the economic operator “*Meditech*”. The

Commercial Court, by Decision [Ka. no. 1386/2022] of 14 December 2022, rejected the lawsuit-proposal of “Meditech” for postponing the execution of the aforementioned Decision of the PRB. The Chamber of the Second Instance of the Commercial Court, by the Decision [Com. D. Shk. II. no. 4712023] of 2 February 2023, also rejected the appeal of “Meditech” and upheld the Decision [Ka. no. 1386/2022] of 14 December 2022 of the first instance of the Commercial Court.

29. On 10 May 2023, regarding the Decision [PSH. 397/409/22] of the PRB Board of 11 October 2022, the Government by Decision [No. 13/142], decided: *“(1) The member of the Procurement Review Body, Ms. Kimete Gashi is proposed for dismissal to the Assembly of the Republic of Kosovo for violating professional ethics; (2) The decision enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo.”*
30. The aforementioned decision of the Government contains this reasoning: *“The Procurement Review Body, in the case of decision-making according to the case PSh No. 397/22, contrary to the primary legislation, specifically Law No. 04/L-190 on Medicinal Products and Medical Devices, tends to allow insulin to be placed on the market without a marketing authorization, thereby endangering public health. Considering that the leadership of the panel in this case was Ms. Kimete Gashi, the Government decides as in the enacting clause of this Decision.”*
31. The Committee on Budget, Labor and Transfer of the Assembly in the meetings held on 17 and 24 May 2023, respectively, examined the Government’s Decision on the dismissal of Ms. Kimete Gashi, from the position of PRB member.
32. On 10 July 2023, the Committee on Budget, Labor and Transfers decided to present the following recommendation to the Assembly: *“(1) it is recommended to the Assembly not to approve the proposal-Decision of the Government of the Republic of Kosovo, for the dismissal of Ms. Kimete Gashi, from the position of member of the Procurement Review Body for the violation of professional ethics. (2) The reasoning of the Report with recommendations is presented by deputy Armend Muja, chairman of the Committee.”*
33. The aforementioned recommendation of the Committee on Budget, Labor and Transfer contains this reasoning: *“Based on Article 101, paragraph 4 of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 05/L-092, the Government proposes to the Assembly the dismissal of the chairperson or a member of the Procurement Review Body, if he/she acts contrary to the professional ethics related to his/her duties. The Government of the Republic of Kosovo (hereinafter: the Government) based on Article 101, paragraph 4, of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 05/L -092, by decision no. 13/142 of 10.05.2023, proposed to the Assembly of the Republic of Kosovo (hereinafter: the Assembly) the dismissal of Ms. Kimete Gashi, from the position of member of the Procurement Review Body (hereinafter: PRB) for the violation of professional ethics. Based on Article 111 of the Rules of the Assembly, the Committee, in the meetings held on 17 and 24 May 2023, reviewed the Government’s Decision on the dismissal of Ms. Kimete Gashi, from the position of a member of the Procurement Review Body and on 10.07.2023, with 3 votes “For”, 3 “abstentions” decided to recommend to the Assembly not to approve the Decision of the Government of the Republic of Kosovo on the dismissal of Ms. Kimete Gashi, from the position of member of the Procurement Review Body.”*
34. On 13 July 2023, the Assembly, at the proposal of the Government, by Decision [No. 08-V-583] decided as follows: *“(1) Ms. Kimete Gashi is dismissed from the position of*

*member of the Procurement Review Body (2) This decision enters into force on the day of approval.”*

35. In the transcript of the plenary session of the Assembly held on 13 July 2023 regarding the Decision [No. 13/142] of 10 May 2023 of the Government for the dismissal of Ms. Kimete Gashi from the position of PRB member, it turns out that sixty (61) deputies participated in the vote, of which fifty-eight (58) voted for the dismissal of Ms. Kimete Gashi, one (1) vote against and two (2) abstentions, so that Ms. Kimete Gashi was dismissed from the position of PRB member.

### **Applicants’ allegations**

36. The applicants state that the contested decision of the Assembly is contrary to Articles 3 [Equality Before the Law], 24 [Equality Before the Law], 32 [Right to Legal Remedies], paragraph 1 of Article 65 [Competencies of the Assembly] as well as Article 142 [Independent Agencies] of the Constitution.

*(i) allegations related to the violation of paragraph 1 of Article 65 [Competencies of the Assembly] of the Constitution*

37. The applicants emphasize that paragraph 1 of Article 65 of the Constitution stipulates that the Assembly adopts laws, resolutions and other acts of a general nature, while the contested decision has an individual character because it violates the individual rights of Ms. Kimete Gashi by dismissing her from the position of a member of the PRB Board. Therefore, the applicants claim that the Assembly exceeded the powers established in paragraph 1 of Article 65 of the Constitution, precisely because the contested decision violates the individual rights of Ms. Kimete Gashi.

38. In this context, the applicants emphasize, among other things: *“Based on this, this constitutional provision could not be applied because the contested decision represents an individual decision, that is, it is neither a general act nor a law, but an individual decision that violates the rights of Ms. Kimete Gashi as a member of the Procurement Review Body. The contested decision is unconstitutional because this provision of the Constitution of the Republic of Kosovo could not be applied to individual acts, which is why the Assembly of the Republic of Kosovo exceeded its powers established by Article 65 of the Constitution of the Republic of Kosovo.”*

39. The applicants emphasize that in the proposal of the Government *„it is stated that Ms. Kimete Gashi, in violation of the applicable law, tried to allow insulin to be placed on the market without a marketing authorization, as a result of which public health would be endangered.“* According to the applicants’ allegations, the violation of the law in court proceedings is determined by the courts, not the Assembly, and the latter has interfered with the contested decision in the matter that is under the jurisdiction of the courts. In this context, among other things, they emphasize that *„Decision PSH. 397/409-122 of the Review Panel, of Procurement Review Body, of 11 October 2022, has been subjected to judicial review by legal remedies, and both court instances rejected the lawsuit of the claimant, the Ministry of Health, by decision A. no. 2953/12022 of the Basic Court in Prishtina - Department for Administrative Matters, of 21 October 2022 and by decision AA. no. 851/2023 of the Court of Appeals of Kosovo in Prishtina, of 9 February 2023. Thus, the decisions became final. Therefore, the question arises, are the decisions of the Procurement Review Body subject to judicial control or are they subject to control by the Assembly of the Republic of Kosovo? Because by this decision of the Assembly of the Republic of Kosovo, the judicial system of the Republic of Kosovo was completely abolished as a separate authority, and the Assembly of the Republic of Kosovo interfered with the matters that are within the*

*jurisdiction of the courts, outside the competences established by the Constitution (Article 65 of the Constitution)."*

40. The applicants highlight the content of paragraph 4 of Article 101 (Suspension and Removal of a Member of the PRB) of Law no. 04/L-042 on public procurement of the Republic of Kosovo, amended by Law no. 04/L-237 and Law no. 05/L-068 (hereinafter: Law on Public Procurement): *"The removal and suspension of a member of the PRB shall be subject to the same rules and procedures indicated in this law for PPRC's members"*. In this context, the applicants claim that apart from the lack of procedure and reasoning for the dismissal of the member of the PRB Board, the contested decision is based on a „inexistent“ legal provision.
41. The applicants also claim: *"Article 101 paragraph 4 of Law no. 04/L-042 on public procurement in Kosovo in conjunction with three laws amending and supplementing the Basic Law (Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-068) which laws do not provide for paragraph 4, so the Assembly based its decision on an inexistent provision! [...] The contested decision does not show at all what constitutes a violation of professional ethics related to her duties. The question arises as to how this circumstance was determined – „Fact“?! which is a prerequisite for the application of Law no. 05/L-092, Article 101, paragraph 4 of the Law."*
  - (ii) *allegations related to violation of Article 142 [Independent Agencies] of the Constitution*
42. The applicants emphasize that Article 142 of the Constitution establishes only the competence of the Assembly for the establishment of independent agencies as a constitutional category, but not the dismissal of their members.
43. In this context, the applicants state, among other things: *"This provision sanctions the existence of independent agencies and the principled way of working as a constitutional category and nothing else. No constitutional-legal source for the dismissal of any member of any independent agency arises from this provision. The contested decision is unconstitutional for the reason that it was not possible to apply this provision of the Constitution of the Republic of Kosovo, which does not regulate the issue of dismissal of a member of independent agencies, but only sanctions their existence as a constitutional category. Therefore, this constitutional norm (Article 142 of the Constitution) was erroneously applied in the contested decision."*
44. The applicants further allege: *"Only by Law no. 05/L-092, established by Article 101, paragraph 4, I cite: „Besides that referred to in paragraph 3 of this Article, Government shall propose to the Assembly the dismissal of the chairperson or a member of PRB if he/she acts in contrary to the professional ethics associated with his/her duties."*
  - (iii) *allegations related to the violation of Articles 3 [Equality Before the Law], 24 [Equality Before the Law] and 32 [Right to Legal Remedies] of the Constitution*
45. The applicants emphasize that the contested decision violates the principle of equality before the law, which is guaranteed by Articles 3 and 24 of the Constitution, because the dismissed person was only one of the members, while the PRB review panel also consists of four (4) other members.
46. In this regard, the applicants claim: *"In the present case, by the decision contested in this referral, the Assembly of the Republic of Kosovo violated Articles 3 and 24 of the Constitution of Kosovo, because it dismissed only one member of the Review Panel of*

*the Procurement Review Body, although four other members of the Review Panel of the PRB apostrophized by this referral decided anonymously.”*

47. The applicants also emphasize that the contested decision violates the right to legal remedies, guaranteed by Article 32 of the Constitution because *„there is no guide or instruction for the use of legal remedies”*.
48. In this regard, the applicants claim: *“As for the form of the contested decision, it contains neither a reasoning nor an instruction on the legal remedy, although it is about the right of a citizen who was unlawfully dismissed from a position that is considered a working place [...] due to non-compliance with the form, the provision on human rights and freedoms from Article 32 of the Constitution has been violated.”*
49. The applicants claim: *“As a recapitulation of the case, the dismissed person, as a member of the PRB Panel, rendered a decision within her competencies and this does not represent any „attempt to violate the law“ unanimously with the members of the Panel, and which decision is not a decision on merits, because it remanded the case for reconsideration, and the decision is based on the law. The question arises, since the Assembly adopted the Government’s proposal, it turns out that the dismissed person had to decide differently from her professional conviction, but this „differently“ is kept secret. This does not represent a dismissal due to a violation of ethics, and this does not constitute the independence of the Procurement Review Body, but on the contrary, the legal uncertainty of persons in charge of public affairs in making decisions according to the law.”*

