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

Prishtina, 23 July 2024
Ref. no.: AGJ 2486/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

cases no. KO232/23 and KO233/23

Applicants

KO232/23, Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo;

KO233/23, Besian Mustafa and 10 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Law no. 08/L-180 on Amending and Supplementing Law no. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. Referral KO232/23 is submitted by Abelard Tahiri, Memli Krasniqi, Isak Shabani, Eliza Hoxha, Xhavit Haliti, Ferat Shala, Rashit Qalaj, Ariana Shoshi, Ganimete Musliu, Mërgim Lushtaku and Hisen Berisha, deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), of the parliamentary group of the Democratic Party of Kosovo (hereinafter: PDK), who are represented by Faton Fetahu.

2. Referral KO233/23 is submitted by Besian Mustafa, Agim Veliu, Avdullah Hoti, Driton Selmanaj, Armend Zemaj, Rrezarta Krasniqi, Arben Gashi, Vlora Dumoshi, Valentina Bunjaku, Anton Quni and Kujtim Shala, deputies of the Assembly, of the parliamentary group of the Democratic League of Kosovo (hereinafter: LDK), who are represented by Arben Gashi (hereinafter jointly referred to as: the applicants).

Challenged law

3. Applicants in referral KO232/23 challenge: i) the constitutionality of the procedure followed for the adoption of Law No. 08/L-180 on amending and supplementing Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo (hereinafter: the contested Law); as well as ii) the constitutionality of the content of the contested Law as a whole.

4. Whereas the applicants in KO233/23 challenge the constitutionality of articles 2, 3, 6, 7, 8, 9 and 10 of the contested Law.

Subject matter

5. The subject matter of referral KO232/23 is (i) the constitutional review of the procedure followed for the adoption of the contested Law, whereby the applicants claim that it was rendered in violation of Article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly; as well as (ii) the constitutional review of the content of the contested Law, which the applicants claim is not in compliance with articles: 24 [Equality Before the Law], 32 [Right to Legal Remedies], 101 [Civil Service] and 142 [Independent Agencies], of the Constitution. The subject matter of referral KO233/23 is the constitutional review of the provisions specified above of the contested Law, which the applicants claim that they are not in compliance with articles: 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions], 55 [Limitations on Fundamental Rights and Freedoms] and 101 [Civil Service] of the Constitution.

6. In addition, (i) the applicants of referral KO232/23 request the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) that the contested Law be suspended *ex-lege* and not be sent for implementation until the final decision of the Constitutional Court on the contested case; while (ii) the applicants of referral KO233/23 request the imposition of an interim measure in relation to their request since the public interest would be protected, emphasizing, among others, that "*failure to impose the interim measure would have irreparable consequences for all civil servants of Kosovo […]*".

Legal basis

7. The referrals are based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of article 116 [Legal Effect of Decisions] of the Constitution, articles 22 [Processing Referrals], 27 (Interim Measures), 42 (Accuracy of the Referral] and 43 [Deadline] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), as well as rules 25 [Filing of Referrals and Replies] and 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 of the Court, No. 01/2023 (hereinafter: the Rules of Procedure).

Proceedings before the Court

8. On 20 October 2023, the applicants submitted their referrals to the Court.

9. On 30 October 2023, the President of the Court, by Decision [No. GJR. KSH KO232/23], for case KO232/23, appointed judge Radomir Laban as Judge Rapporteur and the Review Panel composed of: Remzije Istrefi-Peci (Presiding), Nexhmi Rexhepi and Enver Peci (members). On the same date, the President, in accordance with paragraph 1 of rule 32 [Joinder and Severance of Referrals] of the Rules of Procedure, by Order [KO232/23 and KO233/23], ordered the joinder of referral KO233/23 with referral KO232/23. Based on paragraph 2 of the abovementioned rule, for the joint referrals, the Judge Rapporteur and the composition of the Review Panel remains in the same composition, as determined for the first referral, namely KO232/23.

10. On 31 October 2023, the Court notified about the registration and joinder of referrals KO232/23 and KO233/23: (i) The President of the Republic of Kosovo (hereinafter: the President); (ii) The President of the Assembly, who was asked to notify the deputies of the Assembly regarding the referral; and (iii) the General Secretary of the Assembly. The latter were asked to take into account the requirements of paragraph 2 of Article 43 of the Law, which establishes: "*In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5 of the Constitution, such a law or decision, shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest*". The President and President of the Assembly were also informed that they may submit their comments regarding the applicants' referral, if they have any, by 15 November 2023; while the General Secretary of the Assembly was requested to submit all relevant documents related to the subject matter of the referral by 15 November 2023. Also, on the same date, the Court notified about the registration and joinder of referrals also: (i) the applicants; (ii) The Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); (iii) the Institution of the Ombudsperson of the Republic of Kosovo (hereinafter: the Ombudsperson); and (iv) the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: IOBCSK), who were requested to submit their comments regarding the referral of the applicant, if any, by 15 November 2023. On the same date, the Court, regarding referral KO232/23, requested the deputy Arben Gashi, in accordance with paragraph 4 of Article 72 of the Rules of Procedure, to submit to the Court the authorization for representation signed by all the deputies submitting the referral.

11. On 2 November 2023, deputy Arben Gashi submitted to the Court the authorization for representation.

12. On 8 November 2023, the General Secretary of the Assembly submitted to the Court the relevant documents related to the case, as follows:

    i) The draft law on amending and supplementing Law No. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo (hereinafter: Draft law on amending and supplementing the basic law on IOBCSK), of 3 October 2022;
    ii) The report of the functional Committee on Public Administration, Local Government, Media and Rural Development for the review in principle of the Draft law on amending and supplementing the basic law on IOBCSK, of 18 October 2022;
    iii) Minutes from the meeting of the functional Committee on Public Administration, Local Government, Media and Rural Development for the review in principle of the

Draft law on amending and supplementing the basic law on IOBCSK, of 17 October 2022;
iv) Decision [No. 08-V-485] of the Assembly of the Republic of Kosovo on the approval in principle of the Draft law on amending and supplementing the basic law on IOBCSK, of 23 February 2023;
v) Minutes of the plenary sessions of the Assembly of the Republic of Kosovo, on 10 November 2022 and on 23 February 2023;
vi) Parts of the transcripts of the plenary sessions for the first review of the Draft law on amending and supplementing the basic law on IOBCSK, of 10 November 2022 and on 23 February 2023;
vii) The report with amendments of the Committee on Public Administration, Local Government, Media and Rural Development for the permanent committees related to the second review of the Draft law on amending and supplementing the basic law on IOBCSK, of 18 July 2023;
viii) Report with amendments of the functional Committee on Public Administration, Local Government, Media and Rural Development, for the second review of the Draft law on amending and supplementing the basic law on IOBCSK, together with the reports of the permanent committees, of 15 September 2023;
ix) Minutes of the meeting of the functional Committee on Public Administration, Local Government, Media and Rural Development, of 26 July 2023;
x) Decision [No. 08-V-615] of the Assembly of the Republic of Kosovo on the approval of the Law on amending and supplementing the basic law on IOBCSK, of 12 October 2023;
xi) Parts of the transcript of the plenary session for the second review of the Draft Law on amending and supplementing the basic law on IOBCSK, of 12 October 2023;
xii) Law No. 08/L-180 on amending and supplementing Law No. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo, of 12 October 2023.

13. On 14 November 2023, the IOBCSK submitted to the Court its comments regarding the referrals.

14. On 15 November 2023, the Prime Minister submitted his comments regarding the case to the Court.

15. On 15 November 2023, the deputy of the parliamentary group of the VETËVENDOSJE! Movement, (hereinafter: the parliamentary group of the LVV), Valon Ramadani submitted his comments to the Court regarding the case.

16. On 21 November 2023, the Court notified about the acceptance of comments related to referrals KO232/23 and KO233/23: (i) the applicants; (ii) the President; (iii) the Presidentof the Assembly; (iv) the Prime Minister; (v) the General Secretary of the Assembly; (vi) the Ombudsperson; as well as (vii) the IOBCSK.

17. 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.

18. On 17 May 2024, the Court, after considering the report of the Judge Rapporteur, decided to postpone its consideration for the next session after additional supplementations.

19. On 21 June 2024, the Court decided (i) unanimously, to declare the referral admissible; and to hold (ii) unanimously, that articles 2, 7 and 8 of Law No. 08/L-180 on Amending and Supplementing Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo are not in compliance with paragraph 1 of article 24 [Equality Before

the Law] and article 32 [Right to Legal Remedies] in conjunction with paragraph 2 of article 101 [Civil Service] of the Constitution of the Republic of Kosovo and the latter are declared invalid; (iii) by seven (7) votes for and two (2) against, that Article 6 of Law No. 08/L-180 on Amending and Supplementing Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, is not in compliance with paragraph 2 of Article 101 [Civil Service] of the Constitution of the Republic of Kosovo and the same is declared invalid; (iv) unanimously, that articles 9, 10 and 11 of Law No. 08/L-180 on Amending and Supplementing Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, are not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and declared the latter invalid; (v) unanimously, that based on Article 43 (Deadline) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, Law No. 08/L-180 on Amending and Supplementing Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, is sent for promulgation to the President of the Republic of Kosovo, without articles 2, 6, 7, 8, 9, 10 and 11; and (vi) unanimously, to reject the request for interim measure.

Summary of facts

20. On 30 September 2022, the Government of the Republic of Kosovo (hereinafter: the Government), in its 99th meeting, by Decision [No. 30/99], adopted the Draft Law on amending and supplementing Law on the IOBCSK.

21. On 3 October 2022, the Draft Law on amending and supplementing the Law on the IOBCSK was distributed to the deputies of the Assembly for review.

22. On 23 February 2023, after the first reading, in the presence of 88 (eighty-eight) deputies, with 61 (sixty-one) votes in favor, none against and no abstentions, the Assembly approved in principle the Draft Law on amending and supplementing the Law on IOBCSK and, by Decision [No. 08-V485], charged i) the functional Committee on Public Administration, Local Government, Media and Rural Development, as a reporting functional committee (hereinafter: Functional Committee); ii) Committee on Budget, Labor and Transfers; iii) Committee on Legislation, Mandates, Immunities, the Rules of the Assembly and the Oversight of the Anti-Corruption Agency; iv) Committee on European Integration as well as i) Committee on the Rights and Interests of Communities and Return, to examine the draft law in question and present their reports with recommendations.

23. On 17 July 2023, the Functional Committee reviewed the Draft Law on amending and supplementing Law on IOBCSK, and decided to present the report with 3 (three) amendments to the Assembly and the permanent committees. The proposed amendments include the following changes

    (i) **Amendment 1 (one**) foresees the addition of Article 3 to the Draft Law on amending and supplementing Law on the IOBCSK, by which Article 8 (Composition of the Board) of Law No. 06/L-048 on IOBCSK (hereinafter: Basic Law on IOBCSK), so that from seven (7) members of the IOBCSK, their number increases to fifteen (15), and the ratio of ethnic and gender representation of members is changed;
    (ii) **Amendment 2 (two)** envisages the addition of an article before article 3 of the Draft Law on amending and supplementing Law on IOBCSK, by which the content of Article 9 of the Basic Law is changed so that the criteria for appointing a member of the IOBCSK are changed; and

(iii) **Amendment 3 (three)** provides for the addition of an article before article 3 of the Draft Law on amending and supplementing Law on IOBCSK, by which paragraphs 4 and 5 of article 10 of the Basic Law on IOBCSK are changed, respectively, the competences of the relevant functional Committee which is responsible for the development of procedures for the appointment of members of the IOBCSK are changed.

24. On 20 July 2023, the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, assessed that the Draft Law on amending and supplementing the Law on IOBCSK is in compliance with the Constitution and the applicable law. On the same date, the Committee on European Integration reviewed the Draft Law on amending and supplementing the Law on IOBCSK and assessed that the latter is not contrary to the legislation of the European Union.

25. Also on 20 July 2023, the Committee on Rights and Interests of Communities and Return examined the Draft Law on amending and supplementing the Law on IOBCSK and assessed that the rights and interests of the communities are not violated or affected by the latter.

26. On 26 July 2023, the Committee on Budget, Labor and Transfers reviewed the Draft Law on amending and supplementing the basic law of the IOBCSK and assessed that it does not contain additional budgetary implications.

27. On 15 September 2023, the Functional Committee approved its report regarding the Draft Law on amending and supplementing the basic law of the IOBCSK, proposing its adoption to the Assembly.

28. On 12 October 2023, the Assembly, after the second reading, in the presence of 63 (sixty-three) deputies, with 59 (fifty-nine) votes in favor, none against and 4 (four) abstentions, adopted in principle the Draft Law on amending and supplementing the Law on IOBCSK.

The contested provisions of Law No. 08/L-180 on amending and supplementing Law No. 06/L-048 on the Independent Oversight Board for Civil Service of Kosovo

Article 1
(no title)

"The purpose of this Law is to amend and supplement the law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo."

Article 2
(no title)

"In Article 6 of the basic Law, the following paragraph 2 shall be added:

2. Notwithstanding paragraph 1 sub-paragraph 1.1 of this Article, IOBCSK shall have no competence to decide on appeals against the Government's decision for civil servants in senior management positions. Against these decisions, the party shall have the right to initiate an administrative conflict with the competent court, in accordance with the relevant law on administrative conflicts."

Article 3
(no title)

"Article 8 of the basic Law shall be amended as follows:

Article 8
(Composition of the Board)

1. The Board shall be composed of fifteen (15) members appointed by the Assembly of the Republic of Kosovo.
2. The composition of the Board shall reflect the multi-ethnic and gender character of Kosovo. At least three (3) members shall be appointed from among non-Albanian, communities and at least four (4) members shall be among female gender."

Article 4
(no title)

"Article 9 of the basic Law shall be amended as follows:

Article 9
(Criteria for the Appointment of the Board's member)

1. The candidate applying to be appointed as a member of the Board shall have qualifications and meet the criteria as follows:
1.1. be citizen of the Republic of Kosovo;
1.2. have a valid diploma of the Law faculty pursuant to the Law into force;
1.3. have at least seven (7) years of professional work experience, of which at least four (4) years of work experience in the civil service or public official;
1.4. have good knowledge for the legislation into force;
1.5. not to be convicted by a final decision for commitment of a criminal offence intentionally;
1.6. no disciplinary measure of discharge from the civil service has been taken by a final decision against him/her."

Article 5
(no title)

"Article 10 of the basic Law, paragraphs 4 and 5 shall be amended as follows:

4. In carrying out the procedures for appointment of the members of the Board, the relevant functional Committee shall have the following competences:
4.1. review of the applications of the candidates;
4.2. preparation of the short list of candidates that meet the defined legal criteria;
4.3. interview and evaluation of the candidates; as well as
4.4. preparation of the recommendation for the successful candidates.
5. Within the period of twenty-one (21) days after the closing of the public announcement, the relevant functional Committee shall finalize the procedure of selection and recommends to the Assembly of Kosovo two (2) candidates evaluated with the highest points, for any vacancy in the Board."

Article 6
(no title)

"Article 11 of the basic Law, paragraph 3 of shall be deleted from the text of the Law."

Article 7
(no title)

"1. Article 16 of the basic Law, paragraph l, in the first sentence, after the phrase: "or a candidate for employment in the Civil Service", there shall be added the words: "except successful candidates proposed for the senior managerial positions".
2. Article 16 of the basic Law, paragraph 6, the words "senior management" shall be deleted from the basic Law."

Article 8
(no title)

"Article 19 of the basic Law, in every paragraph or sub-paragraph of this Article, the words "senior management" shall be deleted.

Article 9
(no title)

"Article 21 of the basic Law shall be reworded as a whole, as follows:

1. The decision of the Board is an administrative decision and it shall be implemented by the senior management level official or the responsible person of the institution that has taken the first decision towards the party.
2. Implementation of the decision shall be made within fifteen (15) days upon the end of the deadline foreseen for the appeal in the competent court, as foreseen by the provisions of the law on administrative conflict, except when the decision is appealed within the competent court.
3. Non-implementation of the decision of the Board, within the determined deadline in cases when none of the parties have contested it at the competent court, or after the final decision of the competent court, represents violation of the provisions of this Law."

Article 10
(no title)

"Paragraph 2 of Article 22 of the basic Law shall be reworded as follows:

2. In cases when an administrative conflict is initiated against the decision of the Board the competent court, the decision shall be executed for the case only when there is final decision of the competent court."

Article 11
(no title)

"Paragraph 1 of Article 23 of the basic Law shall be reworded as follows, while paragraphs 5 and 6 shall be deleted:

1. If the person responsible of the institution does not implement the decision of the Board within the time frame foreseen under Article 21 of this Law, in cases when none of the parties has contested the decision of the Board in the competent court, Chairperson of the Board in the time frame of fifteen (15) days from the day when the deadline for implementation has expired, shall inform, in writing, the President of the Assembly, the relevant Committee for public administration and the direct supervisor of the person responsible for the implementation."

Article 12
(Entry into force)

"This Law shall enter into force fifteen (15) days after the publication in the Official Gazette of the Republic of Kosovo."

Relevant provisions of Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo

Article 6
(Functions of the Board)

"1. For the supervision of the implementation of rules and principles of the Civil Service legislation, the Board shall have the following functions:
1.1. reviews and determines appeals filed by civil servants and candidates for admission to the civil service;
1.2. supervises the selection procedure and determines whether the appointments of civil servants of high executive and management level have been conducted in accordance with the rules and principles of civil service legislation;
1.3. monitors public administration institutions employing civil servants regarding the implementation of the rules and principles of civil service legislation."

Article 8
(Composition of the Board)

"1. The Board shall be composed of seven (7) members appointed by the Assembly of the Republic of Kosovo.
2. The composition of the Board shall reflect the multi-ethnic and gender character of Kosovo. At least two (2) of its members shall be appointed from among Kosovo non-Albanian community and at least two (2) members shall be among female gender."

Article 9
(Criteria for the Appointment of the Board's member)

"1. The candidate applying to be appointed as a member of the Board shall have qualifications and meet the following the criteria:
1.1. be citizen of the Republic of Kosovo;
1.2. have a valid diploma of the Law faculty pursuant to the applicable Law;
1.3. have at least ten (10) years of professional work experience, of which at least five (5) years work experience in the Civil Service;
1.4. have passed jurisprudence examination;
1.5. have good knowledge of the applicable laws;
1.6. not to be convicted by a verdict for willingly committing a criminal offense;

1.7. no disciplinary measures of discharge from the civil service have been taken with a final decision against him/her."

Article 10
(Appointment procedures of the members of the Board)

"[...]
4. For carrying out the procedures for appointing members of the Board, the Assembly of Kosovo shall establish an Ad-hoc Committee, which shall have the following competencies:
4.1. to consider the applications of the candidates;
4.2. to prepare the short list of the candidates who meet the defined legal criteria;
4.3. to interview and evaluate the candidates, and
4.4. to prepare recommendation for the successful candidates.
5. Within the period of twenty-one (21) days after the closing of the public announcement, Adhoc Committee shall finalize the procedure of selection and recommends to the Assembly of Kosovo two (2) candidates with the highest scores, for any vacancy in the Board."

Article 11
(Term of office for members of Board)

"[...]
3. Regarding the decision-making within the constitutional and legal functions of the Board, the Chairperson and members of the Board enjoy immunity from prosecution, civil lawsuit or discharge."

Article 16
(Review of the Complaints)

"1. A civil servant, or a candidate for employment in the Civil Service who is unsatisfied with the decision of the employing authority, shall have the right to appeal to the Board, regarding his claim for breach of the rules and principles set out in the legislation on Civil Service of the Republic of Kosovo.
2. Civil Servant or candidate for employment in the Civil Service is entitled to submit a complaint to the Board electronically in accordance with the respective legislation for electronic communication as well as the rules set with the respective regulation for submitting complaints to the Board.
3. On behalf of the Board, complaints are reviewed and decided upon by the College composed out of three (3) members, which is determined with the decision of the Board.
4. Before appealing to the Board, the civil servant or applicant who alleges to be damaged, must exhaust all the internal appeals procedures of the employing authority concerned, unless otherwise defined by a special law.
5. The Board should give the parties the right to present in written their evidence and facts related to the case. In cases involving disputes of material facts, both parties are given the possibility to be questioned by the Board, with the aim of presenting the relevant evidence.
6. A member of the Board, who monitored the election procedure for appointment of senior management and management level civil servants, shall not participate in the procedure of reviewing the complaints related to the same procedure."

Article 19
Oversight procedure for the selection of senior management and management level Civil Servants

"1. Board monitors all the procedures for selection of senior management and management level Civil Servants.
2. Public administration institution that initiates the procedure for election of Civil Servants pursuant to paragraph 1. of this Article, is obliged to inform the Board accordingly within five (5) days from the moment of publication of the vacancies.
[...]
6. The Board is obliged to issue a decision for the procedure of election of senior management and management level Civil Servants, within the thirty (30) days deadline from receiving the complete file from the employing authority.
7. If the development of the procedure for election of senior management and management level Civil Servants, is done without notifying the Board for participating in the oversight, the procedure is considered invalid and according to its official duty the Board issues a decision for annulment of the procedure.
8. The decision of the Board about the procedure for election of senior management and management level Civil Servants, is a final decision in the administrative procedure and against this decision the parties in the procedure can initiate an administrative conflict, in accordance with the provisions of the law on administrative conflict."

