



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

Prishtina, on 26 Juna 2024
Ref. no.: MM 2460/24

DISSENTING OPINION

of Judge

RADOMIR LABAN

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 on the dismissal of the member of the Board of the Procurement Review Body of 13 July 2023

Expressing from the beginning my respect for the opinion of the majority of judges that in this case, who by a majority of votes held that Decision [No. 08-V-583] of the Assembly of the Republic of Kosovo, of 13 July 2023 is not compatible with paragraph 9 of Article 65 [Competences of the Assembly] and paragraph 1 of Article 142 [Independent Agencies] of the Constitution.

However, I, as a single judge, have a dissenting opinion regarding the conclusion of the majority and I do not agree with the opinion of the majority. I consider that the court was obliged to respond to all Applicant's allegations and to state them in the enacting clause of the judgment because only the enacting clause of the judgment obliges all individuals and legal entities to respect them.

As a judge, I agree with the factual situation as stated and presented in the judgment and I accept the same factual situation as correct. I, as a judge also agree with the way in which the

Applicant's allegations were stated and presented in the judgment and I accept the same as correct.

However, I do not agree with the legal analysis regarding the admissibility of the case in one part and the position of the majority regarding the Applicant's allegations of violation of 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] and Article 142 [Independent Agencies] of the Constitution (see the Dissenting opinion of Judge Radomir Laban in case KO134/21 of 6 September 2023, also see the Concurring opinion of Judge Radomir Laban in case KO139/21 of 16 June 2023).

For to the above, and in accordance with Rule 56 of the Rules of Procedure of the Constitutional Court, in order to follow and explain my dissenting opinion as easily and clearly as possible I will state **(I)** General allegations of the applicants about alleged violations **(II)** State the allegations related to the violation of paragraph 1 of Article 65 [Competencies of the Assembly] of the Constitution **(III)** State allegations related to the violation of Article 142 [Independent Agencies] of the Constitution; **(IV)** Assess the applicant's allegations regarding the alleged violations of Article 65.9 and Article 142 of the Constitution **(V)** State the 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 **(VI)** perform an admissibility analysis in relation to the relevant articles **(VII)** Present a conclusion in relation to the alleged violations of the applicant's rights.

(I) General allegations of applicants about alleged violations

1. 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.

(II) Allegations related to the violation of paragraph 1 of Article 65 [Competencies of the Assembly] of the Constitution

2. 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 violated the individual rights of Ms. Kimete Gashi.
3. 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 violated 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”.*
4. 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, since 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 with 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).*”

5. 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 „*non-existent*“ legal provision.
6. 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 a non-existent 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*”.

(III) Allegations related to violation of Article 142 [Independent Agencies] of the Constitution

7. 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.
8. 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 incorrectly applied in the contested decision*”.
9. 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.”

(IV) Assessment of the applicants’ allegations regarding alleged violations of Article 65.9 and Article 142 of the Constitution

10. Paragraph 9 of Article 65 of the Constitution prescribes that the Assembly oversees the work of the Government and other public institutions, which, based on the Constitution and the law, submit a report to the Assembly.
11. On 10 May 2023, by decision [No. 13/2024] the Government decided to propose to the Assembly the dismissal of the member of the PRB, Ms. Kimete Gashi on the grounds of „*violation of professional ethics*“. After the sessions held on 10 and 17 May 2023, the Committee on Budget, Labor and Transfer decided on 10 July 2023 to recommend to the Assembly not to adopt the Government’s proposal-decisions for the dismissal of Ms. Kimete Gashi from the position of a member of PRB. On 13 July 2023, the Assembly by decision [No. 08-V-583] decided to dismiss Ms. Kimete Gashi from the position of a member of the PRB. In the transcript of the plenary session of the Assembly of 13 July 2023, it results that sixty (61) deputies participated in the vote, of which fifty-eight (58) voted „for“ the dismissal of Ms. Kimete Gashi, one (1) vote was „against“ and two (2) „abstentions“. After voting, the Assembly adopted the contested act on 13 July 2023 [No. 08-V-583], which officially confirms the dismissal of Ms. Kimete Gashi from the position of a member of the PRB.
12. In this context, first I emphasize the role of the Assembly in exercising its essential function of supervision. In this context, I 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 law 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).
13. I recall that twelve (12) deputies challenged the constitutionality of the contested decision of the Assembly by which the member of the PRB was dismissed, claiming, among other things, that (i) the Assembly decided to dismiss the member of the PRB without a legal basis; (ii) the Assembly dismissed a member of the PRB for rendering a decision, namely exercising her powers as a member of the PRB; (iii) the Assembly exceeded its powers established by the Constitution, interfering with the judicial power because the courts had already rejected the lawsuit of the Ministry of Health, filed against the decision [P.SH. 397/409-122] of PRB Panel of 11 October 2022; and (iv) 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.
14. I note that the above-mentioned statements specifically refer to the exceeding of the oversight role of the Assembly towards PRB, as an independent review body that exercises the powers, functions and responsibilities established by law for the implementation of procurement review procedures. Therefore, in this context, I will handle and consider the allegations of the applicants, within the framework of