#### **Request for interim measure**

50. The applicants assess that their referral is grounded and that it is clear that the contested Decision is unconstitutional and therefore, they request the imposition of an interim measure because: *“a) Failure to impose the interim measure would have irreparable consequences because the termination of the mandate of PRB member Ms. Kimete Gashi, would make the PRB dysfunctional until the selection of new members. b) the selection process of PRB members depends on whether there will be a need for a new appointment process, therefore, any change in PRB, without deciding on the merits of the referral for the contested law, would seriously damage the Procurement Review Body; c) the termination of the employment relationship of the dismissed members and the creation of a new employment relationship for the new members of the PRB according to the contested law, without deciding on the merits of the referral, would have irreparable consequences because it would violate rights from the employment relationship, as a constitutional human right.”*
51. Based on the reasons given above, the applicants request the Court to impose an interim measure and suspend the contested Decision until the merits of this referral are decided.
52. Finally, the applicants request the Court: (i) to declare the referral admissible for review on merits; (ii) to declare the contested Decision invalid; (iii) to find that there has been a violation of paragraph 1 of article 65 [Competencies of the Assembly] and articles 142 [Independent Agencies], 3 [Equality Before the Law] and 24 [Equality Before the Law], 32 [Right to Legal Remedies] ] of the Constitution; (iv) to find violation of the Law on Public Procurement; and (v) to determine any other measure that the Court deems legally based and reasonable.

#### **Comments of the Parliamentary Group of the VETËVENDOSJE! Movement**



53. On 14 August 2023, Mrs. Mimoza Kusari-Lila, as the chairwoman of the Parliamentary Group of the VETËVENDOSJE! Movement, submitted comments regarding referral KO157/23.
54. In this context, they emphasized that the contested Decision is in full compliance with the constitutional provisions and based on the procedures established by law and the Rules of Procedure of the Assembly. According to them, the contested Decision is an inalienable competence of the Assembly, which takes decisions by majority of the votes of the deputies, as it happened in the present case.
55. The latter also emphasized that the contested Decision as a decision-making, enters the scope of the Assembly based on paragraph 1 of Article 65 [Competencies of the Assembly] in conjunction with Article 80 [Adoption of Laws] of the Constitution and Article 3 of the Rules of Procedure of the Assembly.
56. Regarding the legal certainty and foreseeability of the dismissal of PRB members, the comments emphasize, among other things, that *“The legislation in force has also provided for the dismissal of PRB members, that is, within the terms of the law, defining the relevant criteria. These criteria meet the requirement of foreseeability and legal certainty, informing in this way a priori the members of the PRB about the potential sanction established by law, within the competences of the relevant bodies for the dismissal proposal (in this case the Government) and then also of decision-making (Assembly).”*
57. In this regard, according to the submitted comments, the contested Decision is also in accordance with Article 142 [Independent Agencies] of the Constitution and in this context, they emphasize: *“Consequently, the allegation and conclusion of a violation of the Constitution in the general provision which defines the foundations of the operation of an independent agency supervised by the Assembly is unfounded. Article 142 of the Constitution on Independent Agencies foresees their mode of operation, competencies and responsibilities regulated according to the law adopted by the Assembly. Therefore, the special provision that regulates the dismissal and which clearly falls within the categories of operation, competencies and responsibilities of an independent agency, is defined by law, as it is defined in the present case. So, the procedure and process are in full compliance with the spirit and instructions of Article 142 of the Constitution.”*
58. As for the legal basis for the dismissal of the PRB member, it is emphasized that the contested Decision has a specific and legal basis, claiming that: *“The review of the Proposal-Decision of the Government of the Republic of Kosovo for the dismissal of Ms. Kimete Gashi from the position of member of the Procurement Review Body. This authorization of the Assembly derives from Article 4 of Law No. 05/1-092 on amending and supplementing Law no. 04/1-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law no. 04/237 and Law no. 05/L-068 '4. Except as provided in paragraph 3 of this article, the Government proposes to the Assembly, the dismissal of the chairman or a member of the PRB, if he/she acts contrary to the professional ethics related to his/her duties.”*
59. Regarding the facts and circumstances that led to the dismissal of the PRB member, according to the submitted comments *“The facts or circumstances that led to the proposal decision of the Government of Kosovo on the dismissal of the member of the Procurement Review Body, Ms. Kimete Gashi for dismissal are justified in the Decision of the Government of the Republic of Kosovo, no. 13/ 142 dated 10.05.2023. This decision proposal, listed as point 33 of the agenda of the plenary session of 13.07.2023, was voted by the majority of the deputies of the Republic of Kosovo and was specified with the Decision, which is already challenged. Moreover, the reasons for the proposed*

*decision on dismissal are not the subject of review by the Constitutional Court but may be the subject of review by the regular courts.”*

60. Regarding the Government’s responsibility for maintaining public health, among other things, it is argued that *“Based on the fact that the Government as an executive body proposes the members of the PRB to the Assembly of the Republic of Kosovo, the latter has the legal responsibility to manage and take care of the budget of the Republic of Kosovo, the latter has as its primary obligation public safety and the preservation of public health, the latter also according to the Law on Public Procurement can also propose the dismissal of the member of the PRB due to the violation of professional ethics, which it assesses according to the aforementioned competences based on its prerogative to issue decisions based on discretion. In order to assess such a thing, it is of course necessary to consider the facts of the case. The PRB, chaired in the panel by Ms. Kimete Gashi, decided to oblige the Ministry of Health to re-evaluate the tender for the supply of insulin from the List of essential drugs, establishing criteria that forced the Ministry to sign a contract for the supply of insulin with the company which did not have a marketing authorization.”*
61. Regarding the actions of the dismissed PRB member, it is noted that: *“The lack of marketing authorization leads to the lack of responsibility for the damage that can be caused to health, beyond the irreparable damage that is done to public health and public money, which are primary obligations of the Government of the Republic of Kosovo as an executive body. Although these data are not related to constitutional issues, out of respect for the Court, we inform you that this process started in December 2020, was already proven to be compromised. The operator for whom the PRB panel had insisted to be awarded the contract, not only did not have a Marketing Authorization according to the law in force, but also submitted falsified documentation in the application file claiming that it had permission to supply from an American company, from its branch in Switzerland, and a company in North Macedonia. For this issue, if the Court considers it important for the examination, it can obtain the data from the Government of the Republic of Kosovo, the Ministry of Health.”*
62. Regarding the legal basis of the contested Decision, they consider that the contested Decision has a legal basis, and that this basis is not *“inexistent”* as claimed by the applicants, emphasizing that: *“The Assembly decided with a majority of votes based on the Government’s proposal pursuant to Article 101 of the Law on Public Procurement, which, beyond the Government’s competence to propose, foresees the obligation and responsibility of the Assembly to decide on the proposal. Therefore, invoking Article 101 of the Law on Public Procurement is not invoking on an inexistent legal basis as the applicant erroneously claims, but it is compliance with the Law by the Assembly which has also adopted this Law on Public Procurement.”*
63. Regarding the claim of the applicants that the contested Decision does not contain instructions for the use of the legal remedy, they emphasize that: *“The Assembly should not refer to the legal remedy at all since the Constitution itself foresees the possibility of referring the constitutionality of the decisions of the Assembly before the Constitutional Court. Further, and in relation to the previous paragraph, according to paragraph 7, of article 113, individuals can also turn to the Constitutional Court after they have exhausted the regular legal remedies, which means the possibility of Ms. Kimete Gashi, the dismissed member of the PRB to challenge the Decision of the Assembly before the regular courts. So, the latter enjoys the right to exercise legal remedies according to the Constitution, which has not been denied due to the lack of instruction on legal remedies according to the Decision of the Assembly of the Republic of Kosovo.”*

64. Regarding the claim of the applicants that the contested Decision is discriminatory, they emphasize: *“Decision of the Assembly of the Republic of Kosovo, with no. 08-V-583 and with no. of protocol 861/23 of 18.07.2023 is not discriminatory and contrary to Article 24 of the Constitution of the Republic of Kosovo [Equality Before the Law]. This article foresees and obliges equal treatment of all citizens before the law, denying any kind of discrimination. The action of the Government of the Republic of Kosovo is not discriminatory, on the contrary, it is based on the Law on Public Procurement, which in article 101 defines that: Government shall propose to the Assembly the dismissal of the chairperson or a member of PRB. So, as long as the applicable law foresees such an action by the Government, within its powers and discretion, there can be no talk of any discrimination. The Government has proposed to the Assembly the decision-making, based on the Rules of Procedure of the Assembly and respect for the laws adopted by this legislative body itself, with the majority vote, as provided by the Constitution of the Republic of Kosovo. Article 24 includes the possibility of appealing and hearing the position of each before the competent bodies, which must be treated on the basis of equality and denying discrimination. Consequently, the applicant has misinterpreted Article 24 of the Constitution and placed the referral under the erroneously interpreted legal basis.”*
65. In the end, the Parliamentary Group of the VETËVENDOSJE! Movement proposes to the Court that, in accordance with the constitutional and legal provisions, declare the referral inadmissible and find that the contested Decision is in compliance with the Constitution.