Article 21
(Board's decision)

"1. Board's decision is a final administrative decision and is implemented by the senior management level official or the responsible person from the institution that made the first decision towards the party.
2. Implementation of the decision should be done within fifteen (15) days deadline from the receipt of the Board decision.
3. Non-implementation of the Board decision by the responsible person from the institution, constitutes serious breach of the work duties."

I. Applicants' allegations in case KO232/23

29. Applicants of referral KO232/23, initially claim that the procedure followed for the adoption of the contested Law was conducted in violation of Article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly, as well as request the constitutional review of the content of the contested Law, claiming that its provisions are not in compliance with Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 101 [Civil Service], Article 142 [Independent Agencies], of the Constitution.

30. In what follows, the Court will summarize the claims of the applicants KO232/23 regarding i) the procedure followed for the adoption of the contested Law, which the applicants claim was rendered in violation of Article 77 (Reading of a draft law amending and supplementing a law) of the Rules of procedure of the Assembly; as well as ii) the content of the contested Law, which the applicants claim is not in compliance with Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 101 [Civil Service] and Article 142 [Independent Agencies], of the Constitution.

31. In the following, the Court will reflect the essential allegations of the applicants, according to the chronology presented in the referral in connection with the contested Law.

(i) Allegations of procedural violations during the adoption of the contested Law

32. Regarding the procedure for adoption of the contested Law, the applicants claim that: *"The initiative for drafting and approving the contested law was taken by the Government and as such it was proposed for review and approval in the Assembly. However, the approved amendments in the content of the text of the contested law exceed the volume of changes proposed in the government's draft law, as the Committee, in violation of Article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly has also proposed amendments, respectively new articles".*

(ii) Allegations about the incompatibility of the contested Law with the Constitution

33. Applicants in referral KO232/23 emphasize that the contested Law in its entirety violates "*role, function and constitutional status"* of the IOBCSK, because according to them:

"i) Strips it of the constitutional responsibility for assessing complaints and the legality of procedures (on which the Government decides) regarding the employment relationship of senior management level of public officials;
ii) Increases the numerical composition of members from the current seven (7) to fifteen (15) members;
iii) It removes the constitutional right to functional immunity from its members;
iv) Makes the decision of the board ineffective, in cases where an administrative conflict is initiated against its decision in the competent court, fundamentally violating the principle of legal certainty and the principle of fair trial and for this reason, because the initiation of the administrative conflict, on the basis of the contested law, prohibits the execution of the Board's decision;"

(iii) Allegations regarding Article 2 of the contested Law, which supplements and amends Article 6 of the Basic Law

34. In relation to Article 2 of the contested Law, which supplements and amends Article 6 (Functions of the Board) of the basic Law, by adding a new paragraph, namely paragraph 2, as reflected in the provisions of the contested Law, the emphasize that Article 6 of the Basic Law defines the functions of the IOBCSK, specifying that the latter makes decisions on complaints of all civil servants, while through amendments to the contested Law, the latter"*[...] strips it of the constitutional responsibility for assessing complaints and the legality of procedures (for which the Government decides) related to the employment relationship of senior management level of public officials, and in this way narrows and reduces this function*".

35. According to the Applicants, Article 2 of the contested Law is contrary to Article 101 [Civil Service] of the Constitution, "*[...] limiting the competencies and responsibilities of the Board by Law, as long as the latter are guaranteed by the Constitution*".

36. The applicants further emphasize that "*the definition of the IOBCSK as a constitutional institution to protect the rules on the civil service has the purpose, in addition to the protection of the standards and principles in the civil service, also to guarantee*

effective legal remedies for the entities that are part of the procedures where the rules of the civil service are applied". According to the applicants, Article 2 of the contested Law not only diminishes the competencies of institution but is also seen as "*denial of the right to exercise the legal remedy for a part of the civil service in their constitutional rights*", respectively violates Article 32 [Right to Legal Remedies] of the Constitution.

37. The applicants also emphasize that Article 2 of the contested Law, "*[...] excludes a part of public officials from the right to appeal to the IOBCSK while allowing other public officials the opportunity to appeal*". According to the applicants, this violates Article 24 [Equality Before the Law] of the Constitution. In connection with this, the applicants emphasize that in a similar situation the Constitutional Court also assessed in similar manner, where it underlined that *"the unequal treatment of civil servants in relation to the competencies of the Board for the oversight of the selection of civil servants, defined by Article 6 paragraph 1.2 of the contested Law, is not compatible with Article 24 [Equality Before the Law] of the Constitution. In addition to the constitutional violation, the reflection of this provision in practice presents an extremely high potential for the violation of human rights, political influence in the recruitment of these positions and damage to the budget*".

(iv) Allegations regarding articles 3, 4 and 5 of the contested Law, which supplement and amend articles 8, 9 and 10 of the Basic Law

38. Regarding articles 3, 4 and 5 of the contested Law, the applicants claim that "*they present new approved changes in the content of the text of the law which exceed the volume of changes proposed in the draft law of the government, as the committee, contrary to Article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly has also proposed amendments, respectively Articles 3, 4 and 5*".

39. According to the applicants, Article 3 of the contested Law represents a procedural violation, "*excluding the possibility to draft, propose and approve new articles in such cases*".

40. Regarding this claim, at the end, the applicants add that the contested Law was approved by a procedure that resulted in a violation of the Rules of Procedure of the Assembly.

(v) Allegations regarding Article 6 of the contested Law, which supplements and amends Article 11 (Mandate of Council members) of the Basic Law

41. Article 6 of the contested Law amends Article 11 (Term of office for members of Board) of the basic Law by deleting paragraph 3 of the latter.

42. The applicants emphasize that the Basic Law is the "*materialization and operationalization*" of articles 101 [Civil Service] and 142 [Independent Agencies] of the Constitution, and according to them "*any violation thereof, especially regarding the removal of immunity is a clear violation of the above provisions of the Constitution*".

43. Further, in this regard, the applicants point out that according to the Court's own practice "*this immunity [...] is completely valid and as such is of a functional character, while in terms of its role, the IOBCSK enjoys the prerogatives of a court within the meaning of Article 6 of the European Convention on Human Rights*".

44. They further emphasize that the granting of immunity for the chairman and other members of the IOBCSK *"[...] directly violates the independence of this institution as well as it violates the rights of the parties. It is absurd to consider that for each case, the members of IOBCSK will also bear civil liability*".

45. The applicants in connection with this claim also refer to Court's case KO171/18, applicant *the Ombudsperson*, Judgment of 25 April 2019, respectively paragraph 247, emphasizing among other things that *"This judgment already has the status of a constitutional norm, so it is equal in legal effect to any other provision of the Constitution"*.

46. In addition, the applicants also refer to the Court case, KO127/21 [applicant *Abelard Tahiri and ten other members of the Assembly of the Republic of Kosovo*, Judgment of 9 December 2021, paragraph 114], emphasizing that the immunity of the members of IOBCSK is considered as a necessary element of independence and as an opportunity for members to be free to "to exercise their functions independently and without fear of consequences for the exercise of their functions in relation to "*the views expressed, the manner of voting or the decisions taken during their work [...] this institution cannot do this in the manner and constitutionally required standards if it does not have immunity"*.

(vi) Regarding the claims of the applicants regarding Article 10 of the contested Law, which amends and supplements paragraph 2 of Article 22 (Initiation of the administrative conflict) of the Basic Law

47. In connection with this, the applicants emphasize that "*The contested law ultimately renders the decision of the Board ineffective, in cases where an administrative conflict is initiated against the relevant decision in the competent court, fundamentally violating the principle of legal certainty and the principle of fair trial and within a reasonable time because the initiation of the administrative conflict, based on the contested law, prohibits the execution of the Board's decision. Currently, in the administrative procedure, the Board acts as the second instance. In each case when a decision is taken by the institution in the first instance administrative procedure, the dissatisfied party has the right to appeal to the Board. Based on Law 05/L-031 on the General Administrative Procedure [Article 130], the submission of the appeal suspends the implementation of the decision of the first instance. According to the Law, the decision of the Board is considered final and is an enforceable decision. The initiation of the administrative conflict does not stop the execution of the Board's decision, except if the Court assesses that in a specific case this should happen and imposes an interim measure"*.

48. The applicants add that through the contested Law, in cases where an administrative conflict is initiated before the regular courts, the Decisions of the IOBCSK will not be implemented until a final decision of the regular courts.

49. The latter also emphasize that: "*This legal solution is contrary to the conceptual aspects between the administrative procedure and the judicial procedure. These two procedures are different and separate procedures. The administrative procedure, which ends at the second instance within the administrative institutions, is regulated by another law of the administrative conflict that takes place in court. For this reason, the correlation of the implementation of the Board's decision with the court's decision, as long as the court has not imposed an interim measure, is a mixture of the basic differences between the administrative and the judicial procedure. The existence of the board as an administrative body for the protection of judicial rights aims at the legal*

resolution of issues and complaints within the administration, as well as increasing the efficiency in handling these cases. Ex-lege suspension of the Board's decision until a final court decision is issued, practically excludes the board from its constitutional role and makes it impossible to resolve complaints within the administrative procedure. This article, which regulates the form and methods of establishment of Independent Agencies, defines four basic principles that must accompany the establishment and operation of Independent Agencies. First, the Assembly of Kosovo is the constitutional authority that holds the right of establishment of Independent Agencies. For their establishment, the article in question determines that the Assembly must adopt the relevant laws, which regulate, among other things, their operation and legal scope. Secondly, the Constitution establishes that the Independent Agencies must be guaranteed that the exercise of their legal function is carried out without influence and independently from any instruction or interference of other state bodies, including the body that established it. Thirdly, to guarantee their independence, Article 142 establishes that the Independent Agencies must have their own separate budget, and administer the latter in an independent manner, and, the last constitutional principle which must accompany the establishment of Independent Agencies, is related to the constitutional gradation that other state bodies maintain their independence, cooperate and respond to the requests of independent agencies while exercising their constitutional and legal competencies".

50. In the end, the applicants of referral KO232/23, request the Court as follows: (i) to declare the referral admissible; and (ii) to hold that the contested Law is not in compliance with the Constitution and to declare it invalid in its entirety.

II. Applicants' allegations in case KO233/23

51. The applicant of this referral claim that articles 2, 3, 6, 7, 8, 9, 10 and 11 of the contested Law are not compatible 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], article 53 [Interpretation of Human Rights Provisions], article 55 [Limitations on Fundamental Rights and Freedoms] as well as article 101 [Civil Service] of the Constitution.

52. In what follows, the Court will summarize the essential claims of the applicants in case KO233/23 regarding the incompatibility of the aforementioned articles of the contested Law with the Constitution.

(i) Claims related to articles 2, 7 and 8 of the contested Law

53. The applicants emphasize that articles 2, 7 and 8 of the contested Law *"limit the constitutional role of this institution, since the Constitution of the Republic of Kosovo has mandated the Board to "ensure compliance with the rules and principles that regulate the civil service and which reflects the diversity of the people of the Republic of Kosovo". Thus, the Constitution has given the constitutional right to the Independent Oversight Board to oversee the entire civil service of the Republic of Kosovo and not only some categories of the civil service".*

54. Further, regarding the abovementioned articles of the contested Law, where, among other things, the IOBCSK is deprived of the competence to decide on the complaints of senior management level employees, the applicants point out that "*in the Judgment in case no. KO 171/18 published on 20 May 2019, the Constitutional Court of the Republic of Kosovo in points 98 and 99 of this Judgment found that "the scope of the Board is*

limited and closely linked to the basic law, namely the special law governing the civil service". Therefore, also in this sense with LAW NO. 08/L-197 ON PUBLIC OFFICIALS, which regulates the civil service and entered into force on 18 September 2023, the competence of the IOBCSK to handle and decide on the complaints of civil servants of the senior management level, the removal of the competence of the IOBCSK to decide on complaints for the positions of civil servants at the senior management level is also contrary to Article 32 of the Constitution, civil servants at the senior management level have their constitutional rights reduced, consequently human rights [Article 32] guaranteed by the Constitution, because they are unable to apply administrative legal remedies in administrative proceedings. This approach of unequal treatment is contrary to Article 24 of the Constitution, which guarantees equality before the law."

(ii) Allegations regarding Article 6 of the contested Law

55. In relation to Article 6 of the contested Law, the applicants, among other things, claim that: *"The issue of functional immunity for the chairman and members of the Board is concluded by the Judgment in case no. KO 171/18 published on 20 May 2019 of the Constitutional Court of the Republic of Kosovo. In this case, the Ombudsperson, among other things, contested the immunity of the chairman and members of the IOBCSK, but the Constitutional Court rejected the claim of the Ombudsperson".*

56. In this context, the applicants add that "*The parliamentary majority intends to take away the functional immunity from the Chairman and members of the IOBCSK. Taking the immunity from the chairman and members of the IOBCSK undermines the independence of this institution and directly affects the intimidation and decision-making of the chairman and members of the Board, thus affecting the legal uncertainty of thousands of civil servants, who expect decision-making based on the law by the Independent Board and not decision-making under the pressure of the Government and other political mechanisms.*

57. The applicants, referring to the case law of the European Court of Human Rights (hereinafter: ECtHR), add that: *"[...] functional immunity is important both for the independence of judges and for the rights of the parties. In the first case, functional immunity enables judges to perform their duties without the fear that the exercise of their powers may result in being considered responsible for the damages caused. Also, this type of immunity allows judges to focus on their work and not to be constantly disturbed by lawsuits filed against them. In addition, according to the European Court of Human Rights, functional immunity enables parties to appeal court decisions at a higher instance and not need to open a separate civil case. Thus, under this spirit, the fact is understood that the citizens will contest the decisions made and not the decision maker".*

(iii) Claims regarding Article 9 of the contested Law

58. The applicants, in connection with this claim, initially before the Court emphasize that the Court in some of its cases has concluded that the decisions of the IOBCSK are "*final, binding and enforceable*" decisions.

59. Furthermore, regarding the legal status of the IOBCSK, the applicants refer to the case law of the Court, respectively case KO171/18, cited above, as well as in individual cases, respectively KI33/16, applicant *Minire Zeka*, Judgment of 6 July 2017, paragraph 56; KI50/12, applicant *Agush Llolluni*, Judgment of 9 July 2012, paragraph 36; and KI129/11, applicant *Viktor Marku*, Judgment of 11 July 2012, paragraph 42.

60. The applicants emphasize that by Law No. 05/L-031 on General Administrative Procedure (hereinafter: LGAP), the submission of the complaint to the IOBCSK suspends the implementation of the decision of the relevant institution, and that the decisions of the IOBCSK are considered as final decisions. The latter underline that *"[...] the initiation of the administrative conflict does not stop the execution of the decision of the IOBCSK, exceptionally if the court assesses that in a specific case this should happen and imposes an interim measure"*.

61. The applicants further add that: "*According to the provisions of the contested Law, in each case when a lawsuit is initiated against the decision of the IOBCSK before the court, the decision of the IOBCSK will not be implemented until the moment when the court renders a final decision. [...] the correlation of the applicability of the decision of the IOBCSK with the decision of the court, as long as the court has not imposed an interim measure, is a mixture of the basic differences between the administrative and the judicial procedure, and the latter is contrary to Article 31. The existence of IOBCSK as the final body in the administrative procedure for the resolution of disputes from the employment relationship in the civil service aims to resolve disputes within the administration as well as to increase the efficiency in handling these cases, Ex-lege suspension of the decision of the IOBCSK until the issuance of a the final court decision practically excludes the IOBCSK from its constitutional role and prevents the resolution of complaints and the implementation of the decision within the administrative procedure"*.

62. At the very end, in connection with this claim, the applicants state that the non-implementation of the decisions of the IOBCSK, if the latter is challenged before the Court *"[...] essentially strikes the institutional authority of the Board, as a quasi-judicial institution, and without this function it would have no role at all in the structure of independent institutions, and as such it would not have to exist at all"*.

(iv) Request for interim measure

63. The applicants of referral KO232/23 request from the Court that the contested Law be suspended *ex-lege* and not be sent for implementation until the final decision of the Constitutional Court on the contested Law is rendered.

64. Applicants of referral KO233/23 request the Court to impose an interim measure, claiming as follows:

"(i) the non-imposition of interim measure would have irreparable consequences for all civil servants of Kosovo due to the non-implementation of the decisions of the IOBCSK which are contested before the Court, for the chairman and members of the Independent Board due to the removal of immunity as well as for senior management level employees who are denied the right to apply legal remedies in administrative proceedings;
(ii) moreover, as a result of the non-application of legal remedies in the administrative procedure, and consequently their denial to civil servants, serious consequences will be caused to the functioning of the institutions and the budget of the Republic of Kosovo will be damaged;
(iii) the removal of immunity for the chairman and members of the IOBCSK will affect their intimidation by the government to decide on the complaints of civil servants and would severely damage the independence of this independent institution."

Comments submitted by IOBCSK on 14 November 2023

65. On 14 November 2023, the IOBCSK submitted its comments to the applicants' allegations. In the following, the Court will summarize the comments of the IOBCSK regarding the claims of the applicants and the contested Law, including those related to: (i) Article 2 of the contested Law, which supplements and amends Article 6 (Functions of the Board) of the Basic Law; (ii) Article 6 of the contested Law, which supplements and amends Article 11 (Term of office for members of Board) of the Basic Law; and (iii) Article 10 of the contested Law which amends and supplements paragraph 2 of Article 22 (Initiation of the administration conflict) of the Basic Law.

(i) Regarding the claim of the applicants in connection with Article 2 of the contested Law, which supplements and amends Article 6 (Functions of the Board) of the Basic Law.

66. Regarding the claim of the applicants, which is related to the reduction of the constitutional competencies of the IOBCSK, the latter claims that "*is not compatible with Article 24 [Equality Before the Law] and Article 101 [Civil Service] of the Constitution [...] in our assessment the scope of the Independent Oversight Board for the Civil Service is limited and closely related to the basic law respectively the basic law which regulates the civil service".*

67. According to the IOBCSK, based on Article 101 of the Constitution as well as Article 5 of Law No. 08/L-197 on Public Officials, "*The Board has a mandate to oversee the implementation of the rules and principles of the Civil Service in all public administration institutions where Civil Servants are employed and that in fulfillment of the constitutional mandate it exercises the function of examining and deciding complaints for all civil servants, starting from the professional official to the position of the senior manager, if it is claimed that the rights or legal interests stemming from the employment relationship in the civil service have been violated, regardless of whether the object of the dispute is the Government's decision or any other decision of other public administration bodies [...] taking into account that civil servants of the senior management category, on the one hand, as well as other civil servants on the other hand, are in an analogous situation or a relatively similar situation, due to the fact that all are civil servants, we note that Article 2 of the contested law creates a situation of unequal treatment of civil servants in relation to the exercise of effective legal remedies and as such this provision is not compatible with Article 24 [Equality Before the Law] of the Constitution".*

(ii) Regarding the claim of the applicants in connection with Article 6 of the contested Law which supplements and amends Article 11 (Term of office for members of Board) of the Basic Law

68. Regarding the claim of the applicants for the removal of immunity for the members of the IOBCSK, the latter in their comments emphasize that "*Functional immunity for the chairman and members of the Board exists because the Board qualifies as a "quasi-judicial" institution, namely as a tribunal in relation to the resolution of disputes arising from the civil service. Consequently, the Independent Board enjoys the prerogatives of a "court", specifically because of its independence from the executive and the legislature, and qualifies as an institution that has full jurisdiction to render binding decisions, regarding conflicts between civil servants or candidates for civil servants on the one hand, and institutions that employ civil servants, on the other (see Judgment in case no. KO171/18, paragraph 165 and case no. KO127/21, paragraph 86)".*

69. Finally, regarding this claim, the IOBCSK adds that *"Article 3 of the contested law, which provision removes immunity of the chairman and members of the Board, violates the independence of the Board in the exercise of the constitutional mandate, and as such this provision is not in compliance with Article 101.2 of the Constitution, Judgment in case no. K0171/18 and the Judgment in case no. KO127/21 of the Constitutional Court".*

(iii) Regarding the claim of the applicants regarding Article 10 of the contested Law which amends and supplements paragraph 2 of Article 22 (Initiation of the administration conflict) of the Basic Law

70. The IOBCSK in its comments regarding the lack of effectiveness of the decision of the IOBCSK in the event of the initiation of the administrative conflict emphasized that "*In cases where an administrative conflict is initiated against the decision of the Board before the competent court, the execution of the decision on the case is done only when there is a final decision of the competent court" referring to Court's cases respectively no. KO171/18, paragraph 165 as well as case no. K0127/21, paragraph 86) adds that "in the event that the initiation of the administrative conflict against the decisions of the Board constitutes a legal cause for the decision of the Board to be suspended, it will prevent the latter from effectively and efficiently exercising the constitutional mandate to ensure compliance with the rules and principles that regulate the civil service."*

71. In relation to this, the IOBCSK adds that: "*The ex lege suspension of the Board's decision also contradicts the spirit of the ECtHR consolidated case law, where it has been concluded that in the actions of the state administration a balance between the requirements of the general interest of the community and the requirements of the protection of the fundamental rights of individual must exist".*

72. Finally, referring to the content of paragraph 1 of article 13 and paragraphs 1, 2, 3 and 4 of article 22 of Law No. 03/L-202 on Administrative Conflicts, the IOBCSK states that "*the parties to the proceedings are given the opportunity to protect their claimed rights by submitting a request for the postponement of the execution of the administrative act until the court decision is rendered, under the condition that the execution of the decision would bring harm to the claimant which would be difficult to repair, the postponement of the execution is not contrary to the public interest, nor would the postponement of the execution bring any great harm to the opposing party or the interested party".* Further, according to the IOBCSK: *"article 7 of the contested law, by which it is established that in cases where an administrative conflict is initiated against the decision of the Board before the competent court, the execution of the decision on the case is done only when there is a final decision of the competent court, is not in compliance with the spirit of Article 33 [Right to Legal Remedies] of the Constitution, since interested parties in administrative conflict proceedings, which may include civil servants or candidates for admission to the Civil Service, will not be able to use legal remedies according to the legal framework of Law No. 03/L-202 on Administrative Conflicts and the Law on Contested Procedure, because the provisions of these two laws have not addressed nor regulated the issue of suspension according to the ex lege principle of the final administrative act, as are also the decisions of the Board, by which civil servants or candidates for admission to the civil service may be recognized or confirmed any right from the employment relationship according to the provisions of the legislation on the civil service and therefore in the spirit of Article 49.1 [Right to Work and Exercise Profession] of the Constitution of Kosovo".*

Comments submitted by the Government on 15 November 2023

73. On 15 November 2023, the Prime Minister, on behalf of the Government, submitted his comments to the applicants' claims. In the following, the Court will summarize the comments of the Prime Minister regarding the claims of the applicants and the contested Law, including those related to (i) "*stripping*" the IOBCSK of constitutional responsibility; (ii) composition of members; (iii) removal of immunity; and (iv) the lack of effectiveness of the decision of the IOBCSK in case of the initiation of the administrative conflict.

