



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

Prishtina, 2 August 2024
Ref. no.: AGJ 2513/24

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JUDGMENT

in

Case No. KO248/23

Applicant

Ferat Shala and 9 (nine) other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Law No. 08/L-209 on Sustainable Investments

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 and
Enver Peci, Judge, and
Jeton Bytyqi, Judge

Applicant

1. The Referral was submitted by ten (10) deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), namely: Ferat Shala, Mërgim Lushtaku, Hisen Berisha, Eliza Hoxha, Ariana Musliu Shoshi, Ganimete Musliu, Isak Shabani, Hajdar Beqa, Floretë Zejnullahu, and Rashit Qalaj, represented through authorization by Ferit Pula (hereinafter: the Applicants or the Applicant Deputies).

Contested Law

2. The Applicants contest the constitutionality of Law No. 08/L-209 on Sustainable Investments (hereinafter: the Contested Law), adopted by Decision [No. 08-V-620] of 19 October 2023 of the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

Subject matter

3. The subject matter of the Referral is the constitutional review of the Contested Law, which the Applicants claim that is not in compliance with Article 7 [Values], Article 24 [Equality Before the Law], Article 119 [General Principles] of Chapter IX [Economic Relations], and Article 122 [Use of Property and Natural Resources] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. In the context of the effects of submitting the respective Referral to the Court, the Applicants, *inter alia*, emphasize: “*with the request for the application of Article 43 of the Law on the Constitutional Court, regarding the ex-lege suspensive effect of the implementation of the law, if the same is contested before the Constitutional Court, as stipulated in paragraphs 1 and 2 of this article*”.

Legal basis

5. The Referral is 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 of Referrals), 27 (Interim Measures), 42 (Accuracy of the Referral) and 43 (Deadline) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rules 25 (Filing of Referrals and Replies) 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

6. On 27 October 2023, the Applicants submitted the Referral by mail to the Court.
7. On 8 October 2023, the President of the Court by Decision [No. GJR. KO248/23] appointed Judge Enver Peci Judge Rapporteur and the Review Panel, by Decision [No. KSH. KO248/23], composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Remzije Istrefi Peci (members).
8. On 21 September 2023, the Court notified the Applicants of the registration of the Referral.
9. On the same date, regarding the registration of the Referral, the Court also notified (i) the President of the Republic of Kosovo (hereinafter: the President); (ii) the President of the Assembly; and (iii) the Deputy Secretary General of the Assembly, explaining that based on paragraph 2 of Article 43 (Deadline) of the Law, “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 Court, based on the above-mentioned provision of the Law and its case-law, reminded that this provision implies that the Contested Law cannot be decreed, enter into force, or produce legal effects until the final decision of the Court regarding the matter raised before it. The President of the Assembly was also requested to notify the deputies that they may submit their

comments regarding the Applicants' Referral, if any, within fifteen (15) days, namely by 6 December 2023.

10. Furthermore, on the same date, regarding the registration of the Referral, the Court also notified (i) the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); (ii) the Ombudsperson Institution of the Republic of Kosovo (hereinafter: the Ombudsperson); and (iii) the Ministry of Finance, Labor, and Transfers (hereinafter: the MFLT), informing them that they may submit to the Court their comments regarding the submitted Referral, if any, within fifteen (15) days, namely by 6 December 2023.
11. On 30 November 2023, the Deputy Secretary General of the Assembly submitted to the Court the following documents: 1. The Draft Law on Sustainable Investments, proceeded by the Government to the Assembly on 19 January 2023; 2. The Report of the Functional Committee on Economy, Industry, Entrepreneurship, and Trade for the preliminary review of Draft Law No. 08/L-209 on Sustainable Investments, of 14 September 2023; 3. The minutes of the meeting of the Functional Committee on Economy, Industry, Entrepreneurship, and Trade for the first review of Draft Law No. 08/L-209 on Sustainable Investments, of 14 February 2023; 4. Decision [No. 08-V-532] of 3 May 2022 of the Assembly approving in principle Draft Law No. 08/L-209 on Sustainable Investments, of 14 February 2023; 5. The minutes of the Plenary Session of the Assembly, of 23 February 2023; 6. Excerpts from the transcript of the Plenary Session, first review of Draft Law No. 08/L-209 on Sustainable Investments, of 23 February 2023; 7. The Report with amendments of the Functional Committee on Economy, Industry, Entrepreneurship, and Trade regarding the second review of Draft Law No. 08/L-209 on Sustainable Investments, of 10 October 2023; 8. The Report with amendments of the Functional Committee on Economy, Industry, Entrepreneurship, and Trade regarding the second review of Draft Law No. 08/L-209 on Sustainable Investments, along with reports of the permanent committees, of 17 October 2023; 9. The minutes of the meetings of the Functional Committee on Economy, Industry, Entrepreneurship, and Trade, of 10 and 17 December 2023; 10. Response of the European Commission regarding initiatives for private sector development in Kosovo, of 1 February 2023; 11. Remarks and suggestions from the Chamber of Trade and Industry of Kosova regarding the Draft Law on Sustainable Investments; 12. Research Paper of the Directorate for Research, Library, and Archive of the Assembly of the Republic of Kosovo, of July 2023; 13. The transcript of the public hearing of the Functional Committee on Economy, Industry, Entrepreneurship, and Trade for the second review of Draft Law No. 08/L-209 on Sustainable Investments, of 16 June 2023; 14. Decision [No. 08-V-620] of 19 October 2023 of the Assembly approving Draft Law No. 08/L-209 on Sustainable Investments; 15. Excerpts from the minutes of the Plenary Session of the Assembly of 19 October 2023; 16. Excerpts from the transcript of the Plenary Session of the second review of Draft Law No. 08/L-209 on Sustainable Investments, No. 08-V-620, of 19 October 2023; and 17. Law No. 08/L-209 on Sustainable Investments, of 19 October 2023.
12. On 6 December 2023, the Office of the Prime Minister of Kosovo, on behalf of the Government of Kosovo, submitted comments to the Court regarding the Applicants' Referral.
13. Also, on the same date, the Parliamentary Group of the VETËVENDOSJE! Movement, through deputy Mimoza Kusari-Lila, submitted to the Court a reply to the Applicants' Referral.
14. On 20 December 2023, in regard to the comments received, the Court notified (i) the President of the Republic; (ii) the President of the Assembly; (iii) the Prime Minister; (iv) the Ombudsperson Institution; (v) the MFLT; and (vi) the Applicants.