#### **The responses of the applicants to the comments of the Parliamentary Group of the VETËVENDOSJE! Movement**

66. The applicants emphasize that the comments of the Parliamentary Group of the VETËVENDOSJE! Movement are outside the scope of the request for constitutional review of the contested Decision and rather are *“an opinion on how the Juridical-Constitutional system of the Republic of Kosovo is being destroyed!”*.
67. The applicants emphasize that the Parliamentary Group of the VETËVENDOSJE! Movement has avoided the issue that the contested Decision is an individual act and not a general act, as defined by Article 65 (1) of the Constitution.
68. The applicants claim that the contested Decision is an individual act and emphasize that: *“Through the comments, it is claimed that the contested Decision is based on Article 65 (1) of the Constitution, but they have no comment (let alone an argument or fact) that the contested Decision is a GENERAL ACT. Even despite the fact that the latter is an INDIVIDUAL ACT, they continue to invoke the Constitutional provision which establishes the competences of the Assembly only for general acts! Being fully aware that the Assembly of Kosovo has no competence for individual Acts, then they refer to Law no. 05/L-092, Article 101 paragraph 4, so that they try to put the Law above the Constitution! (Which shows clear tendencies for the collapse of the Juridical-Constitutional system of the Republic of Kosovo.”*
69. Moreover, and in the context of the separation of powers, the applicants also emphasize that *“In addition to the fact that they issue Decisions outside the competences defined by the Constitution, they try to abrogate the judicial power in its entirety, which is a separate power. Judicial power is a separate power and is exercised by the courts, and this is determined by Article 102 of the constitution. The factual situation is that the Decisions of the PRB were subjected to judicial review, and it was found that the Decision of the PRB was a legal decision. Therefore, the Decisions which through the*

*control of the judicial power had turned out to be Legal. The Assembly tries to abrogate the judicial system in its entirety, and to exercise the judicial power itself, because regardless of what the courts decide, according to this logic, it is irrelevant, but the Assembly is the one who should also exercise the judicial power!”.*

70. Further and regarding the independence of independent agencies, they claim: *“As it seems according to “Comments” of the Parliamentary Group of the Vetëvendosje Movement, the Agencies should not be independent as defined by the Constitution and Laws. Because, from the interpretation of the aforementioned “Comments”, the Agencies must be absolutely dependent on the will of the deputies and not on the powers which the Constitution and the Law foresee. After the issuance of the Decision contested by this Referral, no Agency shall remain independent as established by the Constitution and Law, and no member of any Agency shall be impartial as defined by Law. But they must be subject to the daily policies and the current mood of the deputies, otherwise they will have the same fate as the PRB member Ms. Kimete Gashi - Brajshori.”*
71. Regarding the discrimination of the dismissed PRB member, they counter-argue that: *“According to the Parliamentary Group of the Vetëvendosje Movement, equality before the Constitution and the Law is considered this: In cases where four members of the Procurement Review Body, with an equal vote, unanimously decide on a Decision. Then equality before the Constitution and the Law is considered the dismissal of only one of them!!!”*
72. Regarding exceeding the competencies of the Assembly, they also emphasize that *“Thus, from the comments of the Parliamentary Group of the Vetëvendosje Movement, it can be seen that we are not only dealing with an unconstitutional Decision, but we are dealing with the most dangerous precedent presented so far, which is the destruction of the Constitutional Legal System of the Republic of Kosovo, through the usurpation of powers by the Assembly of Kosovo, which powers have not been defined by the Constitution, through the ABROGATION of the judicial power exercised by the courts, through the violation of the independence of the Independent Agencies and the violation of the impartiality of the members of the Independent Agencies . And at the very end through unequal treatment before the Constitution and the Law. Even with comic tendencies, trying to give comments, we have equal treatment, etc!!!”.*
73. On the other hand, regarding the request for imposition of an interim measure, they emphasize that: *“The public interest consists in the violation of the Constitutional provisions described by the Referral and supplementation of the Referral, therefore the prohibition of the execution of the contested decision is necessary to prevent the consequences of constitutional and legal violations and that is article 65 paragraph 1 of the Constitution, article 142, article 3 and 24, article 102 of the Constitution. Considering that the constitutional provisions have been violated, this represents a dangerous precedent for the Assembly of Kosovo to repeat these violations against any other member of the PRB, and this would not only defunctionalize the PRB, but also represents a permanent risk of losing the objectivity of the PRB and other members, that in case they do not decide according to the wishes of a group of deputies, they will be dismissed without any disciplinary procedure, as the Claimant/Member of the PRB Ms. Kimete Gashi Brajshori!!!”.*
74. In the end, the applicants emphasize that the Court should assess their arguments by adding: *“We consider that the only fair solution would be the Approval/Admission of the Referral submitted to the Constitutional Court and the Approval/Granting the Request for the Interim Measure.”*



## **Relevant constitutional and legal provisions**

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

#### **Article 3 [Equality Before the Law]**

*“1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.*

*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 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 31 [Right to Fair and Impartial Trial]**

*1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

*3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*

*4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*

*5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.*

*6. Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.*

*7. Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.*

**Article 32**  
**[Right to Legal Remedies]**

*Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.*

**Article 65**  
**[Competencies of the Assembly]**

*The Assembly of the Republic of Kosovo:*

*(1) adopts laws, resolutions and other general acts;*

*[...]*

*(9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law;*

**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.”*

**Law no. 05/L-092 on Amending and Supplementing the Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, Amended and Supplementing by the Law No. 04/L-237 and the Law no. 05/L-068 of 1 March 2016**

**Article 101**

**Suspension, removal and dismissal of the chairperson and members of PRB**

*1. If there is filed an indictment towards the chairperson or a member of PRB for a criminal offence, he/she shall be suspended with payment of fifty percent (50%) of his/her salary, until his/her removal or until he/she is pronounced innocent by a final court judgement. Suspension shall become effective from the moment the indictment is filed by the prosecutor. 2. Competent court shall, in the day of filing the indictment towards the chairperson or any member of PRB, deliver a notification to the President of the Assembly, who on behalf of the Assembly as the institution that has appointed them, shall notify the PRB regarding the suspension of its chairperson or member.*

*3. The chairperson or the member of PRB shall be removed from the office if he/she is pronounced guilty for any criminal offence through a final court judgement. This removal shall become effective from the moment the final court judgement is*

*pronounced, and this judgement shall be notified to the President of the Assembly, who on behalf of the Assembly, as the institution that has appointed them, shall notify the PRB for the removal of its chairperson or member.*

*\4. Besides that referred to in paragraph 3 of this Article, Government shall propose to the Assembly the dismissal of the chairperson or a member of PRB if he/she acts in contrary to the professional ethics associated with his/her duties.*

**Law no. 05/L -068 on Amending and Supplementing the Law No. 04/L-042 on Public Procurement of the Republic Of Kosovo, Amended and Supplemented with the Law No. 04/L-237 of 6 January 2016**

**Article 102**

**Suspension and Removal of Members of the PRB**

*“If a member of the PRB is subject to court proceedings in which he/she is charged with a criminal offense regarding the duties and responsibilities in PRB, he/she shall be suspended from work. If a member of the PRB is convicted for any criminal offence regarding the duties and responsibilities in PRB, he/she shall be removed from work.”*

**Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, Supplemented and Amended by Law no. 04/L-237, Law no. 05/L-068 and Law no. 05/L-092 of 19 September 2011**

**Article 98**

**Procurement Review Body**

- “1. The PRB is an independent review body and exercises the authority, powers, functions and responsibilities specified in the provisions of this law.*
- 2. The PRB is an independent administrative review body. The PRB consists of five (5) Board members. For administrative support the PRB is assisted by a Secretariat led by Head of the Secretariat. No person or public official may exert or attempt to exert any political or illicit influence over the PRB or any of its employees with respect to any specific decisions. Influence shall not be regarded political or illicit if it is exerted openly, in accordance with the rule of law and of procedure, and in good faith to fairly advance a complaint or defense.*
- 3. The PRB is a public authority and a budget organization. The PRB is therefore subject to all applicable provisions of all other laws and regulations of Kosovo to the same extent as any other public authority or budget organization.”*

**Article 99**

**Functions and Powers of the PRB**

- “1. The PRB shall be responsible for implementing the procurement review procedures established in Title IX of the present law and shall have the authorities and responsibilities specified in that Title.*
- 2. Upon a written request of a contracting authority regarding the submission, by an economic operator, of false information or documents forged, the PRB is obliged and is authorized to review and disqualify the economic operator from participation in public procurement up to a period of one year.*
- 3. All decisions issued by the PRB may be reviewed by the competent Court in accordance with the law on the judicial review of administrative matters.”*



**Article 100**  
**Appointment of Members of the PRB**

*“1. PRB Board consists of five (5) members appointed for a term of five (5) years without the right of re-appointment.*

*2. Government shall propose to the Assembly at least (2) candidates for the vacant position of the chairperson of PRB and at least two (2) candidates for each vacant position of members of PRB, at least ninety (90) days before the expiry of the mandate of the current chairperson and members. The Assembly shall appoint the chairperson and each member of PRB based on a recommendation made by an independent selection body. The independent selection body shall interview, evaluate and classify by points the candidates based on merits. The Assembly shall appoint the candidates with the highest points for the position of the chairperson and for each vacant position of the members of PRB. In any case, the independent selection body shall deliver to the Assembly the entire list of candidates that were evaluated.*

*3. The independent selection body referred to in paragraph 2 of this Article shall be established by the Assembly and shall be comprised of three (3) judges appointed by the Kosovo Judicial Council.*

*4. Any candidate proposed for a Chairperson or a member of the PRB must possess the following qualifications and meet the following criteria:*

*4.1. be a citizen of Kosovo;*

*4.2. not to be convicted for any criminal offence or not to be indicted for any criminal offence;*

*4.3. have completed the bar exam;*

*4.4. have at least three (3) years of professional experience in one of these fields: justice, public administration, public finances or procurement;*

*4.5. have the ability to perform the duties impartially, conscientiously, decisively and responsibly.”*

**Article 101**  
**Suspension, removal and dismissal of the chairperson and members of PRB**

*“1. If there is filed an indictment towards the chairperson or a member of PRB for a criminal offence, he/she shall be suspended with payment of fifty percent (50%) of his/her salary, until his/her removal or until he/she is pronounced innocent by a final court judgement. Suspension shall become effective from the moment the indictment is filed by the prosecutor.*

*2. Competent court shall, in the day of filing the indictment towards the chairperson or any member of PRB, deliver a notification to the President of the Assembly, who on behalf of the Assembly as the institution that has appointed them, shall notify the PRB regarding the suspension of its chairperson or member.*