(i) Regarding the claim of the applicants for "stripping" the IOBCSK of constitutional responsibility

74. In relation to the claim of the applicants for the reduction of the constitutional competencies of a constitutional institution and with this, the reduction of the rights guaranteed in Article 32 [Right to Legal Remedies] of the Constitution, the Prime Minister relies on the Commentary on the Constitution where he elaborates Article 32 of the Constitution, which is characterized by the principle of two levels of adjudication as a necessary element, and in this regard emphasizes that: *according to the Constitution itself, the essential element within Article 32 is the provision of two-instance, which fully coincides with Article 13 of the European Convention for the Protection of Human Rights (hereinafter referred to as: ECHR). With the proposed amendments in the contested law in relation to point a), the two-instance is not impossible, on the contrary. The decisions of the Government are subject to the assessment of the court, therefore, with ensuring the court assessment of the decisions of the Government, in two levels at least, the right guaranteed in Article 32 of the Constitution is exercised, moreover, the Commentary points out that this right is regulated by law, which is exactly what was done with the proposed amendments in the contesed law".*

75. The Prime Minister, in his comments, also refers to the cases of the ECtHR, such as: *Ramirez Sanchez v. France*, no. 59450/00, Judgment of 4 July 2006 and *Leander v. Sweden* , no. 9248/81, Judgment of 26 March 1987, citing that the ECtHR can see the effective remedy only that which is presented before the judicial authorities and that, unlike the cases of court remedies, the ECtHR, every time will be forced to assess whether the judicial authorities or quasi judiciary are independent. In this regard, the Prime Minister emphasizes that *"[...] by the proposed amendments to the contested Law, the parties are guaranteed the undisputed independence of the tribunal/court that decides on the case; clear procedure that indisputably allows both parties to be heard (inaudita altera parte), and enforceable decision-making according to the power of judicial authority".*

76. In relation to the removal of the decision-making of the IOBCSK in relation to the executive power, the Prime Minister cites the commentary of the Constitution regarding the constitutional position of the Government, for which he states that: *"[...] the state [Government] constitutes the most important mechanism of the state. There are only judicial mechanisms, (not quasi-judicial or almost judicial), the Assembly, the constitution or the political parties that limit it (or protect it from dictatorship, as the Commentary cites), Consequently, in what light is the limitation of the executive power by a quasi-judicial body like IOBCSK is done? In this regard, reference should also be made to the competencies of the Government that stem from the Constitution, in particular those that directly affect the public administration".*

77. In this context, the Prime Minister, among other things, states as follows: *"1) The Government is responsible for the management of the public administration (including the non-political level of the civil service) and that 2) within the oversight, as a competence of the Government, the dismissal of the bearers of the state administration within the guarantees of Article 101 is foreseen. First, by the authority or the aforementioned constitutional powers of the government, it is noted that the decisions of the latter can become subject to the authority of the court or the assembly. Such a thing is expressly foreseen by the Constitution. [...]"*

78. The Prime Minister also considers that the decision-making of a quasi-judicial body cannot be imposed on the Government and in this regard he emphasizes: *"[...] according to the Decision of the Constitutional Court KO171/18, it is not an independent constitutional institution, the decision-making of a whole power foreseen and protected by the Constitution"*. The latter underlines that the proposal made within the contested Law aims to preserve the power of the Government, guaranteed by the Constitution, to protect and ensure the implementation of the rights guaranteed by the Constitution and the ECHR, respectively the two-instance system, as well as the necessary distinction between the positions which are based on their weight of responsibility, competences and general role in ensuring the functioning of the administration.

(ii) Regarding the claim of the applicants for the composition of the members

79. The Prime Minister in his comments regarding this claim only states that: *"The Government of the Republic of Kosovo considers that the change in the composition of the members of the IOBCSK does not in any way represent a constitutional issue, therefore, moreover, it will not enter the unequal treatment of the claimant's claim at this point"*.

(iii) Regarding the claim of the applicants for the removal of immunity

80. In relation to the claim of the applicants for the prohibition of the removal of immunity for the members of the IOBCSK since they enjoy immunity based on the Constitution itself, according to its articles 101 and 142, the Prime Minister considers that this finding of the applicants is erroneous in terms of constitutional norms because according to them, *"IOBCSK is an administrative, non-judicial body within the meaning of Article 6 of the ECHR, its members are not judges and do not enjoy immunity guaranteed by the Constitution for judges. At this point, it should be noted that only judges, deputies and members of the Government, according to the wording of the Constitution, enjoy functional immunity. Even in Decision KO171/18, the Court affirms that the members of the IOBCSK are not judges nor part of a judicial institution within the meaning of Article 6 of the ECHR, therefore they do not enjoy the immunity granted automatically ex officio"*.

81. Furthermore, the Prime Minister emphasizes that (i) immunity is a legal category and 2) it can be assigned by special laws, and therefore falls under legal categorization. According to him, it is in the hands of the legislator to propose or not immunity by a special law, which makes the removal of immunity not a constitutional category.

(iv) Regarding the claim of the applicants for the lack of effectiveness of the decision of the IOBCSK in the event of the initiation of the administrative conflict

82. Regarding the claim of the applicants for the lack of effectiveness of the decision of the IOBCSK in the event of the initiation of the administrative conflict, the Prime Minister

emphasizes that: *"1. The IOBCSK has neither the form nor the organization of an independent agency of the Assembly; 2. The IOBCSK cannot be imposed on the decisions of the Government, taking into account the lack of competencies that only the Assembly and the judicial system have based on the Commentary against the Government; 3. The decisions of the IOBCSK can be final in the administrative procedure only if such a thing is foreseen in the law, which is therefore completely in the will of the elected people; 4. The judicial resolution of the dispute is a fair, independent, legally binding and enforceable solution, therefore as such it cannot violate the right to a fair trial according to Article 6 of the ECHR and the Constitution of the Republic of Kosovo".*

83. The Prime Minister in his comments argues that the IOBCSK is not an independent agency of the Assembly of the Republic of Kosovo, the scope and operation of the same would depend on the will expressed through the law approved by the Assembly, and that even if it were such the powers depend on the primary legislation that regulates the IOBCSK , as provided for in the law approved by the Assembly. In this regard, the Prime Minister emphasizes that since the source of the competencies of the IOBCSK is the Assembly, according to the Commentary on the Constitution, the competencies of the Government cannot be limited by the judicial and legislative powers. Consequently, according to him, under no circumstances by the IOBCSK.

84. In the context of the final effect of the decision of the IOBCSK, the Prime Minister considers that the solution offered by the contested Law, also in terms of treating the decision as final, is a final solution. This is because according to him, as long as the law in force provides that the decision of the IOBCSK is final, this is also applied in practice. Therefore, the latter states that as long as such a thing is foreseen by law, this regulation has no way of becoming a norm.

85. The Prime Minister also mentions the cases of the ECtHR, in which it is emphasized that Article 6 of the ECHR protects the implementation of the final and enforceable decision as the main element of the "*right to court*", as well as the provisions of Article 6 would avoid their effective use. In this regard, the latter is invoked in the cases of the ECtHR, *Ouzounis and Others v. Greece*, no. 49144/99, Judgment of 18 April 2022, paragraph 21; *Scordino v. Italy (no. 1) [GC],* no. 36813/97, Judgment of 29 July 2004, paragraph 196; *Hornsby v. Greece,* no. 18357/91, Judgment of 19 March 1997; paragraph 40; and *Burdov v. Russia*, no. 59498/00, Judgment of 7 May 2002, paras. 34-37.

86. The Prime Minister also notes that*: "The right to execute court decisions is of even greater importance in the context of the proceedings (Sharxhi and others v. Albania, 2018, § 92). By exercising the appeal in the highest administrative court of the state, the appellant requests the displacement of the effect of the preliminary decision which translates into the effective protection of the appellant's rights (Hornsby v. Greece, 1997, § 41; Kyrtatos v. Greece, 2003, §§ 31-32; and with regard to judgments of a constitutional court, see, mutatis mutandis, Xero Flor ë Polsce sp. z 0.0. v. Poland, 2021, §§ 282-283)."*

87. Moreover, the Prime Minister in his comments considers that the Government, through the creation of a special Court for administrative matters, will enable:

"1) independent and fair trial by judicial authority within the meaning of Article 6 ECHR;
2) resolving disputes in a reasonable time within the meaning of Article 6 ECHR;

3) the selection of judicial authorities according to international standards on those elected "by their peers" completely eliminating political influence against high-ranking positions of the civil service, which represents the legitimate and effective purpose in terms of preserving the independence of the state administration from politics but also differentiation for a fair and legitimate purpose, according to the definition produced by the Constitutional Court of the Republic of Kosovo."

88. Regarding the principle of legal certainty, the Prime Minister states that:

"In general, legal certainty presupposes respect for the principles of res judicata and the finality or final effect of the judgment (Guðmundur Andri Ástráðsson v Iceland [GC], 2020, § 238 and below).
Recently, the right to a fair trial under Article 6 of the ECHR requires that the case be "heard by an independent and impartial tribunal". The independence of the judiciary is a sine qua non condition for a fair trial according to Article 6 of the ECHR, (Grezeda v. Poland [GC], 2022, §301) while the independence of the judiciary is a prerequisite for the rule of law. Judges cannot maintain the rule of law and give effect to the rights of the Convention as long as national laws deprive them of the guarantees of the ECHR. Consequently, as long as the Law on IOBCSK obliges the implementation of the decisions of IOBCSK even when the administrative conflict is initiated, it deprives the parties from hearing their case by an independent and impartial court, specialized in administrative matters (reference to the Court for Administrative Affairs), according to the definition of Article 6 of the ECHR.
Therefore, the applicant, through the presented arguments, deprives the court of the implementation of Article 6 of the ECHR and advocated for the lack of a fair and impartial trial according to the ECHR".

89. Finally, the Prime Minister on behalf of the Government in his comments states the following:

"- the IOBCSK, as a non-independent constitutional institution, regulates its scope by a law voted by the deputies of the Assembly of the Republic of Kosovo;
- the proposals presented in the contested Law make the necessary depoliticization of the public administration and ensure fair and impartial trial according to the ECHR;
- consequently, the Constitutional Court of the Republic of Kosovo is requested to dismiss the arguments presented by the deputies of the Assembly of the Republic of Kosovo by referral KO232/23 and KO233/23 as ungrounded and declare the contested Law in full compliance with the Constitution of the Republic of Kosovo."

The comments submitted by the deputy of the LVV parliamentary group, Valon Ramadani, on 15 November 2023

90. On 30 January 2023, Mr. Ramadani, deputy of the LVV parliamentary group, submitted his comments to the Court regarding cases KO232/22 and KO233/22.

91. From the comments submitted by Mr. Ramadani, the Court notes that the latter are mainly related to the claims of the applicants regarding procedural violations during the review of the approval of the contested law.

92. In the comments submitted to the Court, Mr. Ramadani first emphasizes that the claims of the applicants regarding procedural violations during the review of the approval of the contested law do not constitute constitutional issues. In support of this Mr. Ramadani emphasizes that "*Based on the jurisprudence of the Constitutional Court […] the decisions and/or actions of the bodies of the Assembly of Kosovo are not*

constitutional issues and thus cannot be subject to assessment in the Constitutional Court".

93. In support of this claim, the applicant also refers to the Court's own case law, respectively the case KO45/18, applicant *Glauk Konjufca and 11 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 18 April 2018; KO115/13, applicant *Ardian Gjini and 11 other deputies of the Assembly of the Republic of Kosovo,* Resolution on Inadmissibility of 14 November 2013.

94. Further, Mr. Ramadani before the Court emphasized that "*The claims of the applicant that the changes made in regular parliamentary procedure have exceeded the volume of changes proposed by the initiator, besides being unfounded, are also harmful to the role and function of the Legislature. Volume presupposes quantity, and limiting the role of deputies in the volume of changes is as much a limitation of their legislative function as it is absurd. Such a limitation has no basis in parliamentary practice. The legislator's capacity to adopt laws cannot be violated, even through the presentation and approval of amendments, limiting the amount of interventions, as long as those changes are made in a regular procedure and the approval is in accordance with the Constitution and in compliance with the proposer. There is no authority that demarcates the limits of amending a draft law in parliamentary procedure, as long as the sponsor/proposer is not against those changes and that the approval is based on the Constitution. The applicant contests the increase in the number of members of the IOBCSK from 7 to 15 on procedural grounds. The applicants, convinced that the increase in the number of members in the IOBCSK is a purely legal issue and does not constitute a constitutional issue, try to contest the change by procedurally challenging the adoption of the law".*

95. In his comments before the Court, Mr. Ramadani adds that: "*Even the Board itself in its annual work reports has raised the need to increase capacities, but also the burden that the Board has in dealing with complaints efficiently. As is known, the Board works with special panels for concrete cases. Therefore, the increase in the number of members expands the basis for the creation of several panels at the same time in order for each panel to handle concrete cases. This undoubtedly guarantees efficiency, but also quality in examining cases in the most reasonable time. Add the fact that the Board has determined the maximum term within which it must take a decision on a submitted complaint. Also, the increase in the number of members expands the possibility of fulfilling other responsibilities of the Board, such as the realization of the monitoring plan related to the supervision of the implementation of the rules and principles of the civil service legislation".*

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.
[…]"

Article 4
[Form of Government and Separation of Power]

"1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.
2. The Assembly of the Republic of Kosovo exercises the legislative power.
3. The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.
4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control.
5. The judicial power is unique and independent and is exercised by courts.
[…]"

Article 7
[Values]

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

Article 16
[Supremacy of the Constitution]

"1. The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution.
2. The power to govern stems from the Constitution.
3. The Republic of Kosovo shall respect international law.
4. Every person and entity in the Republic of Kosovo is subject to the provisions of the Constitution".

Article 19
[Applicability of International Law]

"[…]
2. Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo.

Article 22
[Direct applicability of International Agreements and Instruments]

"Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over provisions of laws and other acts of public institutions:
(1) Universal Declaration of Human Rights;
(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
[…]"

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 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 53
[Interpretation of Human Rights Provisions]

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

Article 55
[Limitations on Fundamental Rights and Freedoms]

"1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.
2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.
[...]"

Article 63
[General Principles]

"The Assembly is the legislative institution of the Republic of Kosovo directly elected by the people."

Article 65
[Competencies of the Assembly]

"The Assembly of the Republic of Kosovo:
[...]
(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 74
[Exercise of Function]

"Deputies of the Assembly of Kosovo shall exercise their function in best interest of the Republic of Kosovo and pursuant to the Constitution, Laws and Rules of Procedure of the Assembly."

Article 76
[Rules of Procedure).

"The Rules of Procedure of the Assembly are adopted by two thirds (2/3) vote of all its deputies and shall determine the internal organization and method of work for the Assembly."

Article 101
[Civil Service]

"1. The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality.
2. An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo.

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."

RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC OF KOSOVO, adopted on 28 July 2022

CHAPTER VIII
ASSEMBLY COMMITTEES

Article 41
(Responsible-Rapporteur Committee)

"1. The Speaker of the Assembly, according to the scope, appoints one of the committees, as the responsible committee, to report on the draft law and other documents submitted to the Assembly.
2. The Responsible-Reporting Committee shall review the draft law or motion, shall draft and recommend amendments and shall inform the assembly if amendments are in conflict with one another.
3. Only the Responsible-Rapporteur Committee shall report on the draft law to the Assembly.

4. The report shall contain the proposals of the Responsible-Rapporteur Committee, the opposing reasons and opinions, as well as the comments of other committees, for which the Assembly shall decide in a plenary session.
5. The Chairperson or Rapporteur of the Responsible-Rapporteur Committee shall submit to the Assembly a report on the review of the draft law and the evaluation of the committee."

Article 42
(Standing committees and functional committees)

"1. The Assembly shall establish Standing and Functional Committees.
2. The Assembly, shall approve the establishment of committees, as per paragraph 1 of this article, and shall define their scope.
3. Standing committees are committees that cover relevant areas such as: budget and finances, legislation, European integration and the rights and interests of communities.
4. Standing committees shall consider all draft laws and other acts, from their scope, which are submitted to the Assembly and assigned to them with a decision of the Assembly.
5. Functional committees shall consider draft laws and other acts, only from their scope."

CHAPTER XI
READING PHASES OF A DRAFT LAW

Article 77
(Reading of a draft law amending and supplementing a law)

"In the event of a draft law proposing amendments and supplementation to a law, only provisions proposed with such draft law for the amendment of an existing law shall be amended."

LAW NO. 05/L-031 ON GENERAL ADMINISTRATIVE PROCEDURE

PART VII
ADMINISTRATIVE LEGAL REMEDIES CHAPTER I

GENERAL RULES ON ADMINISTRATIVE LEGAL REMEDIES

Article 10
(Principle of non-formality and efficiency of the administrative proceeding)

"[...]
2. Public organ shall conduct an administrative proceeding as fast as possible and with as little costs as possible, for the public organ and for the parties, but at the same time in such a manner as to obtain everything that is necessary to a lawful and effective outcome.

Article 124
(Locus standi and grounds to an administrative remedy)

"1. A party shall have the right to legal remedy against every administrative action or inaction, if it claims that its right or legitimate interests are infringed by such action or inaction. A member of a collegial organ shall have the right to legal remedy against procedural actions or inactions, if it claims that a provision established in Articles 37 to 43 of this Law was infringed by such action or inaction.
2. Unless otherwise provided by law, administrative remedy may be filed on the grounds of unlawfulness of the action.
3. Ordinary administrative remedies shall be:
3.1. administrative appeal;
3.2. administrative complaint.
4. Exceptional administrative remedies shall be the reopening of the proceeding.
5. A party is not entitled to a second ordinary administrative remedy on the same case.
6. The exhaustion of respective ordinary administrative remedy is a preliminary requirement for any dispute before a competent court for administrative disputes. Direct access to the court without preceded administrative remedy is allowed, when:
6.1. a superior organ does not exist;
6.2. a third party claims that its rights or legitimate interests are infringed by an administrative act resolving an administrative remedy; or
6.3 explicitly provided by law.

Article 144
(Enforceability of administrative acts)

1. A first instance administrative act shall become enforceable:
1.1. when the deadline for an appeal has expired and no appeal has been lodged;

1.2. when the party is notified of the act, and according to the law, no appeal is permitted;
1.3. when the party is notified of the act and according to the law, the appeal has no suspending effect;
1.4. upon the notification of the decision to abolish the suspensory effect of the appeal in accordance with paragraph 3. of Article 130 of this law;

1.5. when the party is notified of the administrative act rejecting the appeal.
2. A second instance administrative act by which the first instance administrative act has been altered shall become enforceable after notification of the party.