15. On 11 March 2024, Judge Jeton Bytyqi took the oath before the President of the Republic of Kosovo, thereby commencing his mandate at the Court.
16. On 20 June 2024, the Review Panel reviewed the preliminary report proposed by the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same day, the Court unanimously decided: (i) to declare the Referral admissible; (ii) to hold that Articles 21 (Council), 35 (Special selection of the investor), 52 (Transitional provisions), and 53 (Abrogation) of Law No. 08/L-209 on Sustainable Investments are not in contradiction with paragraph 1 of Article 7 [Values], paragraphs 1 and 2 of Article 119 [General Principles], and paragraph 2 of Article 122 [Use of Property and Natural Resources] of the Constitution; (iii) to reject the request for interim measures; (iv) to declare 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-209 on Sustainable Investments shall be sent to the President of the Republic of Kosovo for promulgation; (v) this Judgment shall enter into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 (Decisions) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo.

Summary of facts

17. On 3 May 2023, the Assembly approved in principle Draft Law No. 08/L-209 on Sustainable Investments, through Decision [No. 08-V-532].
18. On 19 October 2023, the Assembly, in a Plenary Session, approved in the second reading Draft Law No. 08/L-209 on Sustainable Investments.

Applicant's allegations

19. The Applicants contest the constitutionality of the Contested Law in its entirety, alleging that it is in contradiction with Articles 7 [Values], 24 [Equality Before the Law], as well as Articles 119 [General Principles] and 122 [Use of Property and Natural Resources] of Chapter IX [Economic Relations] of the Constitution.
20. In relation to the above-mentioned allegations, the Applicants submitted arguments regarding: (I) the admissibility of the Referral; (II) the content of the Contested Law; and (III) the imposition of interim measures. The Court will present below the Applicants' allegations for all these categories below.
21. The Applicants allege that the Contested Law, upon entry into force, repeals two laws: (i) Law No. 04/L-220 on Foreign Investments and (ii) Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo, on which occasion it fails to address the issues of the scope of the legal provisions concerning foreign investors and the beneficiaries of strategic investor status who were beneficiaries of the legal provisions repealed, thus creating legal uncertainty for their investments and, on the other hand, it does not regulate the issue of addressing the applications that were already filed based on the repealed laws, leaving such cases without legal resolution.
22. Additionally, the Applicants consider that the establishment of two (2) new agencies, namely: (i) Agency for Investments and Exports (AIE) and (ii) Agency for Innovation and Support to the Enterprises in the Republic of Kosovo (AISEK), implies the abolishing of the existing Investment and Enterprise Support Agency in the Republic of Kosovo, the public officials of which have no legal certainty regarding their employment status. They also highlight that: *"Except for the provision in the Contested Law that the Ministry shall take over their systematization, they are denied of their constitutional right to employment relationship on one side and choosing of their profession and workplace on the other side"*, which constitutes another violation.

23. Furthermore, the Applicants allege that the Contested Law also violates the principles of organizing economic relations in the Republic of Kosovo by restricting free competition and enabling the arbitrariness of the Government, specifically of the *Investment Council* as stipulated in Article 21 of the law in relation to Article 122 of the Constitution, namely failure to establish reasonable conditions by law for the use of the natural resources of the Republic of Kosovo, referred to in paragraph 2 of this Article.
24. The Applicants further emphasize Article 35 (Special selection of the investor) of the Contested Law, alleging that it violates the principle and right of equality before the law under Article 24 of the Constitution, because it creates the possibility for arbitrariness in the selection of a strategic investor through a direct negotiation procedure by the Investment Council, a procedure not provided for by the provisions of the basic law on public procurement, where the relevant provisions of the latter, namely Article 3, clearly define the circumstances and cases of exceptions from the procurement procedure, which exclusively refer to supply and purchase contracts, but do not foresee the option of application in other circumstances, as proposed in Article 35, paragraph 2 of the Contested Law, which explicitly defines as follows: “2. *Notwithstanding paragraph 1 of this Article, the Council may select by direct negotiation the trust company as the proposer, implementer or partner for the implementation of the strategic investment, according to the evaluation criteria in line with the legislation in force. The business organization with a reputation and internationally recognized references in terms of economic activity, business ethics and advanced corporate governance, proven by financial and auditing institutions, shall be considered a trust company.*”
25. In this context, the Applicants argue that the Contested Law prevents: (i) the provision of a favorable legal environment for a market economy; (ii) the freedom of economic activity; and (iii) the security of public and private property; and infringes (iv) the right to equal treatment of all investors, both domestic and foreign, as it restricts free competition by creating conditions for a dominant market position, including the establishment of practices that restrict free competition, as one of the fundamental principles of economic relations in the Republic of Kosovo.
26. Ultimately, the Applicants request the Court: (I) to declare the Referral admissible; (II) to hold that Law No. 08/L-209 on Sustainable Investments is not in compliance with Article 7 (Values), Article 24 (Equality Before the Law), Article 119 (General Principles), and Article 122 (Use of Property and Natural Resources) of the Constitution; and (III) to emphasize that this Judgment enters into force immediately.

Comments and replies Submitted by interested parties

27. The Court will present below the replies to the Applicants’ Referral, namely: (i) the comments of the Office of the Prime Minister on behalf of the Government of Kosovo; and (ii) the comments of the parliamentary group of the VETËVENDOSJE! Movement.

(i) Comments of the Office of the Prime Minister on behalf of the Government of Kosovo to the Applicants’ Referral
28. On 6 December 2023, the Office of the Prime Minister submitted to the Court “The comments of the Government regarding Referral KO173/22”, emphasizing that the Applicants’ allegations have no constitutional basis and that each provision of the new Law is designed in the interest of attracting and protecting investments in the Republic of Kosovo, in light of the constitutional provisions.
29. The Office of the Prime Minister considers the allegation of the Applicants that “*through the two repealed laws, the Constitution has been violated because the rights of investors under the repealed laws have been denied*”, as incorrect, for two reasons: (1) The Law on

Sustainable Investments in the Republic of Kosovo contains provisions whose main aim is to promote and protect investments in the Republic of Kosovo, providing additional guarantees compared to the repealed laws on Strategic Investments and Foreign Investments; (2) the rights acquired under previous laws on strategic investors resulted in contractual relationships between the investor and the state of Kosovo, and the obligations and duties from such relationships remain valid until the contract's expiration. Furthermore, the Office of the Prime Minister emphasizes that the Contested Law is partially aligned with applicable EU regulations and stipulates that "*all investors and their investments are equal before the law.*".