*3. The chairperson or the member of PRB shall be removed from the office if he/she is pronounced guilty for any criminal offence through a final court judgement. This removal shall become effective from the moment the final court judgement is pronounced, and this judgement shall be notified to the President of the Assembly, who on behalf of the Assembly, as the institution that has appointed them, shall notify the PRB for the removal of its chairperson or member.*

*4. Besides that referred to in paragraph 3 of this Article, Government shall propose to the Assembly the dismissal of the chairperson or a member of PRB if he/she acts in contrary to the professional ethics associated with his/her duties.”*

**Article 116**  
**Decision-making Procedures**

- “1. Matters that a complainant has identified in a notice filed pursuant to paragraph 5 and 6 Article 115 of this law, shall be reviewed and decided by PRB.*
- 2. The proceedings shall be conducted in accordance with the provisions of this Title IX and the rules of procedure established pursuant to Article 107 of this law.*
- 3. Before making a final decision on a matter, the PRB may require the contracting authority and/or the complainant to provide additional information and/or explanations. The PRB shall have the right to require any person, undertaking or public authority to submit material or evidence that it reasonably believes may have relevance to the matter. Similarly, the PRB shall have the right to require any person, undertaking or public authority to provide testimony that it reasonably believes may have relevance to the matter.*
- 4. On request from the complainant or the contracting authority the PRB may allow for an opportunity to present additional information and/or explanations. Paragraph 3 of this Article applies in a similar manner.*
- 5. If any party to the proceedings fails or refuses to participate fully in such proceedings or to comply with a requirement of this Title IX, the rules of procedure established pursuant to Article 107 of this law, or an order issued by PRB, the review panel shall reach its decision on the facts available to it and on the basis of evidence and arguments brought to its attention by those parties actively participating in the proceedings. The PRB shall have the authority to address any such refusal or failure by, as it deems appropriate: (i) deciding any concerned legal issue and/or factual matter in favour of the opposing party, and/or (ii) deciding any concerned allegation in favour of the opposing party.*
- 6. A PRB decision to re-evaluate the selection of tenderers or awarding the contract does not imply a change in the initial result”*

**Article 119**  
**Court Actions**

- “1. If a complainant believes that a final decision or determination of the PRB is contrary to the facts or the present law, the complainant may request the Supreme Court to review such decision. The request to the Supreme Court must be filed within a time limit of thirty (30) days from the publication of the decision in accordance with paragraph 2 Article 117 of this law.*
- 2. If, after conducting such a review, the court finds that an allegation made by the complainant in its earlier complaint before the PRB was not frivolously made, the Court shall issue an order requiring the PRB to return to the complainant and any penalty assessed pursuant to the Article 118 of this law.*
- 3. If after conducting such a review, the court finds that an allegation made by the complainant in its earlier complaint before the PRB was validly made, the court shall issue an order (i) rescinding or reversing any order or determination issued or made by the PRB, and/or (ii) if the complainant can show that it has been damaged by the concerned act or omission of the concerned contracting authority, requiring such contracting authority to pay adequate compensation to the complainant.*

**Article 120**  
**Reporting to the Assembly**

*“The PRB shall annually report to the Assembly on the operation of the procurement review procedures established by or pursuant to this Title IX.”*

**Article 121**  
**Conveying Information**

*“1. For each calendar year, the PRB shall provide to the Assembly, not later than the end of February of the following calendar year, the following information and data by individual types of proceedings and the object of the concerned procurement activity:*

*1.1. the total number of complaints received;*

*1.2. the number of complaints that were dismissed for lack of timeliness or insufficiency under Article 109 or Article 111 or failure to post the security required by Article 118 of this law;*

*1.3. the number of complaints determined to contain no valid allegation;*

*1.4. the number of procurement activities that were cancelled as the result of a complaint;*

*1.5. detailed information on any event where a contracting authority failed to respect an order of the PRB; and*

*1.6. the number of review proceedings that resulted in a determination that the concerned a procurement activity had been validly conducted and the award or decision validly made.*

*2. The Government shall, in consultation with the PRB and on the basis of information referred to in paragraph 1 of this Article, develop a proposal for measures aimed at reducing or eliminating certain repeated violations, including proposed amendments to the present law.”*

**LAW Nor. 03/L-202 ON ADMINISTRATIVE CONFLICTS**

**Article 4**  
**Lawfulness Principle**

*“The competent court shall decide based on constitution and laws regarding the administrative conflict.”*

**Article 16**  
**No title**

*“1. The final administrative act can be objected:*

*1.1. for the reason that, the law has not been applied at all or legal provisions have not been correctly applied.*

*1.2 . when the act has been issued by a non-competent body;*

*1.3. when in the procedure that preceded the act, was not been acted according to the procedure rules, the factual situation has not been correctly verified, or if from the verified facts, incorrect conclusion in the light of factual situation has been issued;*

*1.4. when with the final administrative act issued based on a free evaluation, the body has exceeded the limits of legal authorization or such act was not issued in compliance with the purpose of this law;*

*1.5. when the accused party has issued again her earlier act, annulled before with the final decision of the competent court.*

*2. The administrative act can not be rejected for incorrect implementation of the provisions, when a competent body has decided according to free assessment based on authorizations and within the limits given with legal provisions, in accordance with the aim for which the authorization was given.”*

**Article 23**  
**Competence and legal redress**

- “1. For the indictments against administrative acts of all bodies shall decide the competent court for administrative matters in first instance, unless otherwise provided by other legal provisions.*
- 2. Against the issued decision on administrative conflict, complain shall be submitted to the competent court for administrative matters of second instance.”*

**Article 26**  
**The procedure based on the indictment**

- “1. An administrative conflict begins with an indictment*
- 2. With indictment may be required:*
- 2.1. the annulment or void publication of contested act;*
- 2.2. issuance of administrative act, which was not issued in the foreseen term; and*
- 2.3. return of the taken things and compensation of the damage caused by execution of the contested administrative act.”*

**RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC OF KOSOVO (KUV-08 -V-349-RR)**

**Article 110**  
**Election and appointment to bodies established by law**

- 1. The Assembly shall elect and appoint bodies established by law, unless otherwise provided by law.*
- 2. Upon receipt of proposals as per law, the President of Assembly shall task the responsible reporting committee for the review of candidacies of members proposed. The Assembly shall review such proposals in a plenary session within two (2) weeks.*
- 3. If the Assembly is required to make proposed candidacies, the President of Assembly shall task the responsible-reporting Committee to review and submit a relevant report within four (4) weeks. The Assembly shall review the proposed candidacies in a plenary session within two (2) week from the submission of the report by the responsible-reporting Committee.*
- 4. If a candidacy does not meet the requirements according to the law, the Committee shall require from the President of Assembly to notify the proposing institution on such failure to meet requirements.*
- 5. If none of the candidates obtains the required majority of votes, the procedure shall be reinitiated with new candidacies.*

**Admissibility of the Referral**

75. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, further specified in the Law and foreseen in the Rules of Procedure.
76. Initially, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulates:

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

77. In addition, the Court also refers to paragraph 5 of Article 113 of the Constitution, which defines:
- “Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed”.*
78. The Court recalls that the applicants challenge the constitutionality of the contested Decision of the Assembly regarding its content and the procedure followed.
79. The Court recalls that 10 (ten) or more deputies of the Assembly are legitimized to be “*authorized party*” within the meaning of paragraph 5 of article 113 of the Constitution to challenge the constitutionality of any law or act adopted by the Assembly, both in terms of content and the procedure followed. In the present case, the twelve (12) deputies of the Assembly are legitimated to be an authorized party and therefore, based on paragraph 5 of Article 113 of the Constitution, they have the right to challenge the constitutionality of the Decision [no. 08-V-583] of 13 July 2023 of the Assembly before the Court.
80. The Court further assesses whether the referral was submitted within the deadline of “*8 (eight) days from the day of adoption*”, as established in paragraph 5 of Article 113 of the Constitution. In this regard, the Court finds that the contested Decision was adopted on 13 July 2023, while the referral was submitted to the Court on 20 July 2023. In this case, the Court finds that the referral was submitted within the time limit.
81. In addition to the above, the Court also takes into account Article 42 (Accuracy of the Referral) and 43 [Deadline] of the Law governing the submission of the Referral based on paragraph 5 of Article 113 of the Constitution, which requires the following information to be submitted:

Article 42  
(Accuracy of the Referral)

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

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

Article 43  
(Deadline)

*“1. A law or decision adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation after the expiry of the deadline prescribed by Article 113, Paragraph 5 of the Constitution”.*

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

Rule 72

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

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

*(2) [...]*

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

*(a) Names and signatures of all the members of the Assembly challenging the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;*

*(b) Provisions of the Constitution or other act or legislation relevant to this referral; and*

*(c) Presentation of evidence that supports the contest.*

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

83. The Court, according to the clarifications above, notes that the applicants: (i) wrote their names and signatures in the referral; (ii) specified the contested Act of the Assembly, namely the Decision [no. 08-V-583] of 13 July 2023 for the dismissal of a member of the PRB Board and submitted its copy; (iii) referred to specific constitutional provisions, which they claim that the contested Act is not in compliance with; (iv) submitted evidence and testimony to support their claims; and (v) submitted the referral, within the period of eight (8) days, as established by paragraph 5 of article 113 of the Constitution.

84. Therefore, the Court declares the referral admissible and will further examine its merits.

### **Merits of the referral**

85. The Court first recalls the essence of the referral, which, based on the case file, results that: (i) The Contracting Authority, namely the Ministry of Health, on 12 August 2022, issued the Notice on the decision through which it canceled the procurement activity entitled “*Supply of Insulin Analogues from the Essential List Lot 1 and Lot 3*”; (ii) acting on the basis of the complaints of Economic Operators “Pharma Lider LCC” Prishtina and “Meditech” l.l.c. Prishtina, the PRB Review Panel, on 11 October 2022, unanimously, by the Decision [PSH. 397/409/22], canceled the notice of the Contracting Authority and returned the case to re-evaluation; (iii) on 10 May 2023, the Government, by the Proposal-Decision [No. 13/142] related to the Decision [PSH. 397/409/22] of 11 October 2022 of the PRB Review Panel, had decided to propose to the Assembly the dismissal of the PRB member, Ms. Kimete Gashi “*for violation of professional ethics*”; (iv) on 13 July 2023, the Assembly, at the proposal of the Government and despite the fact that the Committee on Budget, Labor and Transfer of the Assembly proposed that the latter should not be dismissed, by the contested Decision, decided on the relevant dismissal.