[...]"

LAW No. 03/L-202 ON ADMINISTRATIVE CONFLICTS (which shall be repealed upon the entry into force of Law No. 08/L-182 on Administrative Conflicts, namely 1 (one) year after its publication in the Official Gazette – publication date 10 January 2024)

Article 13
(Administrative conflict)

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

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

Article 22
(no title)

1. The indictment does not prohibit the execution of an administrative act, against which the indictment has been submitted, unless otherwise provided for by the law.
2. By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person.
3. Together with the postponing request, proves that show the indictment has been submitted should be presented.
4. For postponement of execution, the competent body shall issue decision not later than three (3) days from the date of receiving the request for postponement.
[…]"

Article 66
(no title)

"Court decisions may be executed when they become omnipotent and executable."

LAW NO. 08/L-197 ON PUBLIC OFFICIALS

Article 5
(Categories of the public official)

"[…]
2. A civil service employee shall be a public official within the civil service who participates in the formulation and/or implementation of policies, monitors the implementation of administrative rules and procedures and provides general professional and administrative support in implementation. A civil service employee shall perform the duties in the relevant position, starting from the professional official to the position of the senior manager, in the administration of the President of the Republic of Kosovo, in the administration of the Assembly of the Republic of Kosovo, in the Office of the Prime Minister of the Republic of Kosovo, in the Ministry, in executive agencies and their local branches, independent constitutional institutions, in independent and regulatory agencies, in the municipal administration and every employee whose status is defined as a civil service employee, by special law.
[…]"

Article 38
(Classification of positions in civil service)

"2. Positions in the civil service shall be divided into the following categories:
2.1. Senior-level management category shall include the general secretary, director general in independent and regulatory agencies, executive director, and deputy director of an executive agency, and equivalent positions thereof;
2.2. Mid-level management category shall include the director of department and equivalent positions thereof;

2.3. Low-level management category shall include the head of division and equivalent positions thereof;
2.4. The category of specialists shall include the senior professionals in areas that require specific preparation for that area; and
2.5. The professional category shall include professional officers.

Article 27
(The right to information about the employment relationship and the right to appeal)

"[...]
3. The civil servant shall have the right to file an appeal to the Independent Oversight Board of the Civil Service of Kosovo in relation to any action or omission that violates rights or legal interests, the rights deriving from the employment relationship in the civil service.
[...]"

Article 49
(Appointment and term of senior management positions)

"1. An immediate supervisor shall, through a reasoned decision, select the winning candidate proposed in accordance with paragraph 8. of Article 47 within a period of thirty (30) days from the announcement of winners.
[...]
6. The extension of the term, in the case of state administration institutions, shall be approved by the Government, at the proposal of the immediate supervisor, based on the employee's performance in the case of other state institutions, the decision to extend the term shall be taken by the immediate supervisor.
[...]"

Article 74
(Dismissal from the civil service)

"[...]
3. Dismissal from civil service shall be made by a decision of:
3.1. Human Resource Management Unit, where the employee exercises his or her duty;
3.2. Government, at the proposal of the Minister responsible for public administration, for civil servants of senior-level management category in the state administration institutions.
[...]"

Admissibility of the Referral

96. The Court first examines whether the referrals have fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and the Rules of Procedure.

97. In this respect, the Court refers to paragraph 1, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes that: *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties"*.

98. The Court notes that the applicants have filed their referrals based on paragraph 5 of article 113 of the Constitution, which establish:

> *"5. 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."*

99. Therefore, based on the above, a referral submitted to the Court under paragraph 5 of Article 113 of the Constitution must (i) be submitted by at least by 10 (ten) deputies of the Assembly; (ii) contesting the constitutionality of a law or decision adopted by the Assembly, for the content and/or for the procedure followed; and (iii) the referral must be submitted within a period of 8 (eight) days from the day of adoption of the contested act.

100. The Court, in assessing the fulfillment of the first criterion, namely the necessary number of deputies of the Assembly to submit the respective referrals, notes that the referrals KO232/23 and KO233/23 were submitted by 11 (eleven) deputies, therefore, the referrals of the applicants fulfill the criterion established in the first sentence of paragraph 5 of Article 113 of the Constitution to set the Court in motion.

101. The Court, also in assessing the fulfillment of the second criterion, the Court notes that the applicants contest Law No. 08/L-180 on amending and supplementing Law no. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, adopted in the Assembly. As for the third criterion, namely the time limit within which the relevant referral must be submitted to the Court, the latter notes that both referrals were submitted to the Court on 20 October 2023, while the contested Law was adopted by the Assembly on 12 October 2023, which means that the referrals were submitted to the Court within the deadline set by paragraph 5 of Article 113 of the Constitution.

102. Therefore, the Court assesses that the Applicants are legitimized as an authorized party within the meaning of paragraph 5 of Article 113 of the Constitution to challenge the constitutionality of the contested act before the Court, both in terms of content and the procedure followed, since in in the present case, the applicants, all of whom are deputies of the VIII legislature of the Assembly, therefore, they are considered an authorized party and, therefore, have the right to contest the constitutionality of the contested Law adopted by the Assembly.

103. In addition to the aforementioned constitutional criteria, the Court also takes into account Article 42 (Accuracy of the Referral) of the Law, which specifies filing of the referral based on paragraph 5 of Article 113 of the Constitution, which defines as follows:

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."*

104. 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:

> 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, 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.*
> *(2) 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."*

105. In the context of the two aforementioned provisions, the Court notes that the applicants (i) wrote their names and signatures in their respective referrals; (ii) specified the contested act; (iii) referred to specific articles of the Constitution, which they claim that the provisions of the contested Law are not in compliance with; and (iv) submitted evidence and testimony to support their claims.

106. Therefore, taking into account the fulfillment of the constitutional and legal criteria regarding the admissibility of the respective referrals, the Court declares the referrals of the applicants admissible and will further examine their merits.

Merits

107. The Court recalls that the constitutional issue that includes the referral in question is the constitutional review of (i) the procedure followed for the adoption of the contested Law; and (ii) assessment of the content of the contested Law as a whole.

108. More specifically, the Court recalls that: (i) regarding the procedure followed of the contested Law, the applicants claim that the approved changes in the content of the text of the contested law exceed the volume of changes proposed in the draft law of the Government, since the relevant parliamentary committee, contrary to Article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly, has also proposed amendments, respectively new articles; while (ii) as regards the content of the contested Law, the applicants claim, among other things, that: a) in relation to the removal of the responsibility of the IOBCSK for the assessment of complaints and the legality of the procedures related to the employment relationship of civil servants of senior management level, through the amendments to the contested Law, the IOBCSK strips the constitutional responsibility for assessing complaints and the legality of the procedures of the employment relationship of senior management level, and in this way articles 24 [Equality Before the Law], 32 [Right to Legal Remedies] and 101 [Civil Service] of the Constitution are violated; b) in relation to the legal provisions for the removal of immunity for the members of the IOBCSK, taking

the immunity for the chairman and members of the IOBCSK directly violates the independence of the latter and violates the rights of the parties, and is in violation of articles 101 [Civil Service] and 142 [Independent Agencies] of the Constitution; c) regarding the lack of effectiveness of the final decision of the IOBCSK in case of initiation of an administrative conflict, through the proposed change, the decision of the IOBCSK becomes ineffective, in cases where an administrative conflict is initiated against the relevant decision in the competent court, thus infringing on legal certainty.

109. The claims of the applicants, (i) in principle, are supported by the IOBCSK, while (ii) they are opposed by the Prime Minister and the deputy of the LVV parliamentary group, Mr. Ramadani.

110. The Court (i) has limited the constitutional review of the contested Law to the scope of the provisions contested by the applicants and those related to them; and (ii) throughout this assessment, among other things, elaborated and applied the general principles established by the Court, with an emphasis on (i) the Judgment of the case KO171/18; (ii) Judgment in case KO127/21, and (iii) Judgment in case KO216/22 and KO220/22, applicant *Isak Shabani and 10 (ten) other deputies as well as Arben Gashi and 9 (nine) other deputies*, regarding the assessment of Law No. 08/L-197 on Public Officials (hereinafter: Judgment in case KO216/22 and KO220/22); as well as the case law of the ECtHR.

111. In order to assess the provisions of the contested Law, the Court recalls the aforementioned case law, respectively the Judgment in case KO171/18, the Judgment in the case KO127/21, as well as the Judgment in case KO216/22 and KO220/22, cited above, insofar as the aforementioned judgments are relevant and related to the circumstances of the present case.

112. As far as it is relevant, the Court recalls that in the Judgment KO171/18, it had assessed the constitutionality of the Basic Law on the IOBCSK, in which case it assessed that the IOBCSK cannot be categorized as an independent constitutional institution according to Chapter XII [Independent Institutions] of the Constitution, nor as an independent agency based on Article 142 [Independent Agencies] of the Constitution, but as an independent institution established by paragraph 2 of Article 101 [Civil Service] of Chapter VI [Government of the Republic of Kosovo] of the Constitution, in order to ensure the rules and principles that regulate the civil service in the Republic of Kosovo (see Court Judgment KO171/18, paragraphs 155-159). The Court in the above judgment, among other things, concluded as follows: (i) expression "Civil Service" as read and interpreted by Article 101 of the Constitution must be understood in its context and the purpose of the drafter. This purpose is expressed in Article 1of the Law on Civil Service, thus avoiding the possibility of misinterpretations or technical interpretations of the norm in question; (ii) in relation to the allegations of violation of the constitutional independence of the Ombudsperson and other independent constitutional institutions, emphasized that the latter are not exempted from the obligation to regulate the specifics regarding the employment relationship in regulations or legal acts, which differ from the general norms established by other laws, including the contested Law on the IOBCSK in the case in question; and during its implementation, their function should be recognized, among others, in issuing and applying their internal rules to protect their independence provided by the Constitution and in special laws, to the extent necessary, to protect their independence; as well as (iii) regarding the claims of granting immunity to the members of the IOBCSK through the law, assessed that the latter is *"compatible with the Constitution"* (see, Judgment of the Court KO171/18).

113. In the Court's Judgment KO127/21, during the constitutional review of the Assembly's Decision on the dismissal of the members of the IOBCSK, the Court based on the general principles regarding the independence of the IOBCSK, the nature of the decisions that this institution issued, as well as in the functional immunity of the members of the IOBCSK, found that the latter cannot be called to account for the way of voting or the decisions taken during their work, because this would violate their independence in exercising their competencies as members of the IOBCSK, as guaranteed by the principles embodied in paragraph 2 of Article 101 [Civil Service] of the Constitution. (see, Court Judgment KO127/21).

114. Also, as far as it is relevant to the circumstances of the present case, the Court recalls its finding in the Court Judgment in case KO216/22 and KO220/22, that the competence of the Ministry responsible for public administration regarding "*supervision of the implementation of policies for the public official*" established in sub-paragraphs 1.1 and 1.2 of article 13, of the contested Law on Public Officials in the case in question is the competence of the IOBCSK, according to paragraph 2 of article 101 of the Constitution and article 6 (Powers of the Board), including Article 19 (Oversight procedure for the selection of senior management and management level Civil Servants) of the Basic Law. Consequently, the Court found that the aforementioned provisions were not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power] and paragraph 2 of Article 101 [Civil Service] of the Constitution and as a result repealed the latter (see the case of the Court, KO216/22 and KO220/22, paragraph 254).

115. In the following, the Court will first examine the merits of: (i) the procedure followed for the adoption of the contested law, and then continue with the consideration (ii) of its content as far as it has been contested by the applicants.

I. AS REGARDS THE PROCEDURE FOLLOWED FOR THE ADOPTION OF THE CONTESTED LAW

116. The Court recalls that as regards the procedure followed, the applicants claim that articles 3, 4 and 5 of the contested Law present new approved changes in the content of the text of the contested Law, which exceed the volume of changes in the proposals in the draft law of the government , since the relevant parliamentary committee, contrary to article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly, has also proposed amendments to the contested Law, respectively its articles 3, 4 and 5. More specifically, the applicants emphasize that the changes proposed after the adoption of the contested Law by the Government, respectively the changes issued by the functional Committee, result in the violation of Article 77 of the Rules of the Assembly.

117. In order to deal with the claim of the applicants, first the Court reiterates the content of articles 3, 4 and 5 of the contested Law, as follows:

Article 3
(no title)

"Article 8 of the basic Law shall be amended as follows:

Article 8
(Composition of the Board)

1. The Board shall be composed of fifteen (15) members appointed by the Assembly of the Republic of Kosovo.
2. The composition of the Board shall reflect the multi-ethnic and gender character of Kosovo. At least three (3) members shall be appointed from among non-Albanian, communities and at least four (4) members shall be among female gender."

Article 4
(no title)

"Article 9 of the basic Law shall be amended as follows:

Article 9
(Criteria for the Appointment of the Board's member)

1. The candidate applying to be appointed as a member of the Board shall have qualifications and meet the criteria as follows:
1.1. be citizen of the Republic of Kosovo;
1.2. have a valid diploma of the Law faculty pursuant to the Law into force;
1.3. have at least seven (7) years of professional work experience, of which at least four (4) years of work experience in the civil service or public official;
1.4. have good knowledge for the legislation into force;
1.5. not to be convicted by a final decision for commitment of a criminal of offence intentionally;
1.6. no disciplinary measure of discharge from the civil service has been taken by a final decision against him/her."

Article 5
(no title)

"Article 10 of the basic Law, paragraphs 4 and 5 shall be amended as follows:

4. In carrying out the procedures for appointment of the members of the Board, the relevant functional Committee shall have the following competences:
4.1. review of the applications of the candidates;
4.2. preparation of the short list of candidates that meet the defined legal criteria;
4.3. interview and evaluation of the candidates; as well as
4.4. preparation of the recommendation for the successful candidates.
5. Within the period of twenty-one (21) days after the closing of the public announcement, the relevant functional Committee shall finalize the procedure of selection and recommends to the Assembly of Kosovo two (2) candidates evaluated with the highest points, for any vacancy in the Board."

118. The Court notes that the content of articles 3, 4 and 5 of the contested Law concerns the amendment of the relevant provisions of the Basic Law in relation to (i) the number and composition of the members of the IOBCSK, (ii) the criteria for appointment of its members as well as (iii) changing the procedure for appointing the members of this institution.

119. However, the Court once again recalls that the applicants relate this claim only to the procedure followed by the Assembly for the adoption of the contested Law, emphasizing that the procedural rules of the Assembly, respectively Article 77 (Reading of a draft law

amending and supplementing a law) of the Rules of Procedure of the Assembly have been violated.

120. Based on the claims of the applicants, the Court recalls the content of Article 77 of the Rules of Procedure of the Assembly, which defines as follows: *"In the event of a draft law proposing amendments and supplementation to a law, only provisions proposed with such draft law for the amendment of an existing law shall be amended"*.

121. In relation to the claim for the violation of the provisions of the Rules of Procedure of the Assembly and the relevant circumstances of the case, the Court refers to case law, namely the Resolution on Inadmissibility in its case KO120/16, applicant *Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo* regarding the constitutional review of Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo, where the applicants, among others, had raised the claim for the violation of articles 56 (First reading of Draft-Laws) and 57 (Review of a Draft-Law by Committees) of the Rules of Procedure of Assembly that was applicable at that time. In this regard, the Court assessed that the scope of its jurisdiction according to paragraph 5 of Article 113 of the Constitution is to examine the compliance with the procedural rules included in the Constitution, of the procedure followed in the Assembly, and considered that the applicants had not substantiated how this claim, which is related to the Rules of Procedure of the Assembly, represents a constitutional violation, which the Court would have the competence to examine (see the cases of the Court KO120/16, applicant *Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo, Resolution on Inadmissibility of 20 January 2017, paragraphs 93-94 and *mutatis mutandis*, KO94/16, Constitutional review of the Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency, Resolution on Inadmissibility of 25 October 2016, paragraph 53).

122. In the circumstances of the present case, the Court notes that the applicants, the allegation for the procedure followed by the Assembly for the adoption of the contested Law, which they claim resulted in the violation of the procedural rules of the Assembly, respectively Article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly, the Court assesses that the applicants in their referrals have not argued why the violation of Article 77 of the Rules of Procedure of the Assembly constitutes a constitutional violation. Moreover, they have not related this claim to the violation of any article of the Constitution.

123. From the above, the Court finds that the manner in which the applicants raised the claim for the violation of the procedure followed for the adoption of the contested Law by the applicants, namely in the context of the violation of Article 77 of the Rules of Procedure of the Assembly by not specifically relating to any article of the Constitution, does not raise issues at the constitutional level.

124. Therefore, the Court will not further examine this claim of the applicants.

II. AS REGARDS THE CONTENT OF THE CONTESTED LAW

125. The Court first recalls that 22 (twenty two) deputies of the Assembly of the Republic of Kosovo, through two (2) separate referrals, based on paragraph 5 of article 113 of the Constitution, request the constitutional review the contested Law as a whole, which articles they claim to be incompatible with articles: 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 53 [Interpretation of

Human Rights Provisions], 55 [Limitations on Fundamental Rights and Freedoms], 101 [Civil Service] and 142 [Independent Agencies] of the Constitution.

126. The Court notes that the applicants claim that all the provisions of the contested Law as a whole are unconstitutional, among others, for the following reasons:

(i) The removal of the responsibility of the IOBCSK for assessing complaints and the legality of procedures related to the employment relationship of senior level civil servants, through amendments to the contested Law, strips the IOBCSK of the constitutional responsibility for assessing complaints and the legality of procedures for the employment relationship of senior management level civil servants, and in this way articles: 24 [Equality Before the Law], 32 [Right to Legal Remedies] and 101 [Civil Service] of the Constitution have been violated;
(ii) The removal of immunity for the members of the IOBCSK, directly violates the latter's independence and violates the rights of the parties, and it is contrary to articles: 101 [Civil Service] and 142 [Independent Agencies] of the Constitution;
(iii) The lack of effectiveness of the final decision of the IOBCSK in case of initiation of the administrative conflict, through the proposed change, makes the decision of the IOBCSK ineffective, in cases where an administrative conflict is initiated against the relevant decision before the competent court by violating in this way the legal certainty and violating articles: 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution.

127. These allegations, in essence and according to the clarifications given in the part related to the allegations and responses of the interested parties before the Court, in principle, are also supported by the IOBCSK, while they are counter-argued by the Prime Minister of the Republic of Kosovo and the deputy of parliamentary group of the LVV.

128. In order to assess the constitutionality of the contested Law, the Court, regarding each contested article, will first present: (a) the claims and comments of the parties; (b) general principles established by the case law of the Court and/or ECtHR; and then the Court will proceed with: (c) the application of those principles to the contested articles of the contested Law.

A. Regarding the allegations related to articles 2, 7 and 8 of the contested Law, which supplement and amend articles 6, 16 and 19 of the Basic Law

129. Initially and for the purposes of assessing the constitutionality of articles 2, 7 and 8 (no title) of the contested Law, which supplement and amend articles 6 (Functions of the Board), 16 (Review of the Complaints) and 19 (Oversight procedure for the selection of senior management and management level Civil Servants) of the Basic Law, the Court will examine the claims of the applicants regarding the violation of Articles 24 [Equality Before the Law], 32 [Right to Legal Remedies] and 101 [Civil Service] of the Constitution. More specifically, in the assessment of these claims, the Court will first present: (a) the essence of the claims, comments and relevant answers; (b) relevant general principles; and after (c) the court's assessment of the specific claims.

a. The essence of the applicants' allegations and the comments of opposing and interested parties

130. The Court notes that the applicants claim that the legal changes related to the competence of the IOBCSK for the assessment of complaints and the legality of procedures related to the employment relationship of civil servants of senior

management level, violate articles: 24 [Equality Before the Law] , 32 [Right to Legal Remedies] and 101 [Civil Service] of the Constitution.

131. More specifically, the Court recalls that in the context of the violation of Article 101 of the Constitution, they emphasize that by Article 6 of the Basic Law on the IOBCSK, the functions of the IOBCSK are defined, specifying that the latter takes decisions on complaints of all civil servants, while through the changes established in articles 2, 7 and 8 of the contested Law, the latter according to them, *"[...] strips it of the constitutional responsibility for assessing complaints and legality of procedures (for which the Government decides) regarding the employment relationship of senior management level of public officials, and thus narrows and reduces this function*". Moreover, the Court points out that the applicants consider that this limits the competencies and responsibilities of the IOBCSK, foreseen by the Constitution and the Law, and emphasize that the competence of this institution "*to oversee the entire civil service of the Republic of Kosovo and not only some categories of civil service".*

132. Regarding the allegation of violation of Article 24 [Equality Before the Law] of the Constitution, the Court reiterates that the applicants relying on one of the judgments of the Constitutional Court, without specifying it, state as follows: *"[...] the unequal treatment of civil servants in relation to the competencies of the Board for the oversight of the selection of civil servants, defined by Article 6 paragraph 1.2 of the contested Law, is not compatible with Article 24 [Equality Before the Law] of the Constitution. In addition to the constitutional violation, the reflection of this provision in practice presents an extremely high potential for the violation of human rights, political influence in the recruitment of these positions and damage to the budget*".