paragraph 9 of Article 65 [Competences of the Assembly] of the Constitution, since essentially the referral raises issues of the exercise of the supervisory function of the Assembly towards public institutions, namely, the exercise of the supervisory function towards PRB.

15. I emphasize that based on paragraph 9 of Article 65 of the Constitution, the PRB reports on its operations to the Assembly, and based on the Law on Public Procurement, the PRB reports to the Assembly on its operations every calendar year.
16. Further, I have clarified above the method of solving the dismissal of PRB members. In this regard, based on paragraph 4 of Article 101 of Law no. 05/092 on amending and supplementing the Law on Public Procurement, the dismissal of the chairperson or a member of the PRB by the Assembly can be carried out (i) on the proposal of the Government, provided that (ii) the latter acted contrary to „*the professional ethics associated with his/her duties.*”
17. In this context, I consider that the contested decision is in full compliance with the constitutional provisions and that it is based on the procedures established by law and the Rules of Procedure of the Assembly. According to them, the contested decision is within the inalienable jurisdiction of the Assembly, which makes decisions by the majority of deputies’ votes, as happened in the present case.
18. I emphasize that the contested decision as decision-making falls within the scope of the work of the Assembly based on paragraph 1 of Article 65 [Competences of the Assembly].
19. I also consider that the contested decision is in accordance with Article 142 [Independent Agencies] of the Constitution and in this context, I emphasize that: “*Article 142 of the Constitution on independent agencies foresees the manner of their functioning, competences and responsibilities regulated by the law adopted by the Assembly.*”
20. Therefore, the special provision that governs the dismissal and which obviously falls under the categories of functioning, competences and responsibilities of the independent agency, is established by law, as determined in the present case. Therefore, the procedure and process are in full compliance with the spirit and instructions of Article 142 of the Constitution”.
21. When it comes to the legal basis of the contested decision, I consider that the contested decision has a legal basis and that this legal basis is not „non-existent“ as claimed by the applicants, and emphasizes: “*The Assembly decided by a majority of votes based on the Government’s proposal based on Article 101 of the Law on Public Procurement, which, in addition to the Government’s competence to propose, also provides for the Assembly’s obligation and responsibility to decide on the proposal. Therefore, the reference to Article 101 of the Law on Public Procurement is not a reference to a non-existent legal basis, as erroneously claimed by the applicants, but it represents compliance with the law by the Assembly that also adopted this Law on Public Procurement*”.
22. Based on all of the above, I conclude that the Assembly acted in accordance with Article 65, paragraph 9, by which it has the right to oversee the agencies and bodies that it established, as well as that, in accordance with Article 142 of the Constitution, it invoked the corresponding norms of the law, namely, article 101 of the Law on Public Procurement, paragraph 4, which provides “*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.“

23. I consider that it is not the duty of the Constitutional Court to determine the factual situation in the case whether the dismissal of the PRB member, Ms. Kimete Gashi was actually a result of a „*violation of professional ethics*“ as stated in the challenged decision of the Assembly, but that this is the duty of regular courts in administrative proceedings, especially since in this case it is a legal act that produces consequences for an individual and has no *ergo omnes* effect.
24. I consider that the duty of the Constitutional Court was only to determine whether, in accordance with Article 65, paragraph 9, the Assembly had the right to exercise an oversight function, which in this case is not disputed even for the applicants, as well as that in accordance with Articles 65 and 142 of the Constitution , the Constitutional Court is to determine whether the Assembly, when issuing the contested act, adhered to the procedures provided for in the constitution and invoked the basis for dismissal prescribed by law when rendering the contested decision.
25. Therefore, in the light of the circumstances of this case, it is not about exceeding the competence of the Assembly, nor its interference in the domain of work of independent institutions, because the Assembly has the right to appoint and dismiss members of the PRB. This confirms that the allegation of the applicants that the Assembly acted in violation of paragraph (9) of Article 65 and Article 142 of the Constitution is ungrounded because, by the contested decision, it dismissed a member of the PRB for „*violation of professional ethics*“ as provided for in Article 101 of the Law on Public Procurement.
26. On the basis of all that was said above, I consider that the duty of the regular courts is to determine the correct factual situation in the administrative procedure and to conclude whether by the contested decision was dismissed the member of the PRB for „*violation of professional ethics*“ , namely whether there has been a violation of the legal norms that prescribe the dismissal procedure. After all, Ms. Kimete Gashi will certainly have to conduct this administrative procedure in order to exercise her rights.
27. I consider that the applicants’ allegations concern the violation of the law on public procurement, namely Article 101 paragraph 4 of that law, and that the issues raised are of a legal nature, and that the correct factual situation should be determined in an administrative dispute and by hearing other members of the PRB and determining the correct factual situation.
28. Therefore, I consider that the content of the contested act does not contradict Articles 65(9) and 142 of the Constitution.