86. The aforementioned decision of the Assembly was challenged before the Court by twelve (12) deputies of the Assembly of Kosovo, with the claim that the latter is contrary to articles 3 [Equality Before the Law], 24 [Equality Before the Law], 32 [Right to Legal Remedies], paragraph 1 of article 65 [Competencies of the Assembly] as well as article

142 [Independent Agencies] of the Constitution, essentially because (i) the Assembly decided to dismiss the PRB member without having a legal basis; (ii) the Assembly dismissed the PRB member due to the decision-making and exercise of her powers as a PRB member; and (iii) the Assembly has exceeded its authorizations defined by the Constitution by interfering with the judicial power because the courts have already rejected the lawsuit of the Ministry of Health presented against the relevant Decision of the PRB.

87. The Court points out that the above claims specifically refer to exceeding the oversight role of the Assembly towards the PRB, as an independent review body that exercises the competencies, functions and responsibilities established by law for the implementation of procurement review procedures. Therefore, in this context, the Court will address and examine the applicants' allegations, within the framework of paragraph 9 of Article 65 [Competencies of the Assembly] of the Constitution, since in essence the referral raises issues of the exercise of the oversight function of the Assembly towards public institutions, namely the exercise of the supervisory function towards PRB.

88. Taking into account the applicants' allegations and the arguments and counter-arguments of the interested parties before the Court, the latter will, in the following, examine the circumstances this referral entails, and more specifically, it will first elaborate (i) the principles that are related with the supervisory competencies of the Assembly and the interaction of the Assembly with the PRB; and then (ii) will apply the aforementioned principles in constitutional review of the contested Decision.

*(i) supervisory competencies of the Assembly and the interaction of the Assembly with the PRB*

89. The Court first recalls that based on the applicable public procurement laws, namely according to Article 98 (Procurement Review Body) of Law no. 04/L-042 on Public Procurement in the Republic of Kosovo (hereinafter: Law on Public Procurement of 2011), (i) the PRB is an independent review body and exercises the authority, powers, functions and responsibilities specified in this law; (ii) the PRB is an independent administrative review body ; (iii) the PRB consists of five (5) Board members, while for administrative support the PRB is assisted by the Secretariat, which is led by the Head of the Secretariat; and (iv) no person or public official may exert or attempt to exert any political or illicit influence over the PRB or any of its employees with respect to any specific decisions, while the influence will not be regarded political or illicit if it is exerted openly, in accordance with the rule of law and of procedure, and in good faith to fairly advance a complaint or defense. Whereas, according to Article 99 (PRB functions and competences) of the aforementioned law, (i) PRB is responsible for the implementation of procurement review procedures; (ii) upon a written request of a contracting authority regarding the submission, by an economic operator, of false information or documents forged, the PRB is obliged and is authorized to review and disqualify the economic operator from participation in public procurement up to a period of up to one (1) year; and (iii) all decisions issued by the PRB may be reviewed by the competent Court in accordance with the law on the judicial review of administrative matters.

90. The aforementioned law also determines the relationship of the PRB with the judicial and legislative powers. Regarding the first issue, the Court notes that the decisions of the PRB are subject to judicial review. More specifically, based on Article 119 (Court Actions ) of the aforementioned law, among others, (i) if the complainant considers that the final decision or finding of a review panel or the PRB is contrary to the facts or this law, the complainant may request the Basic Court to review the decision; (ii) if, after the above review, the court finds that an allegation made by the complainant in the earlier

complaint submitted to the PRB was not invalid, the court shall issue an order requiring the PRB to refund the complainant and any fine imposed on him under Article 118 (Security, Penalties and Damages) of this law; and (iii) if, after the foregoing review, the court finds that a claim made by the complainant in his previous complaint submitted to the PRB was validly made, the court shall issue an order (a) annulling or modifying any order or determination made by the PRB, and/or (b) if the complainant can demonstrate that he has been damaged by the action or omission of the contracting authority, then the court may also require the contracting authority to pay the complainant compensation for the damage caused.

91. Whereas, as far as the relationship with the Assembly is concerned, the Court notes that the relationship between the PRB and the Assembly is defined in the applicable laws related to public procurement. This relationship is specified in the provisions that determine the appointment, suspension, dismissal of PRB members as well as the obligations related to the reporting. More specifically and as far as it is relevant in the circumstances of the present case, based on Article 100 (Appointment of members of the PRB ) of Law no. 05/L-092 on Amending and Supplementing the Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by the Law no. 04/L-237 and the Law no. 05/L-068 (hereinafter: Law on Public Procurement of March 2016), (i) PRB Board consists of five (5) members appointed for a term of five (5) years without the right of reappointment; and (ii) The Government proposes to the Assembly at least two candidates for the vacant position of the chairperson of PRB and at least two candidates for each vacant position of members of PRB, at least ninety (90) days before the expiry of the mandate of the current chairperson and members; (iii) the Assembly appoints the chairperson and each member of the PRB, based on the recommendation given by an independent selection body, which is established by the Assembly and consists of three (3) judges appointed by the Kosovo Judicial Council. On the other hand, based on Article 101 (Suspension, removal and dismissal of the chairperson and members of PRB) of the Law on Public Procurement of March 2016, the Assembly, exceptionally, has the power, on the proposal of the Government, to dismiss the Chairperson or a member of the PRB, *“if he/she acts in contrary to the professional ethics associated with his/her duties”*.
92. Furthermore, the relationship related to reporting is determined in Article 120 (Reporting to the Assembly) of the Law on Public Procurement of 2011, and according to which, among other things, the PRB will report annually to *the on the operation of the procurement review procedures*, while according to the provisions of Article 121 (Conveying Information) of the aforementioned law, among other things, for each calendar year, the PRB will provide the Assembly, not later than the end of February of the following calendar year, the information and data according to the provisions of the law.
93. Based on the above clarifications, the functional and decision-making independence of the PRB is not disputed, according to the provisions of the law, and which, based on the applicable laws, is subject to the control of the judicial power. Also, it is not disputed that the PRB, based on the applicable law, is subject to the supervision of the Assembly, according to the provisions of the applicable law. What is disputed in the circumstances of the present case, is whether the Assembly, within its supervisory authorizations related to the PRB, had the legal competence to dismiss the relevant member of the PRB. In order to assess this issue, the Court will further focus on the supervisory competence of the Assembly in relation to the PRB, and more precisely related to the dismissal of its members.
94. In the aforementioned context, the Court first notes that paragraph 9 of Article 65 of the Constitution establishes that the Assembly oversees the work of the Government



and other public institutions, which, based on the Constitution and laws, report to the Assembly. According to the aforementioned clarifications, it is not disputed that PRB, based on the applicable law, is an institution that reports to and is subject to the oversight of the Assembly in the manner defined in the applicable laws on public procurement.

95. The Court considers it important to emphasize the role of the Assembly in exercising its essential function of supervision. In this context, the Court emphasize that based on paragraph 2 of Article 4 [Form of Government and Separation of Power] of the Constitution, the Assembly exercises legislative power. The Assembly exercises this function based on the competencies established in Article 65 of the Constitution, including the competence (i) to adopt laws, resolutions and other general acts, as defined in paragraph 1 of this article; and (ii) to oversee the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the laws as defined in paragraph 9 of this article. Both of these competences of the Assembly constitute the essence of its constitutional function (see case of the Court [KO134/21](#), applicant, *Ramush Haradinaj and nine (9) of other deputies of the Assembly of the Republic of Kosovo*, judgment of 1 August 2023, paragraph 111).
96. Having said that, and as elaborated in the case law of the Court, in exercising these competencies, the Assembly is limited to respecting the constitutional provisions, including Article 74 [Exercise of Function] of the Constitution, based on which the deputies of the Assembly of the Republic of Kosovo exercise their function in the best interest for the good of the country and in accordance with this Constitution, laws and Rules of Procedure of the Assembly. Moreover, in the context of exercising the power of supervision, the Assembly is limited, among others, to the fundamental provisions of the Constitution, with emphasis on (i) the principle of separation and balancing of powers, as specified in Article 4 of the Constitution; and (ii) the fundamental values of the Republic of Kosovo, as specified in articles 3 and 7 of Constitution, respectively. Likewise, in exercising the function of supervision, the Assembly is also limited to respect the applicable law which adopts itself, according to paragraph 1 of Article 65 of the Constitution. The obligation to act in accordance with the applicable law is precisely established in (i) paragraph 9 of Article 65 of the Constitution; and (ii) Article 74 of the Constitution. Any exceeding of the constitutional and legal authorizations in the exercise of the supervisory competence of the Assembly may result in violation of the separation and balancing of powers as specified in Article 4 of the Constitution, but also Articles 3 and 7 of the Constitution, respectively, and also in violation of the constitutional and/or legal independence of the relevant institution, over which this supervision is exercised by the Assembly. (see case of the Court [KO134/21](#), paragraph 111).
97. In the context of the Assembly for dismissal of the members of these institutions, independent agencies and/or bodies established by the Assembly itself, the Court has already consolidated its case law, and among others, in the case of the Court [KO134/21](#) regarding the dismissal of the members of the RTK Board, emphasized, among other things, that the competence of the Assembly to exercise supervision over the Government and other public institutions, which, based on the Constitution and laws report to the Assembly, is an essential competence of the Assembly of the Republic. The Court also emphasizes that this competence is exercised based on the limitations defined in the Constitution and/or the laws adopted by the Assembly itself. The latter, through the adoption of laws, has determined the limits of the exercise of its supervisory competence, including the circumstances in which the members of the respective body may be dismissed. In exercising the function of supervision, the Assembly cannot

exceed the limits which it has determined through the adoption of the relevant law (see case of the Court [KO134/21](#), paragraph 171).