133. Whereas, in the context of the violation of Article 32 [Right to Legal Remedies] of the Constitution, the Court recalls once again the claim of the applicants that *"[...] the definition of the IOBCSK as a constitutional institution to protect the rules on the civil service has the purpose, in addition to the protection of the standards and principles in the civil service, also to guarantee effective legal remedies for the entities that are part of the procedures where the rules of the civil service are applied"* and that this, in essence, not only reduces the competences of the institution itself, but it is also seen as *"denial of the right to exercise the legal remedy for a part of the civil service in their constitutional rights*".

134. The Court also highlights the comments of the IOBCSK, which based on Article 101 of the Constitution as well as Article 5 of Law No. 08/L-197 on Public Officials consider that they have a mandate to oversee the implementation of the rules and principles of the Civil Service in all institutions of public administration where civil servants are employed and that in fulfillment of their constitutional mandate they exercise the function of review and the deciding of complaints for all civil servants, starting from the professional official up to the position of the senior manager, if it is claimed that the rights or legal interests have been violated, the rights stemming from the employment relationship in the civil service, without taking into account whether the object of the dispute is the decision of the Government or any decision of other public administration bodies and that in this sense Article 2 of the contested Law, through the proposed amendments, creates a situation of unequal treatment of civil servants in relation to the exercise of effective legal remedies and as such this provision is not compatible with Article 24 [Equality Before the Law] of the Constitution.

135. The Court also underlines the comments of the Prime Minister, who relies on the Commentary of the Constitution where he elaborates on Article 32 of the Constitution, an article which, according to him, is characterized by the principle of two-instance trial

as a necessary element, and in this regard emphasizes that by:*"[...] by the proposed amendments to the contested Law, the parties are guaranteed the undisputed independence of the tribunal/court that decides on the case; clear procedure that indisputably allows both parties to be heard (inaudita altera parte), and enforceable decision-making according to the power of judicial authority*". The Prime Minister basically claims that the competence of the IOBCSK to assess the decision-making of the Government as "*the most important mechanism of the state*" in relation to the employment relationship of senior management public officials, limits the executive power and that in this context, the latter it cannot be imposed by a quasi-judicial body like the IOBCSK.

136. Finally, the Court reiterates that Mr. Ramadani, the deputy of the LVV parliamentary group, in essence, considers that the IOBCSK as a quasi-judicial institution cannot in any way be vested without any basis with authorizations to control the decisions of the executive as a collegial institution, independent power and with competences clearly and expressly defined by the Constitution and that the Government as the bearer of executive power in the sense of decision-making is subject, for different reasons and by different nature, only to the Assembly of the Republic of Kosovo, the judiciary and the Constitutional Court, but in no way these decisions may be subject to treatment by an institution such as the IOBCSK , when it comes to the dismissal of senior civil officials through a vote in the Government.

b. The basic principles stemming from the practice of the ECtHR and the Court in relation to equality before the law, the right to a legal remedy as well as the constitutional competence of the IOBCSK, established in paragraph 2 of Article 101 of the Constitution

137. First, in relation to the constitutional competence of the IOBCSK, the Court in its practice has emphasized that the IOBCSK is an institution established by the Constitution, which has attributed to it (i) the qualification of the "*independent*" institution in relation to (ii) the exercise of its constitutional function, namely, "*ensuring the respect of the rules and principles governing the civil service*". More specifically, paragraph 2 of Article 101 of the Constitution, (i) precisely defines the naming of the IOBCSK as "*independent*"; and (ii) attributed this "*independence*" for the purpose of "*ensuring the respect of the rules and principles governing the civil service*". Consequently, the purpose of the relevant constitutional provision reflects the institutional independence of the IOBCSK in order to exercise its function of "*ensuring the respect of the principles and rules governing the civil service*" (see Court case, KO127/21, cited above, paragraph 83).

138. In addition, the Court in its case-law qualified the IOBCSK as a "*quasi-judicial*" institution, namely as a tribunal regarding the resolution of disputes stemming from the civil service (the name "*tribunal*" is widely used in the ECtHR discourse). Therefore, the IOBCSK enjoys the prerogatives of a "*court"* precisely because of the independence from the executive and legislative, and is qualified as an institution having full jurisdiction and issuing binding decisions in relation to the dispute between civil servants or the candidates for civil servants on the one hand, and institutions employing civil servants on the other. (see, case of the Court, KO171/18, paragraph 165 and KO127/21, cited above, paragraph 86).

139. In this context, the Court also emphasized that the legality of the decisions of the IOBCSK is further subject to the control of the judiciary, through the initiation of an administrative dispute with the competent court, within the conditions and deadlines set by the provisions of the Law on Administrative Conflict, as set out in paragraph 1 of

Article 22 (Initiation of the administration conflict) of the basic Law. Therefore, the control, namely the assessment of the legality of the decisions of the IOBCSK, is the competence of the judiciary (see, case of the Court, KO127/21, cited above, paragraph 87).

140. In the following, the Court will summarize the general principles that stem from the practice of the ECtHR and the Court in relation to (i) the principle of equality before the law; and (ii) the right to a legal remedy, to proceed with the appeal of the latter in the present case.

(i) General principles regarding equality before the law

141. Regarding the principle of equality before the law, as far as it is relevant in the circumstances of the present case, the Court recalls that Article 14 (Prohibition of discrimination) of the ECHR guarantees protection against discrimination in the enjoyment of the rights guaranteed by the ECHR. According to the case-law of the ECtHR, the principle of non-discrimination is of a "*fundamental*" nature and relates the ECHR to the rule of law and the values of tolerance and social peace (see, *inter alia*, the case of the ECtHR *S.A.S. v. France,* no. 43835/11, Judgment, of 1 July 2014 paragraph 149). The protection against discrimination set out in Article 14 of the ECHR has been further completed and strengthened by Article 1 of Protocol No. 12 to the ECHR, which prohibits discrimination in a more general way, beyond the rights guaranteed by the ECHR, even in the enjoyment of any right provided by law (see, also and inter alia, the Judgment of the Court in the case KO93/21, applicant, *Blerta Deliu-Kodra and 12 Other Deputies of the Assembly of the Republic of Kosovo,* Judgment of 28December 2021, paragraph 287).

142. The Court, based on the case-law of the ECtHR, notes that the latter, in principle, has held that Article 14 of the ECHR does not have autonomous existence, but in order for this Article to be applicable it must be related also with the allegation of a violation of another right or freedom guaranteed by the provisions of the ECHR. However, the ECtHR in its case-law has emphasized that the prohibition of discrimination also applies in relation to other additional rights, which fall within the general scope of one of the articles of the ECHR, for which rights, states have decided to guarantee their protection (see, in this context, ECtHR cases, *Fábián v. Hungary*, no. 78117/13, Judgment of 5 September 2016, paragraph 112; *Biao v. Denmark*, no. 38590/10, Judgment of 24 May 2016, paragraph 88; *İzzettin Doğan and Others v. Turkey*, no. 62649/10, Judgment of 26 April 2016, paragraph 158; and *Carson and Others v. The United Kingdom,* no. 42184/05, Judgment of 10 March 2010, paragraph 63). Having said that, Article 1 (General prohibition of discrimination) of Protocol no. 12 of the ECHR, has expanded the scope of protection against discrimination in the level of the ECtHR, defining a general prohibition of discrimination, and consequently including the rights defined by law.

143. The Court in its Judgment in cases KO100/22 and KO101/22, emphasized its case-law in the context of Article 24 of the Constitution, including in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 to the ECHR, is consolidated based on the relevant case-law of the ECtHR and has been clarified, among others, through Court Judgments in cases (i) KO01/17, applicant *Aida Dërguti and 23 other Deputies of the Assembly*, Constitutional review of the Law on amending and supplementing Law no. 04/L-261 on War Veterans of the Kosovo Liberation Army, Judgment of 28 March 2017; (ii) KO157/18, applicant *the Supreme Court*, Constitutional review of Article 14, paragraph 1.7 of Law no. 03/L-179 on the Red Cross of the Republic of Kosovo, Judgment of 13 March 2019; (iii) KO93/21; and (iv) KO190/19, applicant *the Supreme*

Court, constitutional review of Article 8, paragraph 2, of Law no. 04/L-131 on Pension Schemes Financed by the State in conjunction with Articles 5 and 6 of the Administrative Instruction (MLSW) No. 09/2015 on Categorization of Beneficiaries of Contribute Paying Pensions According to Qualification Structure and Duration of Payment of Contributions, Judgment of 30 December 2022 (see Court cases KO100/22 and KO101/22, cited above, paragraph 332)

144. Through these Judgments, it has been clarified that the test applied to determine whether an act issued by a public authority is in violation of the right to equality before the law as guaranteed by Article 24 of the Constitution, includes initially an assessment (i) whether there has been "*a difference in treatment*" of persons in "*analogous or relatively similar situations*" or failure to treat persons differently in relatively different situations; and if this is the case, (ii) assessing whether such difference or lack of difference is objectively justified, namely whether the limitation is "*prescribed by law*", pursued "*a legitimate aim*" and the measure taken was "*proportionate*" to the purpose that was intended to be achieved (see Court cases KO100/22 and KO101/22, cited above, paragraph 333).

(ii) General principles regarding the right to a legal remedy

145. With regard to the right to legal remedies, this right is exercised and must be read closely and in connection with Article 13 (Right to an effective remedy) of the ECHR, as well as with the relevant case law of the Court and the ECtHR. Article 13 of the ECHR guarantees the right to an "*effective remedy*" in the event of a violation of the rights guaranteed by ECHR, by a public authority (see case of the Court, KI48/18, applicant *Arban Abrashi and Democratic League of Kosovo,* Judgment of 23 January 2019, paragraph 197).

146. Based on the case law of the ECtHR, in principle, the purpose of Article 13 of the ECHR is to provide a legal remedy through which the individuals can reach an effective remedy for violations of their rights guaranteed by the ECHR at the domestic level, before the grievance machinery is set in motion before the ECtHR. (See, *inter alia*, the case of the ECtHR, *Kudła v. Poland*, no. 30210/96, Judgment of 26 October 2000, paragraph 152). On the contrary, the absence of relevant legal remedies would weaken and make illusory the guarantees of Article 13 of the ECHR, while the latter, as already stated, does not aim to guarantee "*theoretical or illusory*", but rights that are "*practical and effective*". (See, *inter alia*, the case of the ECtHR, *Scordino v. Italy (no. 1),* no. 36813/97, Judgment of 29 March 2006, paragraph 192).

147. Furthermore, and insofar as it is relevant to the circumstances of the present case, this case-law on the interpretation of Article 13 of the ECHR states that when an individual has a "*substantiated*" claim that he is the victim of a violation of the rights provided by the ECHR, he/she must have a legal remedy before a "*national authority*", which enables the respective claim to be decided on the substance and, if appropriate, enables him/her to make the appropriate correction (see case of the Court KI56/18, applicant *Ahmet Frangu*, Judgment of 22 July 2020, paragraph 134).

c. Court's assessment

148. Following the above-mentioned allegations of the applicants, the Court considers that in essence, the applicants raise two constitutional issues, namely (i) the constitutional competence of the IOBCSK to ensure compliance with the rules and principles governing the civil service in the Republic of Kosovo; and (ii) equality before the law

regarding the right to a legal remedy in the context of candidates for and civil servants in senior management positions and other categories of civil service.

149. In order to assess the aforementioned claims, the Court once again refers to the content of Article 2 (no title) of the contested Law, which supplements and amends Article 6 (Functions of the Board) of the Basic Law, which defines as follows:

"In Article 6 of the basic Law, the following paragraph 2 shall be added:

2. Notwithstanding paragraph 1 sub-paragraph 1.1 of this Article, IOBCSK shall have no competence to decide on appeals against the Government's decision for civil servants in senior management positions. Against these decisions, the party shall have the right to initiate an administrative conflict with the competent court, in accordance with the relevant law on administrative conflicts."

150. The Court recalls that Article 6 of the Basic Law establishes that:

"1. For the supervision of the implementation of rules and principles of the Civil Service legislation, the Board shall have the following functions:
1.1. reviews and determines appeals filed by civil servants and candidates for admission to the civil service;
1.2. supervises the selection procedure and determines whether the appointments of civil servants of high executive and management level have been conducted in accordance with the rules and principles of civil service legislation;
1.3. monitors public administration institutions employing civil servants regarding the implementation of the rules and principles of civil service legislation."

151. The Court notes that Article 2 of the contested Law amends Article 6 of the Basic Law, thus changing the competence of the IOBCSK, depriving it of the right to review complaints against the Government's decision for civil servants in senior management positions. The Court also emphasizes that the legislator in this regard has left the possibility for the party to open an administrative conflict directly against this decision in the competent court. In this context, the Court emphasizes the phrase "*against the Government's decision*", which limits the proposed change only against the Government's decision-making.

152. The Court also refers to articles 7 and 8 (no title) of the contested Law, which amend articles 16 (Review of the Complaints) and 19 (Oversight procedure for the selection of senior management and management level Civil Servants) of the Basic Law, as follows:

Article 7

1. Article 16 of the basic Law, paragraph 1, in the first sentence, after the phrase: "or a candidate for employment in the Civil Service", there shall be added the words: "except successful candidates proposed for the senior managerial positions".
2. Article 16 of the basic Law, paragraph 6, the words "senior management" shall be deleted from the basic Law.

Article 8

"Article 19 of the basic Law, in every paragraph or sub-paragraph of this Article, the words "senior management" shall be deleted."

153. In this context, the Court also highlights the provisions of the Basic Law, which are amended through the aforementioned articles of the contested Law.

Article 16
(Review of the Complaints)

"1. A civil servant, or a candidate for employment in the Civil Service who is unsatisfied with the decision of the employing authority, shall have the right to appeal to the Board, regarding his claim for breach of the rules and principles set out in the legislation on Civil Service of the Republic of Kosovo.
[...]
6. A member of the Board, who monitored the election procedure for appointment of senior management and management level civil servants, shall not participate in the procedure of reviewing the complaints related to the same procedure."

Article 19
(Oversight procedure for the selection of senior management and management level Civil Servants)

"1. Board monitors all the procedures for selection of senior management and management level Civil Servants.
[...]
6. The Board is obliged to issue a decision for the procedure of election of senior management and management level Civil Servants, within the thirty (30) days deadline from receiving the complete file from the employing authority.
7. If the development of the procedure for election of senior management and management level Civil Servants, is done without notifying the Board for participating in the oversight, the procedure is considered invalid and according to its official duty the Board issues a decision for annulment of the procedure.
8. The decision of the Board about the procedure for election of senior management and management level Civil Servants, is a final decision in the administrative procedure and against this decision the parties in the procedure can initiate an administrative conflict, in accordance with the provisions of the law on administrative conflict."

154. The Court notes that the contested Law, through Articles 7 and 8 of the contested Law, has deleted the references to the phrase "*senior management level*" in Articles 16 and 19 of the Basic Law, which articles have regulated the complaint proceedings, respectively the oversight of the selection and deciding procedure in relation to the complaints of all civil servants, including those of senior management level by the IOBCSK.

155. Having said this, the Court notes that the legislator essentially, through articles 2, 7 and 8 (no titles) of the contested Law, respectively, amending and supplementing articles 6 (Functions of the Board), 16 (Review of the Complaints) and 19 (Oversight procedure for the selection of senior management and management level Civil Servants) of the Basic Law, has: (i) expressly repealed the competence of the IOBCSK for reviewing complaints against the Government's decision for civil servants in senior management positions by Article 2 of the contested Law, but also to all candidates for and other senior management civil servants by Article 7 of the contested Law; as well as (ii) has repealed the competence of the IOBCSK to oversee the selection procedure of civil servants of senior management level, established in paragraph 1 of article 19 of the Basic Law by article 8 of the contested Law.

156. In what follows, the Court will jointly examine the allegations of the applicants for (i) the violation of the constitutional competence of the IOBCSK to ensure compliance

with the rules and principles governing the civil service in the Republic of Kosovo, guaranteed by Article 101 of the Constitution; as well as (ii) violation of the right to non-discrimination of senior management level officials in relation to other categories of the civil service, guaranteed by Article 24 of the Constitution, in relation to their right to a legal remedy, guaranteed by Article 32 of the Constitution, in accordance with the aforementioned principles of the Court and the ECtHR.

157. Initially, based on the aforementioned principles for the competence of the IOBCSK in relation to "*ensuring compliance with the rules and principles governing the civil service*", guaranteed by paragraph 1 of Article 101 [Civil Service] of the Constitution and its case law, the Court clarifies that the IOBCSK has the oversight competence of the civil service, which competence includes: (i) oversight of the selection procedure and deciding whether the appointments of civil servants have been carried out in accordance with the rules and principles of the legislation on the civil service, as well as (ii) assessing their complaints in the administrative procedure (see Court case KO216/22 and KO220/22, cited above, paragraph 254). In this context, the Court also underlines the aforementioned principles, which stem from the case law of the Court regarding the "*quasi-judicial*" nature of the IOBCSK, namely the tribunal regarding the resolution of disputes arising from the civil service, and as an institution that has full jurisdiction to render binding decisions, regarding conflicts between civil servants or candidates for civil servants.

158. Taking into account the proposed amendments to the contested Law, for the purpose of clarification regarding the categories of civil service, the Court notes the legal provisions of the LPO that categorize positions in the civil service of the Republic of Kosovo, more specifically paragraph 2 of article 38 (Classification of positions in civil service) of the LPO, from which it follows that the positions in the civil service are divided into the following categories: (i) the senior level management category that includes: the general secretary, director general in independent and regulatory agencies, executive director, and deputy director of an executive agency, and equivalent positions thereof; (ii) the mid-level management category that includes the position of the director of the department and equivalent positions thereof; (iii) the low level management category, which includes the position of head of division and equivalent positions thereof; (iv) the specialist category, which includes professionals in areas that require specific preparation; and (v) the professional category which includes professional officials.

159. In this regard, the Court notes that the language used in the Constitution but also in the case law of the Court refers to the civil service, without dividing its categories, as well as the Constitution has defined an institution for the oversight of the civil service such as IOBCSK, and not other institutions, not fragmenting such competence. In this regard, the Court recalls that based on the aforementioned legal provisions, the LPO also divides the civil service into certain categories, as mentioned above, however, everywhere in the law when it refers to the civil service, it considers the same as unique, including the general definition of civil servant in paragraph 2 of article 5 (Categories of the public official) of the LPO, where the latter is defined as follows: *"A civil service employee shall be a public official within the civil service who participates in the formulation and/or implementation of policies, monitors the implementation of administrative rules and procedures and provides general professional and administrative support in implementation. A civil service employee shall perform the duties in the relevant position, starting from the professional official to the position of the senior manager, in the administration of the President of the Republic of Kosovo, in the administration of the Assembly of the Republic of Kosovo, in the Office of the Prime Minister of the Republic of Kosovo, in the Ministry, in executive agencies and their local branches, independent constitutional institutions, in independent and*

regulatory agencies, in the municipal administration and every employee whose status is defined as a civil service employee, by special law".

160. Therefore, the Court finds that the IOBCSK, as an institution established by the Constitution, has the competence to ensure compliance with the rules and principles governing the civil service for all its categories. (see Court case, KO171/18, cited above).

161. In what follows, in the context of claims for the violation of the right to equality before the law of senior level civil servants in relation to other categories of the civil service in connection with their right to use the legal remedy of appeal, the Court based on its aforementioned case law, clarifies that the test that is applied to ascertain whether an act issued by a public authority is contrary to the right to equality before the law guaranteed by Article 24 of the Constitution includes first assessment whether there have been (i) a "*difference in treatment*" of persons in "*analogous or relatively similar situations*" or failure to treat persons differently in relatively different situations; and if this is the case, (ii) the assessment whether such difference or lack of difference is objectively justified, namely whether the restriction is (a) "*prescribed in law*", followed (b) "*a legitimate aim*" and (c) the measure taken was "*proportionate*" to the aim it sought to achieve. Also, since its case law shows that the right to legal equality does not have an autonomous existence, but in order for this article to be applicable, it must also be related to the claim of a violation of a right or freedom other guaranteed by the provisions of the ECHR, the Court will assess whether in the circumstances of the present case they meet the aforementioned criteria in connection with the right to legal remedies, guaranteed in Article 32 of the Constitution.