30. The Office of the Prime Minister further emphasizes that the Contested Law provides that "*The investor and investments shall enjoy complete and continuous protection and security in compliance with the legislation in force*". Consequently, according to them, the investment protection cannot be less favorable than the one provided by law or "by generally accepted norms of international law". The Office of the Prime Minister further highlights: "*The Republic of Kosovo promotes and protects responsible and sustainable investments, in accordance with 1) the principles of responsible investment supported by the United Nations.*"
31. Regarding the comments received from the Office of the Prime Minister, in the context of the assessment of Article 7 [Values] of the Constitution, they emphasize that the Contested Law ensures the prohibition of discrimination against the investor and the investment, which also applies to the strategic investor status already acquired under the repealed laws. Accordingly, according to the Office of the Prime Minister, the Contested Law is in compliance with the value of the prohibition of discrimination.
32. Furthermore, the Office of the Prime Minister emphasizes that with respect to the principle of the market economy, "*the market economy is such a system of the economy based on the system of entrepreneurship and free competition, operating through market mechanisms where supply and demand determine market prices. The market and the market mechanism, as such, are based on economic theory. Participants are free to operate under the conditions of free competition and a market economy, while the free market economy includes the fields of goods, services, production, labor, land, and capital. The market economy implies competition and the free choice of consumers, and the main prerequisite for its functioning is the existence of private property. In the market economy, apart from the laissez-faire principle, the state is obliged to set the general rules of the game of economic activities and ensure the rule of law*".
33. Thus, according to the Office of the Prime Minister, the state namely the Government as the proposer and subsequently the Assembly, have established the general rules of economic activities regarding the issue of investments, precisely based on the Contested Law. By establishing clear rules for investments in the Republic of Kosovo, protecting these investments, prohibiting discrimination, advantages gained under the Law and international agreements, as well as the principles of international law, while also ensuring equality between foreign and domestic investments, the state has set high standards and clear rules of the game or determination of economic activities regarding investments.
34. Therefore, in light of *Article 7 [Values]* of the Constitution, the Office of the Prime Minister, on behalf of the Government, considers that the Applicants have not elaborated as to which point of the Contested Law is not in accordance with Article 7 of the Constitution and thus, rejects the allegation that the Contested Law contradicts the values protected by the Constitution.
35. In relation to the comments regarding the compliance of the Contested Law with *Article 24 [Equality Before the Law]* of the Constitution, the Office of the Prime Minister

emphasizes that the Contested Law explicitly prohibits discrimination and expressly imposes or requires the equality of all investments and investors before the law. Therefore, according to them, the Applicants' objection to the Contested Law based on the Constitution is ungrounded in this regard.

36. According to the Office of the Prime Minister, *“Every investor (enjoying such status in the Republic of Kosovo) and every investment is treated equally, just as all applications currently submitted before the Council of Ministers are treated, and as will be treated by the Council for Investments after the entry into force of the new Law.”* Consequently, they emphasize that the work of public institutions is transparent and access to them is provided through the applicable law on access to public documents. Therefore, any potential discrimination or inequality is easily proven and, based on the applicable legislation in the Republic of Kosovo, becomes evident to the public.
37. In relation to the comments regarding the compliance of the Contested Law with *Article 119 [General Principles]* of the Constitution, the Office of the Prime Minister emphasizes that the Contested Law precisely ensures equality and eliminates the possibility of discriminatory treatment.
38. The Office of the Prime Minister highlights that *“Article 119.3 provides that actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law. This Article, according to them, sets out some of the principles of competition policy, which include the prohibition of the dominant market position of an economic entity and the prohibition of abuses resulting from market monopolization. Within the meaning of this Article, exceptions from free competition and the prohibition of abuses of dominant positions and economic monopolies must be established only by law, accompanied by the condition that they are explicitly stated.”*
39. Specifically, the Office of the Prime Minister emphasizes: *“a dominant position or monopoly constitutes market abuse”*, rather than clear rules guiding an Investment Council, as a state body, that operates in accordance with transparency principles. They emphasize that, under the Contested Law, the Council *“evaluates, selects, implements, supervises, and decides on strategic investment projects in accordance with the provisions of this law”* and *“approves action plans and reports for the protection of investments and exports, paying attention to the elimination of barriers to investments, improving the economic activity environment, development opportunities, and comparative advantages of the Republic of Kosovo”*. Consequently, according to the Office of the Prime Minister, the Council not only does not abuse but also has the responsibility to eliminate barriers to investments and improve the economic activity environment. Therefore, the Council's actions fully comply with the Constitution, particularly Article 119, by entirely preventing the possibility of determining a dominant position.
40. Furthermore, the Office of the Prime Minister emphasizes that the Council for Investments also encourages sustainable economic development by promoting investments and removing barriers, in line with Article 119, paragraph 4, as follows: *“Article 119.4 establishes the obligation of the state of Kosovo to promote the welfare of all its citizens by encouraging sustainable economic development. Two basic principles derive from this Article: one, that the state has an obligation to guarantee a basic environment of social welfare for its citizens, which is a relatively significant but also interventionist; and two, that the state encourages sustainable economic development through its public policies. Regarding the latter, Article 119.4 does not make the state the bearer of economic development, but rather imposes the obligation to build basic conditions so that the private sector can drive such development forward.”*