98. Therefore, and based on the above-mentioned principles, it is not disputed that the Assembly has supervisory competence over the PRB, according to the provisions of the laws through which it was established, namely the laws applicable to public procurement. This competence, including that of dismissing the members of the PRB, always according to the determinations that the Assembly itself has established through the adoption of the aforementioned laws. The circumstances in which a member of the PRB can be dismissed are specified in the applicable laws related to public procurement, as will be clarified below.
99. In the context of the competence of the Assembly to dismiss the member of the PRB, the Court first notes that based on the Law on Public Procurement of 2011, namely Article 101 (Suspension and Removal of a Member of the PRB), the removal and suspension of a member of PRB is subject to the same rules and procedures indicated in this law for PPRC members. The removal and suspension of the latter, according to Article 93 (Removal and Suspension of Members), is subject to the decision-making of the courts. More precisely, (i) if, at any time, the Government or the Assembly consider that there are grounds for the removal of any member of the PPRC, it may refer the matter to a court of competent jurisdiction for decision, furnishing its substantiated reasons and all evidential documents required by the court; (ii) the competent court shall issue an order removing or suspending a member of the PPRC from office if, after the conduct of a full and fair hearing on the issue, such court determines that the concerned member (a) does not meet, or no longer meets, the requirements for membership specified in Article 89 (Appointment of Members) of this law, (b) has committed a criminal or unethical act in the course of or relating to the conduct of his official duties, (c) has been involved in an event described in paragraph 1 of Article 130 (Unlawful Influence) of this law or (iv) has intentionally violated or more than once negligently disclosed information that the PPRC has lawfully classified as “*confidential*”; (iii) If the court determination is subject to further proceedings or appeals, the court shall issue an order suspending the member until a final determination on the issue is entered, whereas the court determination is not subject to further proceedings or appeals, the court shall issue an order removing the member; and (iv) if a member of the PPRC becomes the subject of a court proceeding involving allegations that the member has committed a criminal or unethical act in the course of or relating to the conduct of his official duties or has been involved in an event described in paragraph 1 of Article 130 (Unlawful Influence) of this law, the court may issue an order suspending such member until the court has the opportunity to conduct a full and fair hearing on the allegations and to make a determination thereon.
100. With the amendment and supplementation of the aforementioned law, the manner of suspension and removal of PRB members has also been amended and/or supplemented. More specifically, by Law no. 05/L-068 on Amending and Supplementing the Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237 (hereinafter: Law on Public Procurement of January 2016), (i) first, in its article 93 (Suspension and Removal of Members of the PPRC), it is specified that if a member of the PPRC is subject to court proceedings in which he/she is charged with a criminal offense or if he/she has committed any act which is contrary to professional ethics and professionalism associated with professional duties, he is dismissed or suspended, while the procedure for the removal and suspension of members of PPRC members’ is the same with the procedures of their appointment; while (ii) secondly, in Article 102 (Suspension and Removal of Members of the PRB), it is specified that if a PRB member is subject to court proceedings in which he/she is charged with a criminal offense regarding the duties and

responsibilities in PRB, he/she shall be suspended from work, whereas if a member of the PRB is convicted for any criminal offence regarding the duties and responsibilities in PRB, he/she shall be removed from work.

101. Finally, only three months later, namely in March 2016, the Law on Public Procurement was amended and supplemented again, by Law no. 05/L-092 on Amending and Supplementing the Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law no. 04/L-237 and Law no. 05/L-068 and the method of suspension, removal and dismissal of the chairperson and members of PRB has been changed. More specifically, by its article 101 (Suspension, removal and dismissal of the chairperson and members of PRB), it is specified that (i) if the chairman or a member of the PRB is indicted for a criminal offense, he/she is suspended with payment of fifty percent (50%) of his/her salary, until his/her removal or until he/she is pronounced innocent by a final court judgement, while the suspension shall become effective from the moment the indictment is filed by the prosecutor; (ii) the competent court on the day of filing the indictment towards the chairperson or any member of PRB, deliver a notification to the President of the Assembly, who on behalf of the Assembly as the institution that has appointed them, shall notify the PRB regarding the suspension of its chairperson or member; (iii) chairperson or the member of PRB shall be removed from the office if he/she is pronounced guilty for any criminal offence through a final court judgement, and this removal shall become effective from the moment the final court judgement is pronounced, and this judgement shall be notified to the President of the Assembly, who on behalf of the Assembly, as the institution that has appointed them, shall notify the PRB for the removal of its chairperson or member of the PRB, *“if he/she acts in contrary to the professional ethics associated with his/her duties”*.
102. Based on the aforementioned clarifications, and amendments over the years, of the Law on Public Procurement in terms of the method of suspension and removal from the function of a member of the PRB, the Court notes that, taking into account the importance, competences and independence of the PRB, the applicable laws, in principle, have determined that a member of the PRB can leave office only by a court decision. More specifically, based on the applicable laws, (i) suspension and/or removal from office is determined only through the decision of the competent court; (ii) with the amendments foreseen in January 2016, it is possible to suspend the member of the PRB, in the event of an indictment is filed; while (iii) with the amendments foreseen in March 2016, the possibility that the Government proposes to the Assembly, the dismissal of the chairperson or a member of the PRB, *“if he/she acts contrary to the professional ethics related to his/her duties”*. It is this basis, namely the possibility for the Government to propose to the Assembly, the dismissal of the President or a member of the PRB, *“if he/she acts contrary to the professional ethics related to his/her duties”*, as defined in Article 101 (Suspension, removal and dismissal of the chairman and members of the PRB) of the Law on Public Procurement of March 2016, that the member of the PRB was dismissed in the circumstances of the present case.
  - (ii) *Regarding the independence of the PRB in the context of Article 142 [Independent Agencies] of the Constitution*
103. The Court first emphasizes that the Constitution, in its Chapter XII [Independent Institutions], has listed independent institutions, regulating their role and status.
104. In this regard, the Court refers to the independent institutions according to Chapter XII [Independent Institutions] of the Constitution, specifically articles 132-135 [Role and Competencies of the Ombudsperson]; 136-138 [Auditor-General of Kosovo]; 139

[Central Election Commission]; 140 [Central Bank of Kosovo]; and 141 [Independent Media Commission].

105. The Court also notes that in Chapter XII of the Constitution, namely Article 142, the Assembly is authorized to establish Independent Agencies, which will operate on the basis of such a law. Thus, Article 142 [Independent Agencies] of the Constitution defines:

*“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.”*

106. The Court notes that the Constitution, in terms of status, distinguishes between the institutions established by the Constitution, namely those defined in Chapter XII of the Constitution, and independent agencies established based on Article 142 of the Constitution. In relation to the former, the role and constitutional power are expressly regulated by constitutional provisions, while in relation to the latter, their role and powers are defined by law (see Court cases, [KO139/21](#) applicant *Fadil Nura and 9 other deputies*, judgment of 5 April 2023, paragraph 110; and [KO171/18](#), applicant *the Ombudsperson*, judgment of 25 April 2019, paragraph 157). Although the authorizations of Independent Agencies from Article 142 of the Constitution are expressly regulated by law, the Court in its jurisprudence has maintained that their independence enjoys constitutional protection (see Court case [KO216/22](#) and [KO222/22](#) applicant, [KO216/22](#), *Isak Shabani and 10 (ten) other deputies of the Assembly of the Republic of Kosovo*; [KO220/22](#), *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Judgment of 2 August 2023, paragraphs 275-280).
107. The Court notes that Article 142 [Independent Agencies] of the Constitution, within Chapter XII, determines the possibility of establishing Independent Agencies by the Assembly, based on the relevant laws, which regulate their establishment, functioning and competencies. According to this article, these agencies, perform their functions independently from any other body or authority in the Republic of Kosovo and these bodies and/or authorities are obliged to cooperate and respond to the requests of independent agencies in the exercise of their legal powers, in accordance with the relevant law (see Court case [KO127/21](#), applicant *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 9 December 2021, paragraph 77).
108. The Court notes Article 142 of the Constitution, has established the constitutional basis for the establishment of independent agencies, defining that they are institutions established by the Assembly, based on the relevant laws which regulate their establishment, functioning and competencies (see Court cases [KO127/21](#), applicant *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 9 December 2021, paragraph 78; and [KO171/18](#), applicant *the Ombudsperson*, judgment of 25 April 2019, paragraphs 155-159).

109. In this context, the Court also refers to Article 38 (Establishment of independent agencies) of Law no. 06/L-113 on Organization and Functioning of the State Administration and Independent Agencies, which defines: (i) independent agencies are established by law based on Article 142 of the Constitution; (ii) they are not part of the competencies of the executive power of the Government according to the Constitution; (iii) serve the Assembly for the exercise of specialized parliamentary oversight/control of legality and integrity in certain areas of administrative activity; (iv) the law establishing an independent agency regulates the organization, functioning and competencies of the independent agency.
110. The Court also refers to Article 98 (Procurement Review Body) of Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, among other things, defines: (i) PRB is an independent review body and exercises the authority, powers, functions and responsibilities specified in this law; (ii) PRB will be an independent administrative review body ; (iii) the PRB consists of five (5) Board members and for administrative support the PRB is assisted by the Secretariat, which is led by the Head of the Secretariat; (iv) PRB is a public authority and budget organization and is subject to all applicable provisions, laws and regulations of Kosovo.
111. The Court refers to Article 99 (PRB functions and competences) of the of Law no. 04/L-042 on Public Procurement as amended by Law no. 05/L-068, among other things, establishes: (i) PRB is responsible for the implementation of procurement review procedures; (ii) the PRB is obliged and is authorized to review and disqualify the economic operator from participation in public procurement up to a period of up to one (1) year; and (iii) all decisions issued by the PRB may be reviewed by the competent Court in accordance with the law on the judicial review of administrative matters.
112. The Court refers to Article 106 (Establishment and Composition of Review Panels) of Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, which among other things, specifies: (i) PRB organizes its work in a number of review panels; (ii) PRB is responsible for issuing internal rules concerning the appointment of members for a review panel, which are signed by the President of PRB; (iii) The review panel may consist of one, three or five members.
113. The Court refers to Article 120 (Reporting to the Assembly) of Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, which establishes that the PRB will report annually to the Assembly on the operation of the procurement review procedures.
114. The Court assesses that the PRB is: (i) the body established by law based on Article 142 of the Constitution; (ii) it is not part of the competencies of the executive power of the Government according to the Constitution; (iii) exercises authority, powers, functions and responsibilities in the specialized field of public procurement; (iv) has its own bodies, namely review panels and administrative support from its secretariat; and, (v) reports annually to the Assembly on the operation of the procurement review procedures.
115. From the above, the Court assesses that Article 142 of the Constitution is applicable in the circumstances of the present case, insofar as the relevant law provides for and establishes the functional, decision-making and organizational independence of the PRB as an independent agency.
116. Having said this, and beyond the aforementioned constitutional-legal basis, the Court must assess whether, taking into account the specific circumstances of the present case,

the Assembly, in dismissing the relevant member of the PRB, acted within the framework of the legal authorizations of the supervision of the PRB.