(i) If there has been a difference in treatment regarding the right to legal remedies

162. As explained above, senior management level civil servants enter one of the civil service categories, stipulated by paragraph 2 of article 38 of the LPO. In the context of the analysis of whether there has been a difference in treatment in relation to the right to legal remedies, the Court considers that in the circumstances of the present case, it is not disputed that civil servants of the professional, low and mid-level management category on the one hand and civil servants of senior management level category, on the other hand, are in "*analogous situations or relatively similar situations*", because (i) all are members of the civil service; (ii) exercise duties within the civil service, as defined in the Constitution and the relevant law on public officials; and (iii) have the obligation to exercise their functions in an independent, professional and impartial manner and in the interest of the functioning of the civil service, regardless of the fact that the manner of their election and the complexity of the nature of the work are not the same. Moreover, it is also not disputed that in the circumstances of civil servants of professional, low and mid management level in relation to civil servants of senior management level there is a "*difference in treatment*" in the context of the legal remedy available to contest relevant decisions regarding their employment relationship. The first group, namely civil servants of professional, low and mid management level, has been given direct access to the IOBCSK, which is obliged to decide within the deadlines specified in the applicable law, while the second group, namely civil servants of senior management level were denied the right to appeal to the IOBCSK, but were enabled to initiate the administrative conflict directly in the competent court, without a specified deadline for the relevant decision-making.

163. However, as clarified in the case law of the Court and cited above, the fact that there has been a "*difference in treatment*" in this case, in relation to the right to legal remedies, does not necessarily result in a violation of Article 24 of the Constitution, because in advance, it must be assessed if this "*difference in treatment*" has "*an objective and*

reasonable justification" and more precisely if (i) it is "*prescribed by law*"; (ii) pursues *"legitimate aim"*; and (iii) is "*proportionate*".

(ii) The "difference in treatment" test

(a) If the difference in treatment is "prescribed by law"

164. In assessing whether the "*relevant difference in treatment*" is "*prescribed by law*", the Court recalls that the right to a legal remedy, namely the right to appeal directly to the IOBCSK, has been recognized for civil servants of professional, low, mid and senior management level by paragraph 1 of article 16 of the Basic Law, but through the proposed changes in the contested Law, namely articles 2, 7 and 8 (no titles) thereof, from such a right, only civil servants of the senior management level are excluded, who, although in "*similar or analogous*" circumstances with other members of the civil service, must use the right to appeal through other legislation in force, addressing the competent court of first instance for administrative conflict to challenge the relevant decisions regarding their employment relationship. Therefore, the difference in treatment between the two aforementioned categories of civil servants is "*prescribed by law*", respectively in articles 2, 7 and 8 of the contested Law. Consequently, and in the following, the Court must proceed with the assessment of whether the aforementioned "*difference in treatment*" and "*prescribed by law*", pursued a "*legitimate aim*", and if this is the case, it must proceed with the assessment of whether the measures taken were "*proportionate*" with the aim sought to be achieved.

(b) If there is a "legitimate aim"

165. In the context of assessing whether the relevant aim in the "*difference in treatment*" between civil servants of other categories in relation to civil servants of senior management level follows "*a legitimate aim"*, the Court emphasizes that based on paragraph 3 of the article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution but also the principles that stem from the case law of the ECtHR and the Court, it is established that the limitations of the rights and freedoms guaranteed by the Constitution "*may not be limited for purposes other than those for which they were provided*". According to this paragraph, as interpreted through the consolidated case law of the Court and cited above, in principle, the purposes of a restriction must be clearly defined and no public authority can limit any right or freedom on the basis of a purpose other than what is already defined in the law in which the relevant restriction is allowed/specified. In principle, and in the context of the circumstances of the present case, based on this case law, it is up to the Government as the sponsor of the contested Law and the Assembly that adopted the contested Law, to show that that difference was justified (see, among others , the case of the ECtHR, *D.H and Others v. Czech Republic*, no. 57325/00, Judgment of 13 November 2007, paragraph 177; see also Court case KO190/19, cited above, paras 206 and 208 and the references used therein, KO100/22 and KO101/22, cited above, paras 336-338). The Court recalls that the state authorities enjoy a wide margin of appreciation both in terms of the choice of enforcement means and in terms of ascertaining whether the consequences of enforcement are justified by the general interest to achieve the purpose of the given law (see, among others, ECtHR case, *Beyeler v. Italy*, no. 33202/96, Judgment of 5 January 2000, paragraph 112, as well as Court cases, KI185/21, Applicant *LLC "Co Colina"*, Judgment of March 13, 2023, paragraph 209, and KO216/22 and KO220/22, cited above, paragraph 366).

166. Likewise, based on the aforementioned case law, whether a public policy specified through the law adopted in the Assembly is appropriate or not, is a matter for other public authorities and not for the Court, as long as it does not violate the provisions of

the Constitution (see *mutandis mutatis,* case of the Court, KO216/22 and KO220/22, cited above, paragraph 366)

167. Therefore, the Court, taking into account the wide margin of appreciation of the state authorities in drafting public policies, assesses that the "*difference in treatment*" between civil servants of high management level and civil servants of other categories in the civil service, can also pursue a "*legitimate aim*".

168. Therefore, in the future, the Court will assess whether the measures taken are "*proportionate*" in relation to the goal that is intended to be achieved, which is also the last step to assess whether the "*difference in treatment*" may result in the violation of the right to equality before the law of civil servants at senior management level.

(c) If there is a relationship of proportionality between the restriction of the right and the aim sought to be achieved

169. Based on paragraph 4 of Article 55 of the Constitution, but also the principles stemming from the case law of the ECtHR and the Court, it has been determined that in the case of the restriction of fundamental rights and freedoms, constitutional responsibility for public authority is created that during the interpretation and deciding the cases before them, should pay attention to the essence of the right that is restricted, the importance of the purpose of limiting the rights, the nature and scope of the limitation, the relationship between the limitation and the purpose intended to be achieved, as well and to consider the possibility of achieving that aim with the lesser limitation of rights (see, *inter alia*, Court's case, KO157/18, cited above, paragraph 102; and KO190/19, paragraph 212).

170. The Court places emphasis on the importance of the aim of the restriction and the relationship of proportionality between the restriction and the aim sought to be achieved. In the light of this criterion, the Court also refers to the case law of the ECtHR, through which it has emphasized that the difference in treatment requires a fair balance between the protection of the interests of the community and the respect of the rights of individuals. Consequently, the ECtHR has specified that the difference in treatment requires a reasonable relationship of proportionality between the measure taken and the aim sought to be achieved (see ECtHR cases, *Molla Saliv. Greece*, cited above, paragraph 135; *Fabris v. France,* no. 16574/08, Judgment of 7 February 2013, paragraph 56; *Mazurek v. France*, no. 34406/97, Judgment of 1 February 2000, paragraphs 46 and 48; and *Larkos v. Cyprus*, no. 29515/95, Judgment of 18 February 1999, paragraph 29, and Judgment of the Court in case KO190/19, paragraph 213).

171. Following the assessment of the legal changes through the contested Law, which prevent only one category of civil servants (senior management level) from addressing the IOBCSK regarding decisions on their employment relationship, in relation to their colleagues of other categories of civil servants (professional , low and mid-level management), the Court points out that such a difference was not made in the previous civil service laws regarding the right of complaint for civil servants in senior management level positions, respectively not even in Regulation No. 2001/36 on Civil Service, amended and supplemented by UNMIK regulations No. 2006/20 and No. 2008/12 (2001), which established the IOBCSK for the first time; and then (ii) laws regarding civil service, namely Law No. 03/L-149 on Civil Service of Kosovo (2010), Law No. 04/L-114 on Public Officials (2019) and Law No. 08/L-197 on Public Officials (2022).

172. From what was said above, the Court notes that (i) the laws of 2001, 2010, 2019 and 2022, respectively, have made available to civil servants, regardless of category, the legal remedy of appeal to the IOBCSK, as a last legal remedy in the administrative procedure, before the opening of the administrative conflict.

173. In this regard, the Court recalls the comments of the Prime Minister on behalf of the Government as the sponsor of the law, that the purpose of the proposed changes, namely the removal of the competence of the IOBCSK to assess the decision-making of the Government as *"the most important mechanism of the state*" regarding the employment relationship of high-level public officials, is that an institution like IOBCSK should not limit the executive power.

174. In the context of the response of the Prime Minister, the Court emphasizes that (i) the proposed amendments in articles 2, 7 and 8 (no titles) of the contested Law do not only affect the right to appeal against the decisions of the Government, but also other institutions in relation to the selection of civil servants of senior management level, therefore, as a consequence, (ii) the justification that through the superimposition of a quasi-judicial body like IOBCSK on the decision-making of the Government, the executive power is limited, cannot be applied in the relationship between civil servants of senior management level of other institutions, who according to the legislation in force enjoy the right to appeal under equal conditions within the civil service together with civil servants of other categories, this right is guaranteed in addition to the Basic Law, also in paragraphs 3 and 4 of Article 27 (The right to information about the employment relationship and the right to appeal) of the LPO, where it is established that: *"3. The civil servant shall have the right to file an appeal to the Independent Oversight Board of the Civil Service of Kosovo in relation to any action or omission that violates rights or legal interests, the rights deriving from the employment relationship in the civil service."* and *"4. The right to appeal to the IOBKCS shall also be recognized by every candidate in the civil service admission procedure"*. In this context, the Court reiterates that according to the legislation in force, all civil servants, regardless of category, enjoy the right to appeal to the IOBCSK and that they have had this right since 2001.

175. The Court reiterates that according to the proposed amendments in articles 2, 7 and 8 (no titles) of the contested Law, senior management level civil servants in relation to decisions about their employment relationship, based on paragraph 1 and 6 of article 49 and sub-paragraph 2 of paragraph 3 of article 74 of the LPO, which include: (i) selection, (ii) extension of the mandate and (ii) their dismissal as a result of disciplinary procedures, will have to go directly to the competent court with a lawsuit to open an administrative conflict. Consequently, disputes related to the decisions regarding their employment relationship, respectively its initiation, extension and termination, will be subject to judicial review. As for the legal effect of these administrative decisions regarding the employment relationship of the category in question, the Court refers to sub-paragraph 2 of paragraph 1 of article 144 (Enforceability of administrative acts) of the LGAP, which establishes that: *"1. A first instance administrative act shall become enforceable: […] 1.2. when the party is notified of the act, and according to the law, no appeal* is permitted*; […]"*. In the present case, the legislator did not foresee the legal remedy of appeal to the administrative body of the second instance, respectively to the IOBCSK, therefore, such decisions become enforceable and can only be challenged by a lawsuit in the administrative conflict procedure before the competent court, and which lawsuit has no suspensive effect.

176. In this regard, the Court also takes into account the principles and legal provisions established in the law in force on the court administrative procedure, respectively, Law

No. 03/L-202 on Administrative Conflicts (hereinafter: Law on Administrative Conflicts), which defines the deadlines and the decision-making procedure for this type of procedure, which can be challenged in the second court instance through *"appeal"* and in the third instance *"extraordinary court review*", before the judgment of the first instance for the resolution of the lawsuit takes final form. At this point, the Court recalls that until the end of this judicial review, the administrative decision regarding the employment relationship of the senior management level civil servant is enforceable.

177. The Court also, for the purpose of specification and clarification, emphasizes that a new law on administrative conflicts, namely Law No. 08/L-182 on Administrative Disputes, was adopted by the Assembly and was published in the Official Gazette of the Republic of Kosovo on 10 January 2023, but will enter into force 1 (one) year after this publication. Article 98 (Extraordinary remedies) foresees some changes in terms of the use of extraordinary legal remedies, in which case it has foreseen the use of extraordinary legal remedies, *mutatis mutandis* with the contested procedure, in addition to the request for protection of legality, which will not be allowed.

178. On the other hand, the legislator in Article 9 of the contested Law, by which he changes the content of Article 21 (Board's decision) of the Basic Law, has foreseen that the decisions of the IOBCSK are administrative decisions which become enforceable within 15 (fifteen) days from the day when the deadline for filing a lawsuit in administrative conflict passes, which means that the decisions regarding the employment relationship of other categories of civil servants (except those of senior management level) in case of challenging them in the judicial process through administrative conflict, become enforceable only after the court procedure has an epilogue with a final decision in accordance with the legal provisions of the Law on administrative conflicts, namely Article 66 (no title) thereof, which stipulates that: "*Court decisions may be executed when they become omnipotent and executable".*

179. From this it follows that civil servants of senior management level in relation to other categories of civil service employees are placed in an unequal position and carry different burdens in the use of legal remedies in relation to the resolution of disputes regarding the relationship of their employment because they face different expectations for an enforceable decision regarding the employment relationship, which makes this "*difference in treatment*" not proportionate in the use of legal remedies, *"prescribed by law".*

180. Having said that, the Court assesses that the change of the legal remedy, respectively the complaint only for one category of the civil service and not for the other categories, is not proportional because: (i) it does not take into account the consistency of the regulation of this legal remedy for all civil service categories as in the previous laws in accordance with the constitutional competence of the IOBCSK for the oversight of the civil service; and (ii) places a different burden on the use of the legal remedy in relation to the resolution of disputes regarding their employment relationship in the context of their legal effect, namely the unequal expectation of their enforceability. In this context, the Court emphasizes that the category of senior management civil servants is part of the civil service and as long as this category is not expressly excluded from the civil service, then no other regulation can create a division between the categories in terms of the enjoyment of rights and obligations arising from the employment relationship and which are not in accordance with the constitutional competencies of the IOBCSK for the oversight of the civil service.

181. Therefore, the Court finds that articles 2, 7 and 8 (no titles) of Law No. 08/L-180 on amending and supplementing Law No. 06/L-048 on Independent Oversight Board for

Civil Service of Kosovo, which supplement and amend articles 6 (Functions of the Board), 16 (Review of the Complaints) and 19 (Oversight procedure for the selection of senior management and management level Civil Servants) of Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, are not in compliance with paragraph 1 of article 24 [Equality Before the Law] in conjunction with article 32 [Right to Legal Remedies] as well as with paragraph 2 of article 101 [Civil Service] of the Constitution.

B. Regarding the claims related to Article 6 of the contested Law, which supplements and amends paragraph 3 of Article 11 (Term of office for members of Board) of the Basic Law

a. The essence of the applicants' allegations and the comments of opposing and interested parties

182. The Court will further summarize the essence of the allegations of the applicants that are related to the removal of the immunity for decision-making of the members of the IOBCSK. In this regard, the Court recalls that the applicants of KO232/23 claim that Article 6 of the contested Law, which supplements and amends Article 11 (Term of office for members of Board) of the Basic Law, and which concerns the removal of immunity for decision-making for the Chairman and members of the IOBCSK, directly violates the latter's independence and violates the rights of the parties. According to them, this is contrary to Articles 101 [Civil Service] and 142 [Independent Agencies] of the Constitution.

183. In this context, the applicants emphasize that the immunity for decision-making enjoyed by the Chairman and members of the IOBCSK through the Basic Law, even according to the Court's own practice, is completely "*valid and as such is of a functional character*", emphasizing among others that the IOBCSK enjoys the prerogatives of a court "*within the meaning of Article 6 of the European Convention on Human Rights*". According to them, the removal of immunity for decision-making for the members of the IOBCSK *"directly violates the independence of this institution and the rights of the parties*".

184. The Applicants point out that with the changes proposed through the contested Law, which foresees that the members of the IOBCSK will also bear civil liability, legal uncertainty will be created and a climate will be created for the politicization of this institution.

185. In the end, regarding this specific claim, the applicants KO232/23 emphasize that "*the stripping of the right to immunity of the members of the board based on the contested law, represents a flagrant violation of its own institutional character and the role of constitutional responsibility that this institution has*".

186. As for the applicants of referral KO233/23, they first emphasize that the issue of immunity for decision-making for the Chairman and members of the IOBCSK has been concluded with the Court's case, namely Judgment KO171/18.

187. According to them, *"the parliamentary majority has continuously contested the Independent Oversight Board for the Civil Service of Kosovo. The current parliamentary majority, with orders from the executive, at the beginning of taking office dismissed the first members of the* IOBCSK*, who have returned to work by the Judgment of the Constitutional Court [...] In the wake of these contestations, there is*

also the reduction of the constitutional competencies of the IOBCSK as well as the removal of functional immunity".

188. Furthermore, the applicants of referral KO233/23, allege that the removal of the immunity for decision-making for the members of the IOBCSK *"undermines the independence of this institution at its core*".

189. The IOBCSK in their comments submitted to the Court on 14 November 2023, supporting the arguments submitted by the applicants, states that "*Functional immunity for the chairman and members of the Board exists because the Board qualifies as a "quasi-judicial" institution, namely as tribunal regarding the resolution of disputes arising from the civil service. Consequently, the Independent Board enjoys the prerogatives of a "court", precisely because of its independence from the executive and the legislative and qualifies as an institution that has full jurisdiction to render binding decisions, regarding conflicts between civil servants or candidates for civil servants on the one hand, and institutions that employ civil servants, on the other (see Judgment in case no. KO171/18, paragraph 165 and case no. KO127/21, paragraph 86)".*

190. Further, the IOBCSK adds Article 3 of the contested Law, through which provision removes the immunity for decision-making for the Chairman and the members of the latter, infringes on the independence in the exercise of the constitutional mandate, and as such this provision is not in compliance with article 101 of the Constitution. In support of this claim, the IOBCSK also refers to Judgments KO171/18 and KO127/21 of the Court.

191. On the other hand, the Prime Minister, through comments submitted to the Court on 15 November 2023, emphasizes that the IOBCSK is a non-judicial administrative body within the meaning of Article 6 of the ECHR, further arguing that its members are not judges and do not enjoy immunity for decision-making guaranteed by the Constitution for judges. In his comments, the Prime Minister emphasizes that *"At this point, it should be noted that only judges, deputies and members of the Government, according to the wording of the Constitution, enjoy functional immunity. Even in Decision KO171/18, the Court affirms that the members of the IOBCSK are not judges nor part of a judicial institution within the meaning of Article 6 of the ECHR, therefore they do not enjoy the immunity granted automatically ex officio".*

192. In connection with this, the Prime Minister emphasizes that the issue of immunity for decision-making is a legal category and can be determined by special laws, and, therefore, falls under the legal categorization. According to him, it is in the hands of the legislator to propose or not immunity for decision-making through a special law, which makes the removal of the immunity for decision-making a non-constitutional category.

193. Taking into account what was said above, respectively the claims of the applicants, the arguments of the other parties reflected above as well as the circumstances surrounding the case, the Court emphasizes that in relation to this specific claim it is important to first elaborate on general principles regarding (i) the applicability of Article 142 of the Constitution; (ii) the general principles established by the Court in case KO171/18, as well as case KO127/21;

Regarding the applicability of Article 142 [Independent Agencies] of the Constitution

194. The Court first recalls that the applicants, among other things, refer to Article 142 [Independent Agencies] of the Constitution, to support their arguments, against the

removal of immunity for the Chairman and members of the IOBCSK, which changes are foreseen in the contested Law. Further, the applicants, while elaborating their arguments against the changes provided by the contested Law, namely the removal of immunity for the Chairman and members of the IOBCSK, qualify the latter as an Independent Agency.

195. In this aspect, the Court first recalls its Judgment KO171/18, where through it, the Court, among other things, emphasized that Chapter XII [Independent Institutions] of the Constitution specifically regulates independent institutions as follows: i) the Ombudsperson (Articles 132-135 of the Constitution); (ii) the Auditor General of Kosovo (Articles 136-138 of the Constitution); (iii) the Central Election Commission (Article 139 of the Constitution); (iv) Central Bank of Kosovo (Article 140 of the Constitution); and (v) the Independent Media Commission (Article 141 of the Constitution). Likewise, Article 142 [Independent Agencies] of the Constitution, within the same chapter, establishes the possibility of establishing Independent Agencies by the Assembly, based on the relevant laws, which regulate their establishment, operation and competencies. According to this article, these agencies, (i) perform their functions independently from any other body or authority in the Republic of Kosovo; and (ii) each body, institution or other authority, which exercises legitimate power in the Republic of Kosovo, is obliged to cooperate and respond to the requests of independent agencies during the exercise of their legal powers, in accordance with the relevant law.

196. In addition, the Constitution has established several other institutions, among others, the Constitutional Court in its chapter VIII, as well as the IOBCSK in its article 101. In its Judgment in case KO171/18, and all the clarifications given in it, the Court found that the IOBCSK cannot be categorized as an independent constitutional institution according to Chapter XII of the Constitution, nor as an independent agency based on Article 142 of the Constitution, but as an independent institution established in paragraph 2 of Article 101 of Chapter VI of the Constitution, in order to ensure the rules and principles governing the civil service in the Republic of Kosovo (see case KO171/18, paragraphs 155-159).

197. According to the clarifications given in the case law of the Court, and elaborated in this Judgment, while the establishment of independent agencies based on Article 142 of the Constitution is the competence of the Assembly, and which through the relevant laws also regulates the establishment, functioning and their competencies, the Assembly does not have the same competence in relation to the institutions established through constitutional provisions, in this case the IOBCSK, because its establishment, operation and powers, insofar as they are regulated by the Constitution, cannot be changed by the Assembly, except through constitutional amendments.