41. The Office of the Prime Minister further emphasizes that Article 119, paragraph 6, has been fully complied with by the new Law, as foreign investors, same as domestic ones, are naturally allowed to profit and the capital invested abroad, as provided by the provisions of the Contested Law (Article 9), which establishes that the investor must adhere to the principles of the free movement of goods, services, and capital.
42. Concerning Article 122 of the Constitution, the Office of the Prime Minister states: *“The Commentary of the Constitution is very clear when it comes to Article 122: citizens may use natural resources in accordance with the law; special zones of public interest are protected by law, and exploitation followed by compensation for such exploitation is regulated by law. The government does not limit in any way the property rights protected by the Constitution and Article 22 in conjunction with Article 53 of the Constitution, which ensures the implementation of international instruments for the protection of human rights and the direct application of the jurisprudence of the European Court of Human Rights. Consequently, limitation is always done based on a law adopted by the Assembly of the Republic and in compliance with the aforementioned standards which, according to the Constitution, have supremacy over domestic legislation.”*
43. The Office of the Prime Minister also emphasizes that through the Contested Law, *“publicly-owned immovable property is given for use for the strategic investment following the approval of the Assembly of the Republic and in accordance with the relevant law for expropriation of immovable property if the property is socially owned.”* Furthermore, the Government and subsequently the Assembly will act based on the applicable legislation in the Republic of Kosovo regarding publicly-owned property, therefore: 1) neither the investment nor the investor can be discriminated against; 2) publicly-owned land or property is allocated for use according to the applicable legislation; 3) private property is not affected in any way; and 4) equal rights are provided to all. In line with this, it is unclear where the Applicants allege that the Constitution is violated by the Contested Law in terms of Article 122.
44. The Office of the Prime Minister, regarding the Applicants’ allegation in the context of “denial of the rights of public officials serving within KIESA”, emphasizes that the Contested Law provides that: *“the systematization of officials will be carried out by the Ministry”*, clearly indicating that the officials will not lose their jobs. While concerning the allegation that officials cannot choose their place of work, the Office of the Prime Minister states that the Division for Management of Public Officials under the Law on Public Officials systematizes officials within the state administration according to written and published rules within the Law on Public Officials. Therefore, under no circumstances can officials choose their preferred place of work, but they are systematized based on needs, where the possibility of placement in a desired position is not excluded, depending on available vacancies and the interest of the public administration they serve, managed by the aforementioned Division. Thus, by securing the job, salary, and the rights arising from the employment relationship, officials are not denied their acquired constitutional rights, as their acquired right consists of the right to work and implement their contract, and not the position.
45. According to the Office of the Prime Minister, the use of natural resources or property for the purpose of implementing strategic investment, which is also a step forward in economic development, depends on the letter of the law, the competencies of the Government, and other public bodies in relation to the protection or granting for use of natural resources. The Constitution protects resources of state interest by imposing their protection by law but also allows the use of others according to the law. The Office of the Prime Minister notes that the Contested Law grants the Assembly the competence to allocate natural resources—property—as stipulated by the Constitution. According to them, other applicable legislation regulating the use of natural resources, for example

water, does not contradict this Law. Thus, the Office of the Prime Minister concludes that the Applicants' arguments regarding Article 122 of the Constitution and in connection with the competencies of the Council for Investments are unfounded.

46. The Office of the Prime Minister initially clarifies that while the Government is responsible for ensuring the implementation of the investment, it must also be responsible for any potential failure of the investment. Consequently, the Contested Law obliges the Government or the Council to exceptionally invite reputable business organizations to implement the investment, based on the evaluation criteria provided by this Law, according to transparent and public rules, leaving nothing to the Council's discretion. Furthermore, the issue of direct negotiation, according to the Office of the Prime Minister, does not constitute an exception to public procurement. The Office of the Prime Minister further states as follows: *"According to the applicable Public Procurement legislation in the Republic of Kosovo, direct negotiation is a form of procurement and, consequently, this form cannot be part of Article 3 of the applicable public procurement legislation. Therefore, such a provision not only does not go outside the bounds of the applicable legislation in the Republic of Kosovo but also cannot be incompatible with the Constitution, given the interpretations provided above regarding the assessment of Articles 119 and 122 of the Constitution"*.
47. In conclusion, the Office of the Prime Minister, on behalf of the Government of the Republic of Kosovo, considers that: (i) the Applicants' allegations not only elaborated well and clearly but also cannot in any way establish a violation of the Constitution by the Contested Law; (ii) the Constitutional Court should dismiss all of the Applicants' allegations and uphold the Law on Sustainable Investments in the Republic of Kosovo.

(ii) Comments of the Parliamentary Group of the VETËVENDOSJE! Movement

48. The Parliamentary Group of the VETËVENDOSJE! Movement, through deputy Mimoza Kusari Lila, submitted comments to the Court, first emphasizing that: *"The allegation that the Contested Law is contrary to the Constitution as a whole, simply because its entry into force repeals two other laws, is not serious and does not constitute any constitutional issue or constitutional argument. This position presented by the Applicants, oriented more towards the form of regulating a matter rather than towards the content of the regulation, undoubtedly falls outside the realm of constitutional arrangements and more towards what could be described as legislative technique as a scholastic discipline."*
49. According to their comments, the way the Applicants' allegations are formulated seeks to establish that the Constitution obliges the sponsor and/or the legislator to propose and adopt only certain laws or not to amend existing ones. Consequently, according to them, this allegation of the Applicants does not present a constitutional issue.
50. Furthermore, the comments highlight that *"the Referral submitted to the Constitutional Court by the Applicants does not contain any concrete reference as to which provision of the Contested Law is in conflict with the Constitution."* Thus, the comments conclude that: *"The Constitution clearly defines that the Government and the Assembly have the full right to propose and adopt reforms in the form of laws and other acts provided by the Constitution itself and other legal acts"*.
51. The Parliamentary Group of the Vetëvendosje! Movement further emphasizes that the content of reforms is a matter of political will, programmatic approaches, and professional proposals that a certain majority implements as it fulfills its constitutional mandate, derived from lawful and legitimate elections, from which the Assembly and Government also derive.