*(iii) Application of general principles in the constitutional review of the contested Decision*

117. In the circumstances of the present case, the Court recalls that, from the case file, it results that the procedure started when the Ministry of Health issued the Notice for the cancellation of the procurement activity related to the supply of analog insulin, as a result of which, two economic operators, had submitted a complaint to the PRB. The latter, after the analysis of the expertise of the relevant procurement expert, unanimously issued the decision to cancel the Notice of the Contracting Authority, namely the Ministry of Health for the cancellation of the procurement activity, returning the case to re-evaluation.
118. The aforementioned decision of the PRB was subject to the assessment of the regular courts, namely through the Basic Court in Prishtina and the Court of Appeals, and which, by the respective Decisions, rejected as inadmissible the lawsuit of the Ministry of Health against the decision of the PRB. The Court also notes that through the lawsuit of one of the economic operators, the aforementioned decision has also been subject to the assessment of the Department for Administrative Matters of the Commercial Court of Kosovo in the context of the request to postpone the execution of the aforementioned decision, a request that was rejected from the two Chambers of the Commercial Court.
119. Subsequently, the Government proposed the dismissal of one of the members of the PRB, who had taken the aforementioned decision, arguing that the latter was “*contrary to the primary legislation, specifically Law No. 04/L-190 on Medicinal Products and Medical Devices, tends to allow insulin to be placed on the market without a marketing authorization, thereby endangering public health*”. The assessment of this proposal of the Government was initially made by the Committee of the Assembly on Budget, Labor and Transfer, which recommended that the proposal of the Government be rejected, namely the dismissal of the relevant member of the PRB. However, and despite this recommendation, on 13 July 2023, the Assembly, at the proposal of the Government, by Decision [No. 08-V-583], the Assembly decided on the dismissal of Ms. Kimete Gashi from the position of PRB member.
120. The Court above clarified the method of choosing the dismissal of PRB members. In this regard, based on paragraph 4 of Article 101 of the Law on Public Procurement of March 2016, the dismissal of the chairperson or member of the PRB by the Assembly can be done (i) after the proposal of the Government, provided that (ii) “*if he/she acts in contrary to the professional ethics associated with his/her duties*”. Therefore, based on the above, it is not disputed that it is (i) within the competence of the Government to make a proposal for the dismissal of the chairperson or member of the PRB; and (ii) in the competence of the Assembly as the supervisory body of the PRB to dismiss the chairperson or member of the PRB, but only if the latter (ii) acts contrary to the professional ethics related to his/her duties.
121. Having said that, in the circumstances of the present case, it is disputed whether the relevant member of the PRB (i) was dismissed because she acted “*contrary to the professional ethics associated with his/her duties*”; or (ii) was dismissed on the grounds of decision-making in the capacity of PRB member regarding decision-making by Decision [PSH. 397/409/22] of the PRB of 11 October 2022.
122. In the aforementioned context, the Court notes that in the present case, the Government, by Decision [No. 13/142], decided to “*propose for dismissal to the*

*Assembly of the Republic of Kosovo, the member of the Procurement Review Body, Ms. Kimete Gashi for violating professional ethics*". In the reasoning of the aforementioned Government Decision, it is emphasized that the PRB in violation of Law No. 04/L-190 on Medical Products and Medical Devices, "tries to allow insulins to be marketed without marketing authorization, thereby endangering public health. Considering that the leadership of the panel in this subject was Ms. Kimete Gashi, the Government decides as in the enacting clause of this Decision". However, the aforementioned proposal of the Government, apart from stating that it had led the panel of the PRB in question, does not contain justification that (i) the rules of professional ethics related to his/her duties, with which she was in contradiction during the performance of her duties and relevant evidence is not even presented in this regard; and moreover (ii) what was her role in decision-making in the relevant panel; and (iii) what were the specific provisions of the Law on Public Procurement and the Law on Medical Products and Medical Devices that could have been violated in the circumstances of the present case.

123. Moreover, the Court recalls that the decision of the PRB, as a result of which the dismissal of the PRB member was proposed, was subject to the assessment of the regular courts, which had rejected the relevant lawsuit/complaint of the Ministry of Health. More specifically, the Court notes that in relation to the case for which her dismissal was initiated, after the decision-making in the PRB, judicial procedures were conducted which were initiated by the Ministry of Health. In this context and as far as it is relevant to the circumstances of the present case, the Court notes that the Basic Court in Prishtina-Department for Administrative Matters by the Decision [A. no. 2953/2022] of 21.10.2022, dismissed as inadmissible the lawsuit of the Ministry of Health filed against the Decision [PSH. 397/409/22] of the PRB of 11.10.2022. The Basic Court reasoned: *"The first instance court assesses that the administrative decision PSH. 397/409/22 of 11.10.2022, of the highest administrative body, the cancellation of which is requested according to the lawsuit and the postponement of the execution of the same, by which the respondent cancels the decision dated 12.08.2022 and the procurement activities return to re-evaluate and oblige the claimant in the capacity of the contracting authority to re-evaluate the bids regarding the activity "Supply of insulin analogues from the Essential List" Lot 1 and 3, with procurement number [...] in this regard the contested decision by which the administrative act of the lower administrative body is annulled and the administrative body is obliged to re-evaluate the activity - re-evaluation of the bids does not constitute a final administrative act, since by the administrative act PSH. 397/409/22 of 11.10.2022 we are dealing with administrative control by the highest instance administrative body itself, due to the fact that by the same the decision of 12.08.2022 is canceled and the case is returned to re-evaluation related to the procurement activity - re-evaluation of bids. Therefore, by the respondent's decision in point four, the claimant is obliged to inform the PRB Review Panel in writing about all the actions taken in connection with the procurement activity, specified by number and date as in the previous paragraph of enacting clause of the contested decision. The court, within the meaning of Article 9 of the Law on Administrative Conflicts, finds that the decision challenged by a lawsuit, with a proposal to postpone the execution of the same, does not constitute a final administrative decision. The court also took into account the fact that according to the evidence of this Court regarding the subsequent decisions related to this issue after the reevaluation of the bids, the claimant also filed the lawsuit of 23.12.2022."*
124. The Court also notes that in the appeal procedure, the Court of Appeals by Decision [AA. no. 85/2023] of 09.02.2023, rejected as ungrounded the appeal of the claimant-proposer the Ministry of Health and upheld Decision [A. no. 2953/2022] of 21.10.2022 of the Basic Court. The Court of Appeals reasoned: *"The legal position of the first instance court, as regular and based on the law, is fully approved by this court, for the*

*reason that the contested decision does not contain essential violations of the provisions of the Law on Administrative Conflicts, which violations the court of the second instance assesses ex-officio in view of article 23.2 and 49 of the LAC, in conjunction with article 194 of the LCP, (Law applicable according to article 63 of the LAC), nor other violations according to the allegation in the appeal. The panel, same as the first instance court, assesses that the claimant's proposal according to its content is not based on the legal provisions of Article 22 of the LAC, which regulates the way of submitting the request for postponing the final decision of the administrative body until deciding the merits of the case according to the lawsuit. The content of the proposal does not require the suspension of any final administrative act, as provided for in this provision and is not justified in this regard, but a lawsuit has requested the annulment of the decision of the PRB PSH. no. 397/22, 409/22 of 11.10.2022, which is not a final administrative act."*

125. The Court notes that the regular courts found that the contested Decision of the PRB by the Ministry of Health does not constitute a final administrative act in accordance with the relevant provisions of the Law on Administrative Conflict. However, the Court also notes that the Basic Court assessed that the PRB Decision constitutes "*administrative control by the highest instance administrative body itself, due to the fact that with the same the decision of 12.08.2022 is canceled and the case is returned to re-evaluation related to the procurement activity - re-evaluation of bids*". From the above, the Court notes that the regular courts have assessed that the PRB Decision has the character of "*administrative control*" within the competencies granted to the PRB by the law on public procurement and that it is not a question of unethical actions - ethical or criminal offense on the part of the PRB in the case of issuing their decision regarding the re-evaluation of the procurement activity.
126. Furthermore, the Court recalls that in the examination of the Government's proposal for the dismissal of the relevant member of the PRB, the Committee on Budget, Labor and Transfer of the Assembly recommended to the Assembly not to approve the proposal-Decision of the Government of the Republic of Kosovo, for the dismissal of Ms. Kimete Gashi, from the position of PRB member for the violation of professional ethics. The proposal of the aforementioned Committee, even though it referred to the relevant legal provisions for the dismissal of the chairperson or member of the PRB, which are elaborated in this Judgment, did not contain a reasoning regarding the actions and or inactions of Ms. Kimete Gashi and which could result in a violation of her professional ethics, although this proposal was preceded by a discussion within the aforementioned Committee. Moreover, from the minutes of the Assembly session that preceded the vote, it appears that no debate was held in the Assembly regarding her dismissal pertaining to the reasons that led to the proposal for her dismissal.
127. In the aforementioned circumstances, the Court assesses that in none of the decision-making instances starting from (i) the Government that has proposed her dismissal; (ii) the relevant Committee of the Assembly that recommended to the Assembly that she should not be dismissed; and (iii) the Assembly that decided that the latter was dismissed, no reasoning was presented as to (a) based on which rules of professional ethics the latter was dismissed; (b) what was her role in decision-making within the PRB regarding the case for which her dismissal was initiated; (c) in what way the legislation in force was violated, including Law No. 4/L-190 on Medical Products and Medical Devices.
128. In fact, taking into account the circumstances of the case, and more precisely the fact that (i) the essence of the case stems from the unanimous decision-making of the PRB by the Decision [SPH. 397/409/22] of 11 October 2022 and by which the notification of the Contracting Authority was cancelled, namely the Decision of the Ministry of Health



on the cancellation of the procurement activity entitled “*Supply of Insulin Analogues from the Essential List Lot 1 and Lot 3*” (ii) the Ministry of Health contested this decision-making in the competent courts, which in fact rejected the relevant lawsuit; and (iii) “*violation of professional ethics*”, the basis on which the Government had proposed and the Assembly approved the dismissal of the PRB member, is precisely related to the issuance of the decision [PSH. 397/409/22] of 11 October 2022 of the PRB, because there is no other justification in either the Government's proposal or the Assembly's decision, it results in the conclusion that the relevant member of the PRB was dismissed for her decision-making.