198. The Court, taking into account the above, reiterates that unlike the Independent Agencies which are established by the Assembly based on Article 142 of the Constitution, the IOBCSK is an institution which is established by Article 101 of the Constitution, and as such the institutional independence, which has been attributed to it, exceeds that guaranteed to Independent Agencies by Article 142 of the Constitution.

199. As a result, the Court will not further enter the claim of the applicants that is related to Article 142 of the Constitution. Further, the Court will examine the claims of the applicants within the scope of Article 101 of the Constitution.

200. In what follows, the Court will examine the claim of the applicants regarding the violation of Article 101 of the Constitution, which is related to the removal of immunity for the Chairman and members of the IOBCSK, by (i) applying the general principles

established by the Court regarding the case of the immunity of the members of the IOBCSK in Court cases KO171/18 and KI127/21; and then (ii) apply the same to the present case.

b. The general principles established by the Court regarding the issue of immunity of the members of the IOBCSK in Court cases KO171/18 and KI127/21

201. The Court recalls that through the changes provided for by the contested Law, the Chairman and members of the IOBCSK related to decision-making within the framework of constitutional and legal functions, will not enjoy immunity from criminal prosecution, civil lawsuits or dismissal.

202. The Court, in this context, recalls that paragraph 3 of Article 11 (Term of office for members of Board) of the Basic Law, which is related to the issue of immunity for decision-making of the members of the IOBCSK, has been assessed by the Court by the Judgment in case KO171/18, and after examining the relevant case laws and also the relevant reports of the Venice Commission, it was assessed *"in compliance with the Constitution"*.

203. In addressing this claim, the Court recalls its Judgment in case KO171/18, where it assessed the immunity for decision-making for the members of the IOBCSK provided by the Basic Law, initially analyzing whether: (i) the immunity pursues a legitimate aim, and (ii) it is proportional in the sense that the complainants before the IOBCSK, "*have a reasonable alternative to effectively protect their rights according to the decisions of the Board"*.

204. In this regard, taking into account that according to paragraph 3 of Article 11 (Term of office for members of Board) of the Basic Law, the members of the IOBCSK are provided functional immunity regarding decision-making within the exercise of their constitutional and legal functions, guaranteeing that the latter enjoy immunity from criminal prosecution, civil lawsuits and dismissal in terms of decision-making. The Court in its case KO171/18, respectively paragraph 242, assessed that *"[…] the functional immunity guaranteed to members of the Board under the challenged Law is limited and they do not have special protection for actions beyond their scope as members of the Board or if they are accused of criminal offenses that are not simply related with the fact that they have exercised their functions in relation to the views expressed, the manner of voting or the decisions taken during their work. They also have no immunity from arrest"*.

205. Further, the Court in its case KO171/18, added that "*the contested Law does not foresee other immunity for the members of the Board, except the functional immunity that was explained above, which has to do with inviolability for actions outside the scope of their responsibilities as members of the Board. Therefore, in their capacity as ordinary citizens, members of the Board are treated the same as all other citizens"*.

206. The Court in case KO171/18, in the end emphasized that "*having regard to the limited immunity guaranteed to members of the Board by Article 11, paragraph 3 of the challenged Law, and the fact that against the decisions of the Board, the parties have the right to initiate an administrative conflict, the Court considers that the measure employed is proportionate to the aim sought to be achieved as the interested parties are able to effectively protect their rights against the decisions of the Board by initiating an administrative conflict."*

207. Consequently, as a finding, in case KO171/18, the Court assessed that the purpose of the immunity for decision-making is that the members of the IOBCSK are free to exercise their functions independently and without fear of consequences for the performance of their functions, therefore, the immunity for decision-making serves this purpose and the Court, by its above-mentioned judgment, considered that it is legitimate and necessary for the purposes of Article 101 of the Constitution within the functions and competencies of the IOBCSK.

208. Also, in this context, the Court also recalls Judgment KO127/21, where during the elaboration of the claim of the applicants regarding the Decision of the Assembly on the dismissal of the members of the IOBCSK, which was related to the decision-making process, it emphasized as follows, "*The Court, based on the independence of the Independent Board, the nature of the decisions taken by the Independent Board and the functional immunity enjoyed by the members of the Independent Board, considers that they cannot be held accountable for the manner of voting or the decisions taken during their work, because this would infringe on their independence in exercising their competencies as members of the Independent Board, as guaranteed by the principles embodied in paragraph 2 of Article 101 of the Constitution [...] The Court recalls that a member of the Independent Board cannot be controlled by the Assembly for the rationality of decision-making as they are protected by the principle of independence of decision-making of the Independent Board, which is related to "ensuring respect for the principles and rules of civil service" in accordance with paragraph 2 of Article 101 of the Constitution, and protected through immunity from dismissal in accordance with paragraph 3 of Article 11 of the Law on the IOBCSK*".

c. Assessment of the Court

209. In applying these principles, the Court initially refers once again to Article 11 (Term of office form members of Board) of the Basic Law, which establishes as follows:

Article 11
(Term of office for members of Board)

"1. Members of the Board shall be appointed for a term of office of seven (7) years, without the possibility of reappointment for another additional term of office;
2. During the term of office, the member of the Board is not entitled to exercise any other state function, be a member of a political party nor participate in political activities.
3. Regarding the decision-making within the constitutional and legal functions of the Board, the Chairperson and members of the Board enjoy immunity from prosecution, civil lawsuit or discharge."

210. The Court also recalls the content of Article 6 of the contested Law, which amends and supplements the above-mentioned Article 11 of the Basic Law, establishing the following:

Article 6
(no title)

"Article 11 of the basic Law, paragraph 3 shall be deleted from the text of the law.

211. From the content of the contested Law, the Court notes that through the removal of paragraph 3 of Article 11 of the Basic Law on the IOBCSK, the Chairman and members of the IOBCSK will no longer enjoy immunity from criminal prosecution, civil lawsuits

or dismissal related to their decision-making within the exercise of the constitutional and legal functions of the IOBCSK.

212. In the circumstances of the present case, the legislator, through the proposed change, removes the right to functional immunity to the Chairman and members of the IOBCSK, in relation to their decision-making.

213. The Court recalls that the applicants essentially claim that by the contested Law, the removal of immunity for decision-making for members of the IOBCSK is not in compliance with Article 101 [Civil Service], arguing that in this way the essence of independence in decision-making of the institution of IOBCSK itself is violated.

214. In this regard, the Court recalls the content of Article 101 [Civil Service] of the Constitution, which specifies as follows:

"1. The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality.
2. An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo."

215. In the context of the above, the Court recalls the general principles that stem from paragraph 2 of Article 101 of the Constitution and that based on the latter, the IOBCSK is an independent body, which must ensure compliance with the rules and principles of the civil service, the respect which it does through decision-making in the cases submitted before it, which means the individual independence of the members of the IOBCSK in the examination of concrete cases.

216. As it clarified in its Judgment KO171/18, and as it was also elaborated in the general principles, the issue of immunity for decision-making for members of the IOBCSK is not specifically regulated by Article 101 [Civil Service] of the Constitution, which defines the IOBCSK as an institution that oversees the rules and principles of the civil service.

217. However, as explained in the above-mentioned Judgment, the practice of granting immunity through law, even though the Constitution has not explicitly envisaged such a thing, is also known in other countries and the granting of immunity regarding several state institutions is also encouraged by the European Commission for Democracy through Law, known as the "Venice Commission". The Venice Commission in the compilation of the Venice Commission regarding the Ombudsperson Institution has assessed the laws of different states which have foreseen functional immunity for the Ombudsperson, his deputies, but also for the supporting staff of the Ombudsperson Institution. (see Court Judgment in case KO171/18, paragraph 231).

218. Further, in accordance with the Court's Judgment in case KO171/18, as well as all the clarifications given therein, the finding that the members of the IOBCSK cannot be considered "judges" and respectively cannot enjoy the immunity for decision-making enjoyed by judges on the basis of Article 107 of the Constitution, however, the Court, while assessing whether granting immunity for decision-making to members of the IOBCSK violates any of the rights provided for by the Constitution, assessed that "*the purpose of the immunity is that the members of the Board are free to exercise their functions with independence and without fear of the consequences for the performance of their functions, therefore the immunity serves this purpose and the Court considers that it is legitimate.*" The purpose of the immunity for the members of the IOBCSK in

relation to their decision-making, serves the independent exercise of the functioning of the IOBCSK for the purposes of Article 101 of the Constitution.

219. The issue of immunity for decision-making for the members of the IOBCSK is a functional immunity, as was clarified by the Court in the case KO98/11, applicant *the Government of the Republic of Kosovo*, Judgment of 20 September 2011, regarding the immunity of the President, deputies and members of the Government, means that the members of the IOBCSK are exempted from responsibility of any nature for the views expressed, the way of voting or the decisions taken during their work as members of the IOBCSK and other actions undertaken while performing their duties. This type of immunity extends after their mandate comes to an end and it is of unlimited duration. They will never be liable to answer to anyone or any court for such actions or decisions (see case KO98/11, cited above, paragraph 54).

220. The Court also recalls the content of Article 15 of the Basic Law on the IOBCSK, which counts explicitly, the reasons, when a member of the IOBCSK can have his mandate terminated, expressly determining that: "*1. Kosovo Assembly may discharge a member of the Board through the majority of votes on the following grounds: 1.1. violation of this law's provisions; 1.2. when engaged in actions, that present a conflict of interest and despite the warning from the competent body does not eliminate the conflict of interest pursuant to the respective law; 1.3. in case of exercising duties that are not in accordance with his function; 1.4. in case he is absent without a reason from work for longer than (5) days for reasons that are not foreseen by the law".*

221. From the content of Article 15 of the Basic Law on the IOBCSK, which lists all the circumstances when the mandate of a member of the IOBCSK may be terminated, it is very clear that the Basic Law does not provide for the possibility of dismissal of a member of the IOBCSK, for the opinion expressed during the exercise of his functions stipulated by the Constitution and the applicable law.

222. Returning to the circumstances of the present case, the Court assesses that the purpose of the immunity is that the members of the IOBCSK are free to exercise their functions while ensuring and respecting the rules and principles governing the civil service without fear of consequences for the performance of their functions, therefore, the immunity regarding their decision-making serves this purpose and the Court considers that it is legitimate.

223. In light of what was said above, based on the above-mentioned practice of the Court, the members of the IOBCSK enjoy independence in their decision-making in "*ensuring and respecting the rules and principles governing the civil service*", as defined in paragraph 2 of Article 101 of the Constitution; (ii) this independence is further interpreted and defined through the case law of the Court in case KO171/18, and KO127/21, the cases which have dealt precisely with the issue of immunity for decision-making for members of the IOBCSK, which it attributes to its members immunity related to decision-making within the constitutional and legal functions of the IOBCSK, from criminal prosecution, civil lawsuits or dismissal, which enables them to be free to exercise their functions independently and without fear of consequences for the performance of their functions in relation to *"the views expressed, the manner of voting or the decisions taken during their work";* (iii) whereas the Assembly has the constitutional competence to supervise the IOBCSK, including the possibility of terminating the mandate of its members in the cases defined in Article 15 of the Basic Law on the IOBCSK, the members of the IOBCSK cannot be dismissed only for decision-making because in relation to the latter, they have immunity from dismissal, as established in the law adopted by the Assembly. Moreover, based on the same law, the

legality of the decisions of the IOBCSK is subject to the control of the judicial power and not the legislative one.

224. From the above, considering the wording of (i) paragraph 2 of Article 101 of the Constitution; (ii) the case law of the Court clarified above; and (iii) the joint reading of Article 15 and paragraph 3 of Article 11 of the Basic Law on the IOBCSK, namely the possibility of the termination of the mandate of the member of the IOBCSK by the Assembly and the immunity for decision-making, which has been determined by the latter regarding the dismissal related to the decision-making within the constitutional and legal functions of the IOBCSK, the Court emphasizes that the member of the IOBCSK cannot be dismissed on the grounds of decision-making, namely the way of voting during the examination of concrete cases. The legality of such decision-making in fact and as explained above, belongs to the judicial power, through the administrative conflict procedure as defined in Article 22 of the Law on the IOBCSK.

225. In this context, the Court also emphasizes its practice, where it qualified the IOBCSK as a "*quasi-judicial*" institution, namely as a tribunal in relation to the resolution of disputes arising from the civil service, therefore, the independence in decision-making of the members of the IOBCSK, and precisely the functional immunity is a tool that ensures the independence in decision-making for the members of the IOBCSK.

226. The Court based on the above-mentioned principles regarding the decision-making of the members of the IOBCSK, which entail (i) the independence in decision-making for the Chairman and the members of the IOBCSK; (ii) the nature of the decisions that the latter issues (iii) the practice of the Court, which qualified the IOBCSK as a "*quasi-judicial*" institution, namely as a tribunal in relation to the resolution of disputes arising from the civil service; as well as (iii) the functional immunity that the members of the latter enjoy through the Basic Law on the IOBCSK, considers that the members of the IOBCSK cannot be called to accountability for the way of voting or the decisions taken during their work, even if immunity is not specifically granted to them by the Law, because this would violate their independence in exercising their competencies as members of the IOBCSK, and in this way the principle of legal certainty itself, as one of the main pillars of the rule of law, would be violated which requires, among other things, that the rules are clear and precise, and aim to ensure that legal situations and relationships remain foreseeable.

227. In conclusion, the Court emphasizes that the issue of immunity for the members of the IOBCSK in relation to their decision-making, although it is not specifically guaranteed by Article 101 [Civil Service] of the Constitution, which aims to ensure the rules and principles governing the civil service in the Republic of Kosovo and the same was granted to the members of the IOBCSK through the Basic Law, which was assessed by the Court in case KO171/18 and was considered in compliance with the Constitution, and moreover in case KO127/21, the Court assessed that the dismissal of the members of the IOBCSK is not in compliance with paragraph 2 of Article 101 of the Constitution. Therefore, based also on its practice cited above, the Court finds that the issue of immunity, in the present case the removal of immunity for members of the IOBCSK in connection with their decision-making, by Article 6 of Law No. 08/L-180 on amending and supplementing Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, which deletes paragraph 3 of Article 11 (Term of office for members of Board) of Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo is not in compliance with paragraph 2 of Article 101 [Civil Service] of the Constitution.

C. Regarding the applicants' allegations related to articles 9, 10 and 11 of the contested Law, which amend and supplement article 21 (Board's decision), paragraph 2 of article 22 (Initiation of the administrative conflict), as well as paragraph 1 of article 23 (Procedure in case of non-implementation of the Board decision) of the Basic Law of the IOBCSK

228. The Court first recalls the applicants' allegations that are related to articles 9, 10 and 11 of the contested Law which supplement and amend article 21 (Board's decision), paragraph 2 of article 22 (Initiation of the administrative conflict), as well as paragraph 1 of Article 23 (Procedure in case of non-implementation of the Board decision) of the Basic Law of the IOBCSK, recalling the essence of this claim, which has to do with the fact that through the proposed amendments, the decisions of the IOBCSK become ineffective, in all cases when an administrative conflict is initiated against the relevant decision of the IOBCSK in the competent court, infringing in this way the legal certainty.

a. The essence of the applicants' allegations and comments of opposing and interested parties

229. The Court first summarizes the essence of the applicants' allegations in case KO232/23.

230. In relation to this, the applicants emphasize that the contested Law ultimately renders the decision of the IOBCSK ineffective in cases where an administrative conflict is initiated against the relevant decision before the competent court, and in this way fundamentally violates the principle of legal certainty and the principle of fair trial and within a reasonable time, because the initiation of the administrative conflict based on the contested law prohibits the execution of the decision of the IOBCSK. The applicants add that *"Currently, in the administrative procedure, the Board acts as the second instance. In each case when a decision is taken by the institution in the first instance administrative procedure, the dissatisfied party has the right to appeal to the Board. Based on Law 05/L-031 on the General Administrative Procedure [Article 130], the submission of the appeal suspends the implementation of the decision of the first instance. According to the Law, the decision of the Board is considered final and is an enforceable decision. The initiation of the administrative conflict does not stop the execution of the Board's decision, except if the Court assesses that in a specific case this should happen and imposes an interim measure".*

231. The applicants add that through the contested Law, in cases where an administrative conflict is initiated in regular courts, the decisions of the IOBCSK will be suspended and they will not be implemented until a final decision of the regular courts.

232. The latter also emphasize that: "*This legal solution is contrary to the conceptual aspects between the administrative procedure and the judicial procedure. These two procedures are different and separate procedures. The administrative procedure, which ends at the second instance within the administrative institutions, is regulated by another law of the administrative conflict that takes place in court. For this reason, the correlation of the implementation of the Board's decision with the court's decision, as long as the court has not imposed an interim measure, is a mixture of the basic differences between the administrative and the judicial procedure".* Regarding this, the applicants add that the role of the IOBCSK as an administrative body for the protection of judicial rights aims at the legal resolution of issues and complaints within the administration, as well as increasing the efficiency in handling these cases. *"Ex-lege suspension of the Board's decision until a final court decision is issued, practically excludes the board from its constitutional role and makes it impossible to resolve complaints within the administrative procedure. This article, which regulates the form*

and methods of establishment of Independent Agencies, defines four basic principles that must accompany the establishment and operation of Independent Agencies. First, the Assembly of Kosovo is the constitutional authority that holds the right of establishment of Independent Agencies. For their establishment, the article in question determines that the Assembly must adopt the relevant laws, which regulate, among other things, their operation and legal scope. Secondly, the Constitution establishes that the Independent Agencies must be guaranteed that the exercise of their legal function is carried out without influence and independently from any instruction or interference of other state bodies, including the body that established it. Thirdly, to guarantee their independence, Article 142 establishes that the Independent Agencies must have their own separate budget, and administer the latter in an independent manner, and, the last constitutional principle which must accompany the establishment of Independent Agencies, is related to the constitutional gradation that other state bodies maintain their independence, cooperate and respond to the requests of independent agencies while exercising their constitutional and legal competencies".

233. The applicants in case KO233/23, in connection with this allegation initially before the Court, emphasize that the Court in some of its cases, has concluded that the decisions of the IOBCSK are *"final, binding and enforceable"* decisions. The Applicants refer to a number of Court's cases, including individual cases where the decisions of the IOBCSK were the subject of review.

234. The applicants note that with the LGAP, the submission of the complaint to the IOBCSK suspends the implementation of the decision of the relevant institution, and that the decisions of the IOBCSK are considered as final decisions.

235. Further, they add that: *"the correlation between the applicability of the decision of the IOBCSK and the decision of the court, as long as the court has not imposed an interim measure, is a mixture of the basic differences between the administrative and the judicial procedure, and the latter is contrary to Article 31".*

236. At the very end, in connection with this claim, the applicants in case KO233/23 state that the non-implementation of the decisions of the IOBCSK, if the latter is challenged before the Court *"[...] essentially strikes the institutional authority of the Board, as a quasi-judicial institution, and without this function the latter would have no role at all in the structure of independent institutions, and as such it would not have to exist at all".*

237. The IOBCSK in its comments regarding this allegations, states that *"the parties to the proceedings are given the opportunity to protect their claimed rights by submitting a request for the postponement of the execution of the administrative act until the court decision is rendered, under the condition that the execution of the decision would bring harm to the claimant which would be difficult to repair, the postponement of the execution is not contrary to the public interest, nor would the postponement of the execution bring any great harm to the opposing party or the interested party".* Further, according to the IOBCSK: *"article 7 of the contested law, by which it is established that in cases where an administrative conflict is initiated against the decision of the Board before the competent court, the execution of the decision on the case is done only when there is a final decision of the competent court, is not in compliance with the spirit of Article 32 [Right to Legal Remedies] of the Constitution, since interested parties in administrative conflict proceedings, which may include civil servants or candidates for admission to the Civil Service, will not be able to use legal remedies according to the legal framework of Law No. 03/L-202 on Administrative Conflicts and the Law on Contested Procedure, because the provisions of these two*

laws have not addressed nor regulated the issue of suspension according to the ex lege principle of the final administrative act, as are also the decisions of the Board, by which civil servants or candidates for admission to the civil service may be recognized or confirmed any right from the employment relationship according to the provisions of the legislation on the civil service and therefore in the spirit of Article 49.1 [Right to Work and Exercise Profession] of the Constitution of Kosovo.

238. The Prime Minister, on the other hand, in his comments, argues that IOBCSK is not an independent agency of the Assembly of the Republic of Kosovo within the framework of Article 142 [Independent Agencies] of the Constitution. In this regard, the Prime Minister emphasizes that since the source of the powers of the IOBCSK is the Assembly, referring to the Commentary on the Constitution, the powers of the Government cannot be limited by the judicial and legislative powers. Consequently, according to him, under no circumstances by the IOBCSK.

239. In the context of the final effect of the decision of the IOBCSK, the Prime Minister considers that the solution offered by the contested Law, also in terms of treating the decision as final, is a final solution. This is because according to him, as long as the law in force provides that the decision of the IOBCSK is final, this is also applied in practice. Therefore, the ltter states that as long as such a thing is foreseen by law, this regulation has no way of becoming a norm.