52. The comments further emphasize that the Applicants, through their allegations, raise issues of collision between laws, therefore it does not constitute a constitutional question, and that the Constitutional Court is not authorized to assess or determine potential collision between laws.
53. Additionally, the comments emphasize that even the Applicants' allegation that the Contested Law establishes two new agencies, abolishing an existing Agency, does not offer any single argument as to how or where this issue first presents a constitutional issue or how it contradicts the Constitution.
54. In this narrative, the comments further highlight that the provision related to the employees of the Agency, to be potentially abolished or transformed, shall be systematized into job positions by the relevant Ministry, is entirely in the service of managing any effects that may arise from the transformation process of an arrangement by new legal provisions during the implementation of the law.
55. According to the comments of the Parliamentary Group of the VETËVENDOSJE! Movement, the Applicants' arguments are not only inaccurate but also irrational, as no institution or agency is established or exists for its employees, but rather the employees serve to implement the legal mandate of the institution. Furthermore, they highlight that (i) Law No. 06/L-113 on Organization and Functioning of State Administration and Independent Agencies, and (ii) Law No. 08/L-197 on Public Officials regulate the abolishing and establishment of executive agencies, as well as the systematization of civil servants, public officials, and every employee in public institutions under any circumstance created and regulated by special laws for these institutions.
56. Through their comments, the Parliamentary Group of the VETËVENDOSJE! Movement emphasize that the Contested Law is in full compliance with the spirit and letter of the Constitution and does not conflict with Articles 7 [Values], 24 [Equality Before the Law], 119 [General Principles], and 122 [Use of Property and Natural Resources], and it partially aligns with Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for screening of foreign direct investments into the EU.
57. Furthermore, the comments emphasize that the Contested Law provides that all investors and their investments are equal before the law. Additionally, under Article 7 of the Contested Law – Protection and Security – investors and investments enjoy full and continuous protection and security in accordance with the applicable legislation. Therefore, the Contested Law guarantees the rights of investors regardless of their status.
58. Moreover, according to the comments, the law does not have retroactive effect, meaning that all applications already submitted based on the two repealed laws will be treated based on those two laws. Consequently, no acquired right is infringed or restricted; on the contrary, the Contested Law enhances the legal and institutional framework in favor of investors.
59. Finally, the Parliamentary Group of the VETËVENDOSJE! Movement requests the Court to dismiss the allegations of the Applicants claims as unfounded and to declare the Contested Law fully compliant with the Constitution.

Relevant provisions and documents

60. The Court will present below: (I) the relevant provisions of the Constitution; (II) the relevant provisions of the applicable laws of the Republic of Kosovo, including: (i) Law No. 05/L-069 on Ratification of the Stabilization and Association Agreement between the Republic of Kosovo, of the one part, and the European Union and the European Atomic

Energy Community, of the other part; (ii) the Contested Law; (iii) Law No. 04/L-042 on Public Procurement in the Republic of Kosovo; and (iv) Law No. 06/L-113 on Organization and Functioning of the State Administration and Independent Agencies.

RELEVANT CONSTITUTIONAL PROVISIONS

Constitution of the Republic of Kosovo

Article 7 [Values]

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

Article 10 [Economy]

“A market economy with free competition is the basis of the economic order of the Republic of Kosovo.”

Chapter II Fundamental Rights and Freedoms

Article 21 [General Principles]

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

Article 65 [Competencies of the Assembly]

*The Assembly of the Republic of Kosovo:
(1) adopts laws, resolutions and other general acts;
[...]*

Article 80 [Adoption of Laws]

- 1. Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.*
- 2. Laws adopted by the Assembly are signed by the President of the Assembly of Kosovo and promulgated by the President of the Republic of Kosovo upon her/his signature within eight (8) days from receipt.*
- 3. If the President of the Republic of Kosovo returns a law to the Assembly, he/she should state the reasons of return. The President of the Republic of Kosovo may exercise this right of return only once per law.*

4. *The Assembly decides to adopt a law returned by the President of the Republic of Kosovo by a majority vote of all its deputies and such a law shall be considered promulgated.*
5. *If the President of the Republic of Kosovo does not make any decision for the promulgation or return of a law within eight (8) days from its receipt, such a law shall be considered promulgated without her/his signature and shall be published in the Official Gazette.*
6. *A law enters into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo, except when otherwise specified by the law itself.*

Article 93
[Competencies of the Government]

The Government has the following competencies:

- (1) proposes and implements the internal and foreign policies of the country;*
 - (2) promotes the economic development of the country;*
 - (3) proposes draft laws and other acts to the Assembly;*
- [...]*

Chapter IX Economic Relations

Article 119
[General Principles]

- 1. The Republic of Kosovo shall ensure a favorable legal environment for a market economy, freedom of economic activity and safeguards for private and public property.*
- 2. The Republic of Kosovo shall ensure equal legal rights for all domestic and foreign investors and enterprises.*
- 3. Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law.*
- 4. The Republic of Kosovo promotes the welfare of all of its citizens by fostering sustainable economic development.*
- 5. The Republic of Kosovo shall establish independent market regulators where the market alone cannot sufficiently protect the public interest.*
- 6. A foreign investor is guaranteed the right to freely transfer profit and invested capital outside the country in accordance with the law.*
- 7. Consumer protection is guaranteed in accordance with the law.*
- 8. Every person is required to pay taxes and other contributions as provided by law.*
- 9. The Republic of Kosovo shall exercise its ownership function over any enterprise it controls consistently with the public interest, with a view to maximizing the long-term value of the enterprise.*
- 10. Public service obligation may be imposed on such enterprises in accordance with the law, which shall also provide for a fair compensation.*

Article 122
[Use of Property and Natural Resources]

- 1. The people of the Republic of Kosovo may, in accordance with such reasonable conditions as may be established by law, enjoy the natural resources of the Republic of Kosovo, but they may not infringe on the obligations stemming from international agreements on economic cooperation.*
- 2. Natural resources such as water, air space, mineral resources and other natural resources including land, flora and fauna, other parts of nature, immovable property*

and other goods of special cultural, historic, economic and ecologic importance, which have been determined by law to be of special interest to the Republic of Kosovo, shall enjoy special protection in accordance with law.

3. Limitations on owners' rights and other exploitation rights on goods of special interest to the Republic of Kosovo and the compensation for such limitations shall be provided by law.

Article 142 **[Independent Agencies]**

1. Independent agencies of the Republic of Kosovo are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies. Independent agencies exercise their functions independently from any other body or authority in the Republic of Kosovo.

2. Independent agencies have their own budget that shall be administered independently in accordance with the law.

3. Every organ, institution or other entity exercising legal authority in the Republic of Kosovo is bound to cooperate with and respond to the requests of the independent agencies during the exercise of their legal competencies in a manner provided by law.

I. RELEVANT PROVISIONS OF APPLICABLE LAWS

LAW No. 05/L -069 on Ratification of the Stabilization and Association Agreement between the Republic Of Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part

Article 98 **Investment promotion and protection**

Cooperation between the Parties in the field of investment promotion and protection shall focus on protection of foreign direct investment and shall aim to bring about a favourable climate for private investment, both domestic and foreign, which is essential to the economic and industrial revitalisation of Kosovo. The particular aims of cooperation shall be for Kosovo to improve the legal framework so as to favour and protect investment.