129. In the aforementioned context, the Court first emphasizes that independence in decision-making is the most important aspect of any independent body. No institution can be independent, nor function with the necessary independence from the institutions and/or powers in the Republic of Kosovo, insofar as the members and/or leaders of the same can be dismissed due to decision-making. In the circumstances of the PRB members, and as elaborated above, the decision-making of the PRB members is subject to judicial review. Moreover, the applicable laws, and more specifically Article 101 (Suspension, removal and dismissal of the chairperson and members of PRB) of the Law on Public Procurement of March 2016, among other things, specify that (i) if there is filed an indictment towards the chairperson or a member of PRB for a criminal offence, he/she shall be suspended with payment of fifty percent (50%) of his/her salary, until his/her removal or until he/she is pronounced innocent by a final court judgement. Suspension shall become effective from the moment the indictment is filed by the prosecutor; and (ii) the Chairman or member of the PRB shall be removed from office if he/she is found guilty of any criminal offense by final judgment of the court. Moreover, and in the context of PRB decision-making, the law itself approved by the Assembly, namely the Law on Public Procurement of 2011, in its article 98 (Procurement Review Body), among other things, determines that “*no person or public official may exert or attempt to exert any political or illicit influence over the PRB or any of its employees with respect to any specific decisions. Influence shall not be regarded political or illicit if it is exerted openly, in accordance with the rule of law and of procedure, and in good faith to fairly advance a complaint or defense*”.
130. Consequently, and based on the applicable laws, (i) the legality of PRB decisions is controlled by the courts of the Republic of Kosovo, according to the applicable laws; while (ii) when PRB members are suspected of committing criminal offenses according to the relevant indictment, they are immediately suspended from office, and removed from office, in the case of being found guilty by a final court decision.
131. In the circumstances of the present case, (i) according to the above-mentioned clarifications, the relevant courts have rejected the lawsuit of the contracting authority, namely the Ministry of Health; (ii) the PRB member has not been accused of any criminal offense, circumstances in which the above-mentioned provisions regarding her immediate suspension would apply; but (iii) she was dismissed at the proposal of the Government on the basis of “*acts contrary to the professional ethics associated with his/her duties*”, without any justification. The Court recalls that as long as this legal basis exists, it cannot be interpreted in isolation from other provisions of the laws applicable to public procurement, much less be used as an opportunity to dismiss PRB members regarding their decision-making in concrete cases. In fact, such an opportunity and/or precedent would undermine in its entirety, the functional independence of the PRB and consequently, the purpose of its existence, contrary to the law approved by the Assembly.
132. Moreover, the Court also recalls its case law, through which it has addressed the dismissal of members of independent institutions due to decision-making. More

specifically, and among other things, in its Judgment, KO127/21 regarding the dismissal of the members of the Independent Oversight Board of Kosovo, as far as it is relevant in the circumstances of the present case, the Court has emphasized that *“it is the duty of the Assembly to oversee, but also to preserve the independence of the Independent Board, as provided for in the Constitution and the Law on the IOBCSK. This means, among other things, not only the duty of selecting members through an open, transparent and merit-based process, but also the eventual termination of the respective mandate on an individual basis, arguing precisely the facts and reasons for such a proposal, based on those circumstances for which the law allows the termination of the mandate, and not certain expectations or interventions of the legislator for the decisions that the member of the Independent Board took or should have taken. The Court reiterates that the decision-making of the members of the Independent Board in concrete cases can be challenged by the dissatisfied party, which claims that the decision of the Independent Board is not lawful, initiating administrative conflict in the competent court, within the time limit set by the provisions of Law on Administrative Conflicts as stipulated by paragraph 1 of Article 22 of the Law on IOBCSK”* (see case of the Court [KO127/21](#), applicant Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo, cited above, paragraph 117).

133. Similarly, and despite the differences in the nature of the Independent Oversight Board and PRB, the Court emphasizes that independence in decision-making is the essence of the functioning of any body attributed with constitutional and/or legal functional independence. Regarding the decision-making independence of the PRB, the Court assesses that individual and collegial independence of PRB members means not only independence in the face of external influences that the members of the PRB have, but also in the face of influences from the body which has appointed them to the respective positions, namely the Assembly. The Court recalls that such independence, includes the intention that the members of the respective bodies be free to exercise their functions without fear of consequences for the performance of their legal functions (see Court case [KO127/21](#), paragraph 92). In the case of the PRB, as precisely determined through the provisions related to public procurement in the Republic of Kosovo, the decision-making of the PRB is subject only to judicial control.
134. Consequently, and assessing the circumstances of the present case in their entirety, the Court finds that the Government and/or the Assembly have not presented or elaborated any argument that the relevant member of the PRB was dismissed *“for unethical professional conduct”*, but from the circumstances of the case, it is clear that the latter was dismissed due to the decision-making to re-evaluate the procurement activity of the Ministry of Health. The Court notes that the PRB in Decision [PSH. 397/409/22] of 11.10.2022, requested the Contracting Authority: (i) to cancel the procurement activity entitled *“Supply of Insulin Analogues from the Essential List Lot 1 and Lot 3”*; (ii) to re-evaluate the bids in relation to the procurement activity *“Supply of Insulin Analogues from the Essential List Lot 1 and Lot 3”*, based on the competencies of the PRB, as specified in the relevant law on public procurement. Based on the latter, the assessment of the legality of this decision belongs to the courts of the Republic of Kosovo, and not to the Assembly.
135. In this context, the decision-making independence of the PRB, in addition to being guaranteed by the relevant legislation, is also guaranteed by paragraph 1 of Article 142 of the Constitution, which establishes: (i) independent agencies are institutions established by the Assembly based on respective laws; (ii) relevant laws regulate the establishment, operation and competencies of independent agencies; and, (iii) independent agencies exercise their functions independently from any other body or authority in the Republic of Kosovo.

136. Therefore, the Court finds that in the present case, the Assembly exceeded its oversight competencies in the case of the dismissal of the chairperson of the PRB, established by paragraph 4 of Article 101 of Law no. 05/092 on Amending and Supplementing the Law on Public Procurement and as a result, the contested Decision of the Assembly is not in compliance with paragraph 9 of article 65 and paragraph 1 of article 142 of the Constitution.

### **Regarding other allegations**

137. The Court recalls that in addition to the allegations of unconstitutionality of the contested Decision and its incompatibility with articles 65 and 142 of the Constitution, the applicants have raised other allegations from Chapter I and II of the Constitution. However, as the Court has already found that the contested Act of the Assembly is not in compliance with the requirements of paragraph 9 of Article 65 and article 142 of the Constitution, and accordingly, the declaration of the contested Act invalid from the entry into force of this Judgment, it does not consider it necessary to address and examine separately the other allegations raised in the referral. (see case of the Court [KO134/21](#), applicants, *Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo*, Judgment of 1 August 2023, paragraph 181).

### **Request for interim measure**

138. The Court emphasizes that the Applicants request the Court to impose an interim measure for the suspension of the implementation of the contested Decision, until the final resolution of the referral. However, the Court assesses that the issues raised in the referral have already received an epilogue by the decision on the merits of the referral. Having said this, the Court does not consider it necessary to deal separately with the Applicants' allegations for the imposition of the interim measure (see case of the Court [KO134/21](#), applicants, *Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo*, cited above, paragraph 182).
139. Therefore, the request for imposing an interim measure is rejected in accordance with Articles 44 and 45 of the Rules of Procedure.

### **Regarding the effect of this Judgment**

140. Regarding the effect of this Judgment, the Court clarifies that by this Judgment, the Court emphasizes the importance of independence and autonomy in decision-making of independent agencies and/or bodies, guarantees which the state has a positive obligation to protect and respect. The Judgment also emphasizes the fact that the supervisory competence of the Assembly, established in paragraph 9 of Article 65 of the Constitution, is among the most essential competencies of the Assembly. Having said that, the latter is subject to the limitations defined by the Constitution and the laws itself, which are adopted by the Assembly. (See case of the Court [KO134/21](#), applicants, *Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo*, cited above, paragraph 185).
141. In the context of the effect of this Judgment, the Court clarifies that the subject of the constitutional review is limited only to the contested Decision of the Assembly, in the sense of protecting the independence in decision-making of the PRB based on its legal and constitutional guarantees - and as such - does not coincide with the consequences that the contested Decision may have produced for third parties affected by the latter.

## FOR THESE REASONS

The Court, in accordance with Articles 113.5 and 116.2 of the Constitution, Articles 20, 27, 42 and 43 of the Law and based on Rules 48 (1) (a) and 72 of the Rules of Procedure, on 17 May 2024,

## DECIDES

- I. TO DECLARE, unanimously, the Referral admissible;
- II. TO HOLD, with eight (8) votes for and one (1) against, that Decision [no. 08-V-583] of 13 July 2023 of the Assembly of the Republic of Kosovo, is not in compliance with paragraph 9 of article 65 [Competencies of the Assembly] and paragraph 1 of Article 142 [Independent Agencies] of the Constitution;
- III. TO REJECT, unanimously, the request for interim measure;
- IV. TO NOTIFY this Judgment to the parties;
- V. TO PUBLISH this Judgment in the Official Gazette in accordance with paragraph 4 of Article 20 of the Law;
- VI. TO HOLD that this Judgment enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law.

**Judge Rapporteur**

**President of the Constitutional Court**

Enver Peci

Gresa Caka-Nimani

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