240. The Prime Minister in his comments also emphasizes that*: "The right to execute court decisions is of even greater importance in the context of the proceedings (Sharxhi and others v. Albania, 2018, § 92). By exercising the appeal in the highest administrative court of the state, the appellant requests the displacement of the effect of the preliminary decision which translates into the effective protection of the appellant's rights (Hornsby v. Greece, 1997, § 41; Kyrtatos v. Greece, 2003, §§ 31-32; and with regard to judgments of a constitutional court, see, mutatis mutandis, Xero Flor ë Polsce sp. z 0.0. v. Poland, 2021, §§ 282-283)".*

241. Regarding the principle of legal certainty, the Prime Minister states that *"In general, legal certainty presupposes respect for the principles of res judicata and the finality or final effect of the judgment (Guðmundur Andri Ástráðsson v Iceland [GC], 2020, § 238 and below).*
Recently, the right to a fair trial under Article 6 of the ECHR requires that the case be "heard by an independent and impartial tribunal". The independence of the judiciary is a sine qua non condition for a fair trial according to Article 6 of the ECHR, (Grezeda v. Poland [GC], 2022, §301) while the independence of the judiciary is a prerequisite for the rule of law. Judges cannot maintain the rule of law and give effect to the rights of the Convention as long as national laws deprive them of the guarantees of the ECHR. Consequently, as long as the Law on IOBCSK obliges the implementation of the decisions of IOBCSK even when the administrative conflict is initiated, it deprives the parties from hearing their case by an independent and impartial court, specialized in administrative matters (reference to the Court for Administrative Affairs), according to the definition of Article 6 of the ECHR.
Therefore, the applicant, through the presented arguments, deprives the court of the implementation of Article 6 of the ECHR and advocated for the lack of a fair and impartial trial according to the ECHR".

b. General principles related to the implementation of the decisions of the IOBCSK

242. In relation to the legal status of the IOBCSK, the Court recalls its already consolidated case law in a considerable number of cases, where it had established that the IOBCSK is an independent institution established by law, in accordance with the Constitution, respectively with paragraph 2 of Article 101 of the Constitution. The Court further found in its case law that all the obligations arising from this institution related to the issues that are under the jurisdiction of this institution produce legal effects for other relevant institutions, where the status of employees is regulated by the Basic Law on IOBCSK.

243. The Court in its practice has also emphasized that the decision of this institution represents a final administrative decision and as such should be enforced by the competent court, according to the proposal for enforcement by the creditor in terms of the exercise of the right acquired in the administrative procedure (see Constitutional Court cases, KI33/16, cited above, paragraph 56; KI50/12, cited above, paragraph 36; and KI129/11, cited above, paragraph 42*)*.

244. In the context of what was said above, recalling the content of the reasoning in the case KI33/16, the Court recalls that through the latter it had declared that the IOBCSK enjoys the prerogatives of a court within the meaning of Article 31 of the Constitution and Article 6 of the ECHR and that the "*tribunal" is characterized in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner[…]",* establishing that the decisions of the IOBCSK are "*final, binding and enforceable*" and that the IOBCSK from the point of view of Article 31 of the Constitution and Article 6 of the ECHR is independent because (i) it is independent from the executive and (ii) has full jurisdiction to decide on the matters brought before them as required by Article 31 of the Constitution and Article 6 of the ECHR (see, *mutatis mutandis*, case KI33/16, *Minire Zeka*, cited above, paragraph 59. Regarding the independence of an "*independent tribunal*" see case KO12/17, applicant *the Ombudsperson*, Judgment of the Constitutional Court, of 9 May 2017, paragraph 75).

c. Court's assessment

245. In the application of these principles, in order to address the claims of the applicants, the Court also refers to Article 9 of the contested Law, which supplements and amends Article 21 (Board's decision) of the Basic Law, which establishes as follows:

Article 9
(no title)

"Article 21 of the basic Law shall be reworded as a whole, as follows:

1. The decision of the Board is an administrative decision and it shall be implemented by the senior management level official or the responsible person of the institution that has taken the first decision towards the party.
2. Implementation of the decision shall be made within fifteen (15) days upon the end of the deadline foreseen for the appeal in the competent court, as foreseen by the provisions of the law on administrative conflict, except when the decision is appealed within the competent court.
3. Non-implementation of the decision of the Board, within the determined deadline in cases when none of the parties have contested it at the competent court, or after

the final decision of the competent court, represents violation of the provisions of this Law."

246. The Court also notes the content of Article 21 (Board's decision) of the Basic Law as follows:

Article 21
(Board's decision)

"1. Board's decision is a final administrative decision and is implemented by the senior management level official or the responsible person from the institution that made the first decision towards the party.
2. Implementation of the decision should be done within fifteen (15) days deadline from the receipt of the Board decision.
3. Non-implementation of the Board decision by the responsible person from the institution, constitutes serious breach of the work duties."

247. From the content of Article 9 of the contested Law, the Court observes that it completely changes the content of Article 21 of the Basic Law on the IOBCSK.

248. In addition, the Court also recalls the content of Article 10 of the contested Law, which amends paragraph 2 of Article 22 of the Basic Law on the IOBCSK, and which establishes as follows:

Article 10
(no title)

"Paragraph 2 of Article 22 of the basic Law shall be reworded as follows:

2. In cases when an administrative conflict is initiated against the decision of the Board the competent court, the decision shall be executed for the case only when there is final decision of the competent court."

249. The court recalls the content of paragraph 2 of article 22 which specifies:

Article 22
(Initiation of the administrative conflict)

"1. The party which is unsatisfied, and claims that the Board decision is not lawful may initiate an administrative conflict against the Board decision at the competent court, within the deadline set in the provision of the law on administrative conflict.
2. Initiating an administrative conflict does not stop the execution of the Board decision."

250. The Court further recalls the content of Article 11 of the contested Law, which amends paragraph 1 of Article 23 of the Basic Law on the IOBCSK, and which stipulated that

Article 11
(no title)

"Paragraph 1 of Article 23 of the basic Law shall be reworded as follows, while paragraphs 5 and 6 shall be deleted:

1. If the person responsible of the institution does not implement the decision of the Board within the time frame foreseen under Article 21 of this Law, in cases when none of the parties has contested the decision of the Board in the competent court, Chairperson of the Board in the time frame of fifteen (15) days from the day when the deadline for implementation has expired, shall inform, in writing, the President of the Assembly, the relevant Committee for public administration and the direct supervisor of the person responsible for the implementation."

251. Paragraph 1 of Article 23 of the Basic Law of the IOBCSK, amended according to Article 11 of the contested Law, in its content reads:

Article 23
(Procedure in case of non-implementation of the Council's decision)

"1. If the responsible person from the institution does not implement the Board decision within the deadline foreseen in Article 21 of this Law, in all such cases, Chairperson of the Board should inform in written the President of the Assembly, relevant Committee on Public Administration and the immediate supervisor of the person responsible for non-implementation, within fifteen (15) days from the day of expiry of the execution deadline.

252. From the content of the articles reflected above, of the contested Law, respectively its articles 9, 10 and 11, the decisions of the IOBCSK no longer represent final decisions, and that their immediate implementation occurs only when the latter is not contested in the competent court.

253. Further, according to what is provided in articles 9, 10 and 11 of the contested Law, in cases where the Decision of the IOBCSK is challenged in the competent court, the latter is suspended until a final decision by the competent court.

254. The Court recalls that the applicants claim that through the contested Law, respectively the changes that the contested Law foresees, removing the *"effect of enforceability"* from the decisions of the IOBCSK, which according to them, is not in compliance with Article 101 [Civil Service] and 142 [Independent Agencies] because it violates the independence of the institution of the IOBSCK.

255. Moreover, the applicants emphasize that through these legal changes, through which they claim that "*it is a mixture of the basic differences between administrative and judicial procedures"* claiming that in this way Article 32 [Right to Legal Remedies] of the Constitution is violated because according to them, the Constitution itself has divided the legal remedies for the parties in administrative and judicial proceedings.

256. Furthermore, the applicants add that the IOBCSK as the final body in administrative proceedings, among other things, aims to increase the efficiency in the handling of labor disputes, and that the suspension of the decision of the IOBCSK in cases where one party addresses the competent court, practically represents the "*exclusion*" of the IOBCSK from its constitutional role, and in this way the rights of civil servants guaranteed by Article 31 [Right to Fair and Impartial Trial] are violated, causing delays in the resolution of cases.

257. First, while addressing the claim of the applicants in relation to the violation of Article 101 of the Constitution, the Court reiterates that the competence of oversight of the compliance with the rules and principles governing the civil service is the competence of the IOBCSK, established by paragraph 2 of Article 101 of the Constitution and that

the case law of the Constitutional Court is highly consolidated in the context of the independence of this institution and its functions, including but not limited to the Judgments in the aforementioned Court cases: KO171/18 and KO127/21.

258. The Court recalls that based on Article 101 of the Constitution and the Basic Law on the IOBCSK, the IOBCSK is defined as an independent constitutional institution that ensures compliance with the rules and principles governing the civil service. Based on the Basic Law on the IOBCSK, the latter ensures: (i) oversight of the implementation of the rules and principles of the civil service legislation; (ii) examining and issuing decisions on complaints of civil servants and candidates for admission to the civil service; (iii) oversight and the selection procedure and deciding whether the appointments of civil servants at the senior management level and at the management level have been carried out in accordance with the rules and principles of the civil service legislation; and (iv) monitoring of public administration institutions that employ civil servants, related to the implementation of the rules and principles of civil service legislation. Moreover, based on Article 7 (Powers of the Board) of the Law on IOBCSK, the Board, among other things, has the right, (i) to visit any institution that employs civil servants; (ii) to access and control the files and any document related to the implementation of the rules and principles of the civil service legislation; (iii) to interview any civil servant who may have information of direct importance to the exercise of the functions of the Board; (iv) to request and receive from the institutions any information necessary for the performance of its duties; and (v) issue decisions, guidelines, opinions and recommendations.

259. In this context, the Court underlines that the aforementioned principles, which stem from the practice of the Court, which establish the *"quasi-judicial"* nature of the IOBCSK itself, namely the tribunal in relation to the resolution of disputes arising from the civil service, and as an institution having full jurisdiction to issue binding decisions regarding conflicts between civil servants or candidates for civil servants.

260. As it was elaborated above in the general principles, regarding the implementation of the decisions of the IOBCSK, the Court in its practice emphasized that a decision of the IOBCSK produces legal effects for the parties and therefore, such a decision is final and enforceable administrative decision (see Court cases, KI04/12, applicant *Esat Kelmendi*, Judgment of 20 July 2012 and KI74/12, applicant *Besa Qirezi*, Judgment of 4 April 2015 and references cited therein).

261. In this regard, the Court considers that the relevant constitutional and legal provisions, in addition to the subject matter jurisdiction of the IOBCSK to resolve labor disputes for civil servants, represents a legal obligation for the relevant institutions to address and implement the decisions of the IOBCSK.

262. The Court further states that, based on point 1.4 of paragraph 1 of article 26 of Law no. 06/L-054 on Courts, the Supreme Court "*define principled attitudes and issues legal opinions and guidelines for unique application of laws by the courts in the territory of Kosovo"*. The Supreme Court, based on the practice of the Courts that had dealt with the issue of the decisions of the IOBCSK, in its meeting held on 23 January 2012, found that the decisions of the IOBCSK present an enforceable title.

263. Furthermore, the Court emphasizes that the constitutional norm, namely paragraph 2 of Article 101 of the Constitution, does not expressly provide for the legal effects of the decision of the IOBCSK, although it provides for this institution as an independent body that ensures compliance with the rules and principles governing the service civil in Kosovo, as well as based on the practice of the Court itself, it results that this body has

a *"quasi-judicial"* nature and that within the framework of Article 31 of the Constitution it constitutes a "*tribunal*".

264. In this respect, the Court reiterates its case law and that of the ECtHR, where it considers that the execution of a decision taken by a court should be seen as an integral part of the right to a fair trial, guaranteed by the aforementioned constitutional provisions (see the ECtHR case, *Hornsby v. Greece*, no. 18357/91, Judgment of 19 March 1997, paragraph 40, as well as Court's case, KI33/16, cited above, paragraph 66).

265. Based on this principle, the Court points out that the legal effect of the decisions of the IOBCSK within the framework of the administrative procedure falls under the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution.

266. In this context, the Court also refers to the principles of the general administrative procedure, such as the principle of efficiency and that of its *"final" or "enforceable"* legal effect after the end of this procedure, defined among others in paragraph 2 of Article 10 (Principle of non-formality and efficiency of the administrative proceeding) of the LGAP, which provides that *"2. Public organ shall conduct an administrative proceeding as fast as possible and with as little costs as possible, for the public organ and for the parties […]",* as well as paragraph 2 of Article 144 (Enforceability of administrative act) of the LGAP, which provides that: "*2. A second instance administrative act by which the first instance administrative act has been altered shall become enforceable after notification of the party".*

267. The Court reiterates that the changes provided for in Article 10 of the contested Law, which amends and supplements paragraph 2 of Article 22 (Initiation of the administration conflict) of the Basic Law, determining that the decisions of the IOBCSK no longer present enforceable decisions, and that their immediate implementation occurs only when the latter is not challenged in the competent court. The Court takes into account that the initiation of the administrative conflict by the lawsuit is used by most of the parties after obtaining a decision in the administrative procedure. In this regard, the Court recalls that the administrative conflict procedure according to the Law on Administrative Conflicts ends with a final decision, which becomes enforceable after the exhaustion of the legal remedies mentioned in this Judgment, in case of their use. From this, it follows that the civil servants whose complaint against the administrative act regarding their employment relationship was resolved by the IOBCSK, remain without the possibility of executing this decision, for a period of time until the administrative conflict procedure ends with the decision of final form, despite the aforementioned principles of the right to administrative procedure, namely the principle of speed and enforceability of the administrative act in this type of procedure. In the spirit of what was said above, the Court considers that this fundamentally violates the essence of the right to a fair and impartial trial.

268. Consequently, the Court finds that articles 9, 10 1 and 11 (no titles) of Law No. 08/L-180 on amending and supplementing Law No. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo, which amends and supplements article 21 (Board's decision), paragraph 2 of article 22 (Initiation of the administration conflict), as well as paragraph 1 of article 23 (Procedure in case of non-implementation of the Board decision) of Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, are not compatible with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution.

Effects of this Judgement

269. Finally, the Court recalls that the applicants' referral was submitted to the Court based on paragraph 5 of Article 113 of the Constitution. This category of referrals has a suspensive effect because based on Article 43 (Deadline) of the Law on the Constitutional Court, such a law can be sent to the President of the Republic of Kosovo for promulgation only after the decision of the Court and in accordance with the modalities defined in the final decision of the Court on the contested case.

270. In the following, the Court points out that in the case law of the Court regarding the category of referrals of paragraph 5 of Article 113 of the Constitution, in the event of finding that certain provisions of the contested law are not in compliance with the Constitution, the Court (i) has declared invalid only the provisions assessed as contrary to the Constitution, while the rest of the law has been sent to the President for promulgation in accordance with the modalities of the Court's Judgment, as is the case with the Judgments in case KO01/17; case KO108/13, with the applicant: *Albulena Haxhiu and 12 other deputies of the Assembly of the Republic of Kosovo* regarding the constitutional review of Law No. 04/L-209 on Amnesty or case KO 216/22, with applicant *Isak Shabani and ten (10) other deputies* and KO 220/22; KO79/23; or (ii) in case of assessment that the provisions declared contrary to the Constitution are of essential importance for the law in question and as a result, its promulgation or entry into force would make it unenforceable, has repealed the relevant law in its entirety, as is the case with the Court's Judgment in case KO43/19 with the applicants *Albulena Haxhiu, Driton Selmanaj and thirty* (30) *other deputies of the Assembly of the Republic of Kosovo*, Judgment of 13 June 2019 regarding the Law on Duties, Responsibilities and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia; in cases KO100/22 and KO101/22,; and KO173/22, applicant *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo,* (cited above) related to Law No. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market.

271. In the circumstances of the present case, the Court found that: (i) articles 2, 7, 8 (no titles) of the contested Law are not in compliance with paragraph 1 of article 24 [Equality Before the Law], and article 32 [Right to Legal Remedies] in conjunction with paragraph 2 of article 101 [Civil Service] of the Constitution; (ii) Article 6 (no title) of the contested Law is not in compliance with paragraph 2 of Article 101 [Civil Service] of the Constitution; as well as (iii) articles 9, 10 and 11 (no titles) of the contested Law, are not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution. Consequently, the Court has declared invalid and repealed articles 2, 6, 7, 8, 9, 10 and 11 (no titles) of Law No. 08/L-180 on Amending and Supplementing Law no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo.

272. On the other hand, the Court recalls that the content of other articles of the contested Law, respectively, articles 3, 4 and 5, concerns the change of the relevant provisions of the Basic Law regarding (i) the number and composition of the members of IOBCSK, (ii) the criteria for appointing its members; as well as (iii) changing the procedure for appointing the members of this institution. Since the aforementioned articles of the contested Law (i) have not been assessed by the Court as unconstitutional; (ii) the latter have no correlation and no interdependence with its repealed articles as above, and consequently can be applied independently and unaffected by the provisions declared as contrary to the Constitution, as well as taking into account that (iii) the nature of the contested Law as a law on amending and supplementing the Basic Law on the IOBCSK, the Court considers that its articles 1, 3, 4, 5 (no titles) and 12 (Entry into force) can be applied independently of articles 2, 6, 7, 8, 9, 10 and 11, and consequently has decided

that the contested Law is sent for promulgation to the President of the Republic of Kosovo, without Articles 2, 6, 7, 8, 9, 10 and 11 of the same law.

Request for interim measure

273. The Court recalls that the Applicants requested the Court to impose an interim measure, with the aim of preventing the implementation of the contested Law, until the final decision regarding the referrals in question is rendered.

274. The Court, in this context, emphasizes that paragraph 2 of Article 43 [Deadline] of the Law determines the suspensive effect of the entry into force of the laws which are contested based on paragraph 5 of Article 113 of the Constitution, which establishes that *"In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5 of the Constitution, such a law or decision, shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest*".

275. Based on the aforementioned provision, on 31 October 2023, the Court requested the President, the President of the Assembly and the Secretary of the Assembly to take into account the requirements established by paragraph 2 of Article 43 of the Law.

276. Therefore, taking into account that based on paragraph 2 of article 43 of the Law, the contested Law, based on paragraph 5 of article 113 of the Constitution, cannot be decreed, enter into force, or produce legal effects before the Court renders the decision, as well as in accordance with article 27 (Interim Measures) of the Law and rule 47 (Suspensive Effect of Referrals) of the Rules of Procedure, the request for interim measure is without subject of review and, as such, is rejected (see, *mutatis mutandis*, Judgment of the Court in cases KO100/22 and KO101/22, with the applicant *Abelard Tahiri and ten (10) other deputies* and KO101/22, with the applicant *Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo*, (cited above), paragraph 411, Judgment in cases KO216/22 and KO222/22, with the applicant *Isak Shabani and 10 (ten) other deputies* and KO220/22, with the applicant *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, (cited above) paragraph 405) and the Judgment in case KO173/22, with the applicant *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, (cited above), paragraph 228).

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with articles 113 (5) and 116 (2) of the Constitution, articles 20, 27 and 42 of the Law and based on rules 45, 48 (1) (a) and 72 of the Rules of Procedure, on 21 June 2024:

DECIDES

I. TO DECLARE, unanimously, the referral admissible;

II. TO HOLD, unanimously, that articles 2, 7 and 8 of Law no. 08/L-180 on Amending and Supplementing the Law no. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, are not in compliance with paragraph 1 of article 24 [Equality Before the Law] and article 32 [Right to Legal Remedies] in conjunction with paragraph 2 of article 101 [Civil Service] of the Constitution of the Republic of Kosovo;

III. TO HOLD, by seven (7) votes for and two (2) against, that Article 6 of Law no. 08/L-180 on Amending and Supplementing the Law no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo, is not in compliance with paragraph 2 of Article 101 [Civil Service] of the Constitution of the Republic of Kosovo and the latter is declared invalid;

IV. TO HOLD, unanimously, that articles 9, 10 and 11 of Law no. 08/L-180 on Amending and Supplementing the Law no. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, are not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and the latter are declared invalid;

V. TO DECLARE, unanimously, that based on Article 43 (Deadline) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, Law no. 08/L-180 on Amending and Supplementing the Law no. no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo is sent to the President of the Republic of Kosovo for promulgation, without articles 2, 6, 7, 8, 9, 10 and 11;

VI. TO REJECT, unanimously, the request for interim measure;

VII. TO NOTIFY this Judgment to the parties;

VIII. TO HOLD that this Judgment is effective on the date 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**

Radomir Laban Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.