II. Contested law: LAW No. 08/L-209 ON SUSTAINABLE INVESTMENTS

CHAPTER I **GENERAL PROVISIONS**

Article 1 **Purpose**

- 1. The purpose of this Law is to promote, encourage and protect the sustainable investments and exports in the Republic of Kosovo, including the determination of priority sectors for development.*
- 2. This Law is in partial compliance with Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.*

Article 2 **Scope**

This Law shall define the rights and obligations of the institutions, public authorities and investors related to investments in the Republic of Kosovo.

Article 3 **Definitions**

1. *The terms used in this Law shall have the meaning defined by this Article:*
 - 1.1. **Investment** – *the capital used to develop an economic activity in the Republic of Kosovo, for the purpose of generating income and profits. Investments may be:*
 - 1.1.1. *currency;*
 - 1.1.2. *the right over movable or immovable property, such as ownership, lease or similar right;*
 - 1.1.3. *share or other form of participation in a business organization;*
 - 1.1.4. *intellectual or industrial property rights, such as copyright, patent, trademark, industrial design, copyright, technical progress, practical know-how, trade secret, geographical indication, trade name related to the investment;*
 - 1.1.5. *financial instrument;*
 - 1.1.6. *permit, licence, or other commercial right defined by law, contract or other act;*
 - 1.2. **Investor:**
 - 1.2.1. *a natural person with citizenship of the Republic of Kosovo or foreign citizenship, whose purpose is to invest in the Republic of Kosovo according to this law;*
 - 1.2.2. *a legal person or any entity established in accordance with the provisions of the law in force or foreign laws that aims to invest in the Republic of Kosovo according to this law;*
 - 1.3. **Foreign investor** – *is an investor as follows:*
 - 1.3.1. *the person who does not have citizenship of the Republic of Kosovo;*
 - 1.3.2. *business organization established in accordance with the laws of a foreign country;*
 - 1.3.3. *business organization established under the laws of the Republic of Kosovo, where a person under sub-paragraphs 1.3.1-1.3.3 of this Article owns the majority of decision-making;*
 - 1.4. **Strategic investment** – *an investment in the priority sectors and/or objectives defined in this Law;*
 - 1.5. **Sustainable investment** – *a long-term investment in the Republic of Kosovo in an economic activity that contributes to the fulfilment of one or more of the objectives and priority sectors defined by this Law;*
 - 1.6. **Exporter** – *refers to the business organization identified as exporter, according to the data of the Tax Administration of Kosovo, Kosovo Customs, and registered in the state registry administered by AIE;*
 - 1.7. **Public institution** – *a central or local body with legislative, executive, administrative and regulatory competence in the Republic of Kosovo;*
 - 1.8. **Freely convertible currency** – *any easily convertible currency recognized by the Central Bank of Kosovo, the European Central Bank or the International Monetary Fund;*
 - 1.9. **Investment dispute** – *the dispute or claim related to the investment, which is submitted for resolution through mediation, to the national Commercial Court or the Arbitration Tribunal.*
 - 1.10. **Council** – *the Investment Council of the Republic of Kosovo;*
 - 1.11. **Ministry** – *the ministry responsible for industry, entrepreneurship and trade;*
 - 1.12. **Minister** – *the minister responsible for industry, entrepreneurship and trade;*
 - 1.13. **Agency for Investments and Exports (AIE)** – *the Agency for promotion, increase of investments and exports within the Office of the Prime Minister;*

1.14. Agency for Innovation and Support to the Enterprises in the Republic of Kosovo (AISEK) – the Agency for supporting the development of SMEs, start-ups and relevant ecosystems, tourism, and the development and monitoring of industrial and technological parks, within the Ministry of Industry, Entrepreneurship and Trade;

1.15. Complaints Panel – the Investment Complaints Panel of the Republic of Kosovo.

Article 4 **Basic principles**

1. The Republic of Kosovo shall promote and protect responsible and sustainable investments, in line with the following instruments:

1.1. Principles for Responsible Investment supported by the United Nations;

1.2. Declaration and Decisions on International Investment and Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD).

CHAPTER II **RIGHTS AND OBLIGATIONS OF INVESTOR**

Article 5 **Right to invest**

The person shall have the right to invest in any kind of economic activity and in any part of the territory of the Republic of Kosovo in accordance with the legislation in force.

Article 6 **Equality before the Law**

1. All investors and their investments shall be equal before the Law.

2. The foreign investor shall have the same rights and legal obligations as the domestic investor.

3. The investor shall be subject to the obligation to comply with the law according to Article 9 of this Law.

4. The investor may enjoy special benefits or advantages according to international agreements, especially with regards to:

4.1. method of resolving investment disputes;

4.2. customs, economic or monetary union, common market, free trade area or regional and international economic organizations;

4.3. avoidance of double taxation or other tax issues.

Article 7 **Protection and security**

1. The investor and investments shall enjoy complete and continuous protection and security in compliance with the legislation in force.

2. The protection and security of the investors and investments shall not be less favourable than it is required by this Law or the generally accepted norms of the international law.

Article 8 **Respect of rights**

1. Public institutions shall:

1.1. act within their legal authorizations vis-à-vis the investor;

1.2. recognize and respect the investor rights defined by the legislation in force,

- 1.3. *develop the procedure in accordance with the legislation in force, by acting in particular in accordance with the principle of proportionality and other procedural principles;*
- 1.4. *provide reasonable opportunity to the investor to present facts and arguments in the administrative procedure, to the extent allowed by the nature of procedure and public interest;*
- 1.5. *enable the exercise of legal remedies according to the Constitution and the Law.*
- 1.6. *The right emerging from this Law may be limited in cases when public order, morality, national security, public health, environment and legislation in force are violated.*