(V) 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

29. The applicants emphasize that the contested decision violated 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.
30. 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”.

31. The applicants also emphasize that the contested decision violated the right to legal remedies, guaranteed by Article 32 of the Constitution because *„there is no guidance or instruction for the use of legal remedies.”*
32. 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”.*
33. The applicants claim: *“As a recapitulation of the case, the dismissed person, as a member of the PRB Panel, rendered a decision within her powers 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”.*

(VI) Admissibility analysis in relation to the respective articles

34. Regarding the criteria for constitutional review of “laws” adopted by the Assembly and “decisions” adopted by the Assembly, in the sense of Article 113.5, emphasizes that challenging the constitutionality of a law adopted by the Assembly is significantly different from challenging the constitutionality of a decision. This difference consists precisely in the fact that what determines the content of the act, namely what are the legal consequences produced by the act of the Assembly, namely whether the content of the written norm of the act of the Assembly has *erga omnes* effect or has effect on particular subject (individual).
35. Therefore, what the Court had to assess in relation to the applicants’ allegations regarding the violation of rights and freedoms from Chapter II of the Constitution, is the question of what legal consequences the contested act of the Assembly produced in the light of the circumstances of the present case, in order to further assess whether such allegations of the applicants raise constitutional issues under Article 113.5 of the Constitution and whether the applicants are legitimized as authorized parties to raise such allegations.
36. In this context, I also refer to the case law of the Constitutional Court of the Republic of Albania, namely Decision no. 29/09, of 21 October 2009, Applicant: *Group of 30 deputies of Albania, by which, among other things, it was requested to annul the Decision of the Assembly [No. 190] of 16 June 2008, due to failure to give consent for the appointment of Mr. Z.P, for a member of the Supreme Court. In order to ascertain its jurisdiction, the court assessed whether the subject of constitutional review is an act of normative character and whether its intentions raise issues of conflict of jurisdiction between central or local authorities. Considering the circumstances of the case, the court in question found: „The court has previously expressed that in trials of*

an abstract nature it is not competent to control acts of an individual nature. Given that the decision of the Assembly, which is subject to review, reflects the will of the Assembly not to give consent for the appointment of a member of the Supreme Court, the Court accepts that this act has an individual character. In these circumstances, the Court considers that it is not competent to control the decision of Assembly no. 190, of 16.06.2008. In conclusion, the Court concludes that the request initiated by a group of at least one-fifth of deputies (1/5) referred to the annulment of the decision of the Assembly no. 190 of 16.06.2008 should be quashed due to the lack of legitimacy of the applicants and the lack of jurisdiction of this court.

37. I note that the applicants' allegations that the contested act of the Assembly violate the constitutional rights of the members of the PRB Board, guaranteed by Articles 3 [Equality Before the Law], 24 [Equality Before the Law] and 32 [Right to Legal Remedies] of the Constitution, raise constitutional issues, but not from paragraph 5 of Article 113 of the Constitution, in the circumstances of the present case because the contested act qualifies as a legal act that affects only individual rights of the PRB Board members in particular.
38. Therefore, I consider that the dismissed members of the PRB Board, in such circumstances, are potential victims of violations of their individual rights by the contested act. Therefore, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties of the Constitution], which stipulate that:
- “1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]
7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.*
[...]
39. In assessing the admissibility criteria prescribed in paragraph 1 of Article 113 of the Constitution, I assess that the Applicants do not legitimize themselves as an authorized party to raise issues of violation of the individual rights of members of the PRB Board, guaranteed by Articles 3, 24, and 32 of the Constitution, through abstract preventive control, which falls within the scope of Article 113.5 of the Constitution.
40. In what follows, I recall that the applicants claim that the contested decision violated 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“* against the contested act of the Assembly. However, I assess that this should not be understood *a priori* that members of the PRB Board are exempt as a legal category from exhausting all effective legal remedies in regular proceedings against the contested act of the Assembly, because it directly affects their constitutional rights.
41. In this regard, I consider that based on the constitutional norms, in its case law, and referring to the principles established by the ECtHR, I recall that our legislation does not expressly provide for the exclusion of this category of individuals exercising public functions from seeking judicial protection of their rights before regular courts. Moreover, their right to effective access to justice stems from the Constitution (See analogously the ECtHR case Vilho Eskelinen and others v. Finland, no. 63235/00, Judgment of 19 April 2007, paragraph 62, and the Court case KI214/21, with Applicant Avni Kastrati, Judgment of 7 December 2022, paragraph 125).