Article 9
Compliance with the Law

- 1. *The investor shall be subject to domestic legislation and international agreements ratified by the Republic of Kosovo.*
- 2. *The investor shall respect in particular:*
 - 2.1. *legislation on labour, health, security and environment;*
 - 2.2. *principles of free movement of goods, services and capital;*
 - 2.3. *principles of equal treatment and rules of free competition and state aid;*
 - 2.4. *relevant liability insurance obligations;*
 - 2.5. *the obligation to register beneficial owners and legislation against money laundering, offshore investments and terrorist financing;*
 - 2.6. *legislation on the implementation of international sanctions;*
 - 2.7. *obligations of the Republic of Kosovo from the Stabilisation and Association Agreement with the European Union.*
- 3. *The investor or investment may be subject to screening in accordance with Chapter VII of this Law.*
- 4. *The public institution may ask the investor for compensation of the damage caused by the violation of this law or another act. Compensation is determined according to Article 13 of this Law.*
- 5. *The competent institution may impose a sanction on the investor for violation of the law or other act, in accordance with the legislation in force.*

Article 10
Protection from expropriation

- 1. *The investment may not be expropriated directly or indirectly.*
- 2. *Notwithstanding paragraph 1 of this Article, the investment may be expropriated only in cases when it is necessary for the purpose or public interest, according to the legal provisions of the Law on Expropriation.*

CHAPTER III
PRIORITIES AND FACILITATIONS

Article 14
National objectives

- 1. *State objectives that Republic of Kosovo intends to fulfil through promotion and protection of investments are:*
 - 1.1. *increase of manufacturing and exports;*
 - 1.2. *promotion of the circular economy;*
 - 1.3. *increase competitiveness of domestic industry;*
 - 1.4. *develop innovation and technology;*
 - 1.5. *enhance the industrial ecosystem;*

- 1.6. train and employ the work force;
- 1.7. empower youth, women, non-majority communities and marginalized groups;
- 1.8. sustainability of the movement of people;
- 1.9. engagement of diaspora;
- 1.10. regional development;
- 1.11. environmental sustainability.

Article 15
Priority sectors

- 1. *Priority sectors for investments in the Republic of Kosovo shall be:*
 - 1.1. *manufacturing and processing industry*
 - 1.2. *agriculture;*
 - 1.3. *information and communication technology;*
 - 1.4. *education and training, research and innovation;*
 - 1.5. *health;*
 - 1.6. *tourism;*
 - 1.7. *sewage and waste administration;*
 - 1.8. *transport;*
 - 1.9. *energy;*
 - 1.10. *mines.*

[...]

Article 18
The establishment of the agencies

- 1. *Upon entry into force of this Law, Investment and Enterprise Support Agency in the Republic of Kosovo (KIESA) established with the Law on Foreign Investment shall be seized, and instead of it, following agencies shall be established:*
 - 1.1. *Agency of Investments and Exports (AIE);*
 - 1.2. *Agency for Innovation and Support to Enterprises in the Republic of Kosovo (AISEK).*

Article 21
Council

- 1. *The Investment Council of the Republic of Kosovo shall evaluate, select, implement, supervise and decide on strategic investment projects in accordance with the legal provisions of this Law.*
- 2. *The Council shall consist of:*
 - 2.1. *Prime Minister, Chair;*
 - 2.2. *Minister responsible of industry, entrepreneurship and trade, deputy chair;*
 - 2.3. *Minister responsible of finance;*
 - 2.4. *Minister responsible of environment, spatial planning and infrastructure;*
 - 2.5. *Minister responsible of economy;*
 - 2.6. *Minister responsible of agriculture;*
 - 2.7. *Minister responsible for local governance.*
- 3. *The Government can add the number of the members of the Council as per need.*
- 4. *The Council shall have the following responsibilities:*
 - 4.1. *approve action plans and publish reports on the promotion and protection of investments, paying attention to the identification of interests, improving the*

- environment of economic activity, development opportunities and comparative advantages of the Republic of Kosovo;*
- 4.2. issue decisions on strategic investments as defined by Article 36 of this Law;*
 - 4.3. publish invitations and negotiate agreements concluded with strategic investments as defined by Articles 29 and 35 of this Law;*
 - 4.4. define measures, procedures, terms and obligations of the public authorities related to the design and implementation of strategic investment projects;*
 - 4.5. oversee the implementation of strategic investments;*
 - 4.6. request screening of investments and issue decisions on screening as defined by Chapter VII of this Law.*
 - 4.7. Performs other functions related to the field of investments and exports determined by the decision of the Government.*
- 5. The member of the Council cannot be involved in the strategic investment activity that has been reviewed without passing five (5) years from the end of the member's mandate.*
 - 6. AIE performs the role of secretariat for the Council.*
 - 7. AIE prepares proposals for action plans, reports and decisions of the Council for the promotion and protection of investments and exports.*
 - 8. The work of the Council is regulated by a sub-legal act of the Government.*

CHAPTER V STRATEGIC INVESTMENTS

Article 24 General conditions

- 1. Strategic investment shall enjoy special advantages and support under to this Law.*
- 2. Strategic investment that meets the following conditions may be declared an investment project:*
 - 2.1. the project helps in fulfilling the national objectives referred to in Article 14 of this Law;*
 - 2.2. the project belongs to the priority sectors referred to in Article 15 of this Law;*
 - 2.3. the proposer has demonstrated the financial ability to implement the investment;*
 - 2.4. the project is in accordance with Article 30 of this Law;*
 - 2.5. the project has been subject to screening if required as defined by Chapter VII of this Law and a decision has been made to allow investment under Article 40 of this Law.*
- 3. The strategic investment must reach the value of at least ten (10) million Euros.*
- 4. Priority in selection shall be given to the project that has greater value and helps more in fulfilling the state objectives from Article 14 of this Law, especially the objectives of employment, increasing manufacturing and exports, regional development and environmental sustainability.*

Article 30 Strategic investment proposal

- 1. The strategic investment proposal shall be submitted to AIE.*
- 2. In the strategic investment proposal form, the proposer shall specify if they request preliminary or final review.*
- 3. For the preliminary review, the strategic investment proposal shall contain the following data and documents:*
 - 3.1. the form with the general data for the strategic investment proposal and project;*