42. I also recall that Law No. 03/L-202 on Administrative Conflicts provides effective legal remedies for solving the cases of the applicants. In this regard, the Court initially emphasizes that the very purpose of the LAC as a law, as defined in Article 2 [Aim] is to ensure the judicial protection of the rights and interests of natural and legal persons and other parties, whose rights and interests are violated by: (i) individual acts; or (ii) actions of public administration bodies. Further, Article 3, paragraph 1.1 of LAC stipulates that public administration bodies are central administration bodies, while paragraph 1.2 of the same defines as an administrative act any decision of the administrative body issued in an administrative procedure in the exercise of public authorizations and which directly or indirectly infringes the rights, freedoms or interests of legally recognized natural and legal persons. In addition to the provision defining the purpose of the law, more specifically Article 10 of LAC, *inter alia*, provides for the possibility of initiating an administrative conflict against acts for which a natural or legal person considers that a right or legal interest has been violated. (See KI214/21, cited above, paragraphs 115 and 116).
43. It would be considered a waiver of their constitutional right if members of the PRB Board left the right to seek judicial protection before the court to the mercy and will of the applicants, where the case law of the Court and the ECtHR accurately specifies that *„anyone who considers that there has been unlawful interference in the exercise of his/her civil rights and claims that the possibility to challenge a specific claim before a court has been limited, may refer to Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR, being called upon to the relevant right of “access to justice”* (see, KI214/21, cited above, paragraph 107). In this regard, no one prevented the PRB board members from requesting access to the competent civil court to resolve their dispute, which exclusively falls within the area of employment relationship, by referring to Article 31 of the Constitution and Article 6.1 of the ECHR.
44. Therefore, I consider that the allegations of the Applicants, that the members of the PRB Board are not provided with effective remedies to exercise their civil rights, is ungrounded and is not objectively justified because no legal or constitutional provision prohibits the members of the PRB Board the right to seek legal protection of their rights in the regular proceedings, as it is established by Article 54 of the Constitution.
45. Therefore, based on the above, I consider that the applicants are not an authorized party to challenge the constitutionality of the contested act, in conjunction with the human rights guaranteed from Chapter II of the Constitution, in accordance with Article 113.5 of the Constitution, as well as that the members of the PRB Board cannot be exempted from the constitutional obligation to exhaust all effective legal remedies provided by the applicable laws in the regular proceedings, as required by paragraph 7 of Article 113 of the Constitution.
46. In such a way, I consider that the referral of the applicants regarding violations of the individual rights of members of the PRB Board, guaranteed by Articles: 3, 24 and 32 of the Constitution, does not meet the admissibility criteria for further consideration of the merits of the Referral.

(VII) Conclusion regarding alleged violations of the Applicants’ rights

47. Based on the above, and taking into account the considerations of the applicants’ allegations in their referral:
- I. I CONSIDER THAT** the Court should have **DECLARED** the referral admissible for consideration of merits of the Applicants’ allegations regarding Article 65.9

[Competencies of the Assembly] and Article 142 [Independent Agencies] of the Constitution;

- II. I CONSIDER THAT** the Court should have **HELD** that Decision [No. 08-V-583] of the Assembly of the Republic of Kosovo, of 13 July 2023 is not in violation of paragraph 9 of Article 65 [Competences of the Assembly] and paragraph 1 of Article 142 [Independent Agencies] of the Constitution
- III. I CONSIDER THAT** the Court should have **DECLARED** the referral inadmissible for consideration of merits of the Applicants' allegations regarding the violation of the constitutional rights of the members of the Board of Procurement Review Body, guaranteed by articles: 3 [Equality Before the Law], 24 [Equality Before the Law], 32. [Right to Legal Remedies] of the Constitution.
- IV. I AGREE** with the Court's conclusion to **REJECT** the Applicants' request for the imposition of an interim measure.

Dissenting Opinion is submitted by Judge;

Radomir Laban, Judge

On 22 May 2024 in Prishtina.

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