- 3.2. *detailed description of the project, including:*
 - 3.2.1. *project title;*
 - 3.2.2. *value of the capital proposed to be invested within three (3) years;*
 - 3.2.3. *location where the investment is proposed;*
 - 3.2.4. *description of the property or facility where the investment is proposed;*
 - 3.2.5. *description of the investment financing method;*
 - 3.2.6. *dynamic work plan for the duration of the project implementation;*
- 3.3. *detailed description of the proposer, in particular the natural person, legal person, responsible person, parent entity, subsidiaries, joint venture entities and partners, including:*
 - 3.3.1. *legal form of organization;*
 - 3.3.2. *ownership and beneficial owners;*
 - 3.3.3. *detailed profile;*
 - 3.3.4. *objectives;*
 - 3.3.5. *values and ethics;*
 - 3.3.6. *permits and licenses;*
 - 3.3.7. *criminal history;*
 - 3.3.8. *legal disputes and unsatisfied claims;*
 - 3.3.9. *conflict of interest statement in the proposed project;*
 - 3.3.10. *blacklisting notification by financial institutions and other subjects;*
 - 3.3.11. *statement of compliance with the norms against money laundering, offshore investments and the financing of terrorism, according to the legislation in force and international guidelines;*
- 3.4. *investment business plan, including:*
 - 3.4.1. *product description;*
 - 3.4.2. *operational plan;*
 - 3.4.3. *human resources management plan;*
 - 3.4.4. *legal issue plan and liability insurance;*
 - 3.4.5. *sales and marketing plan;*
 - 3.4.6. *environmental and social management plan;*
 - 3.4.7. *description of social and environmental responsibilities;*
 - 3.4.8. *financial management plan;*
- 3.5. *authorization given to AIE to verify the submitted data and documents.*
4. *For the final review, the strategic investment proposal shall contain the following data and documents:*
 - 4.1. *data and documents from paragraph 3 of this Article, if they were not submitted before;*
 - 4.2. *references of experience in similar projects;*
 - 4.3. *audit reports of the proposer, including financial statements, for the last three (3) years;*
 - 4.4. *financial proof to implement the project;*
 - 4.5. *proof for a bank guarantee;*
 - 4.6. *evidence of compliance with the law according to Article 9 of this Law;*
 - 4.7. *data and documents necessary for screening if it is required according to Chapter V of this Law.*

Article 33
Review period

1. AIE shall request an opinion from the supporting institution within fifteen (15) days from the complete submission of the proposal. The supporting institution shall give an opinion within thirty (30) days.
2. AIE shall review the strategic investment proposal within the following time period:
 - 2.1. sixty (60) days from the complete submission of the proposal for preliminary review;
 - 2.2. ninety (90) days from the complete submission of the proposal for final review;
 - 2.3. sixty (60) days from the complete submission of data and documents requested for final review, if the preliminary review has finished.
3. Notwithstanding paragraph 2 of this Article, a shorter period may be determined to review the proposal for the implementation of the project prepared by parties according to Article 29 of this Law.
4. If the Council approves the preliminary recommendation of AIE for the announcement of the strategic investment or rejects the preliminary recommendation of AIE for the rejection of the strategic investment, AIE may request the proposer the necessary data and documents for the final review. The proposer shall submit the requested data and documents within sixty (60) days.
5. If the Council suspends decision-making and obliges AIE to perform an additional review, AIE shall perform the additional review within thirty (30) days.
6. If screening is required according to Chapter VII of this Law, the proposer may request AIE to perform the screening before or alongside the final review of the proposal of the strategic investment. If the screening is carried out before the final examination, the period from paragraph 5 of this Article shall begin to run after the decision on the authorization of the investment according to Article 40 of this Law.
7. After the screening of the proposal, AIE shall review the strategic investment proposal within the following period:
 - 7.1. thirty (30) days from the complete submission of the proposal for preliminary review;
 - 7.2. sixty (60) days from the complete submission of the proposal for final review;
 - 7.3. thirty (30) days from the complete submission of the data and documents requested for final review, if the preliminary review has been performed.

Article 35

Special selection of the investor

1. The Council may open a call to select a partner for the implementation of the strategic investment, according to the evaluation criteria in line with the legislation in force.
2. Notwithstanding paragraph 1 of this Article, the Council may select by direct negotiation the trust company as the proposer, implementer or partner for the implementation of the strategic investment, according to the evaluation criteria in line with the legislation in force. The business organization with a reputation and internationally recognized references in terms of economic activity, business ethics and advanced corporate governance, proven by financial and auditing institutions, shall be considered a trust company.
3. The Council may enter into a preliminary agreement with the proposer, implementer or partner under this Article. The agreement may replace the proposal from Article 33 of this Law, but must be in accordance with the general conditions from Article 24 of this Law.

Article 40

Determination of screening

1. Targeted investment or an investment performed by a foreign person that is likely to affect public order or national security may be subject to screening.
2. Screening shall mean the procedures for the evaluation, investigation, authorization, conditionality, prohibition or removal of investment, in accordance with this Law and other applicable legislation.
3. Screening shall pay special attention to compliance with:
 - 3.1. norms against money laundering, offshore investments and terrorist financing, in accordance with applicable legislation and international guidelines;
 - 3.2. the relevant legislation on the implementation of international sanctions.
 - 3.3. in the event of unfair trade, the Republic of Kosovo has the right to protect its national resources, in accordance with the relevant legislation for foreign trade.
4. During screening and decision-making, trade secret shall be protected by the applicable legislation.
5. The Government shall, by a sub-legal act, determine the circumstances and causes, required data and documents, and the manner of screening in accordance with this Chapter.

Article 52

Transitional provisions

1. Regulation and organization of AIE and AISEK shall be regulated by special sub-legal acts.
2. Investment and Enterprise Support Agency in the Republic of Kosovo, established with the Law No.04/L-220 for Foreign Investments, exercises all competences within the Ministry of Industry, Entrepreneurship and Trade, until the entry into force of sub-legal acts in accordance with paragraph 1 of this Article.
3. Upon the structuring of the Agency according to this Article:
 - 3.1. The Ministry undertakes the systematization of civil servants.
 - 3.2. AIE and AISEK shall each take the responsibilities, properties under administration, contracts, obligations to third parties and ongoing administrative procedures related to their scopes.

Article 53

Abrogation

Upon entry into force of this Law, the Law No. 04/L-220 on Foreign Investment and Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo shall be abrogated.

LAW No. 04/L-042 ON PUBLIC PROCUREMENT IN REPUBLIC OF KOSOVO

Article 34

Negotiated Procedures After Publication of a Contract Notice

1. In exceptional cases, a contracting authority may use negotiated procedures after publication of a contract notice to conduct a procurement activity. The responsible Procurement Officer, on the basis of objectively verifiable factors and without any discriminatory intent, must in advance make a formal written determination that:
 - 1.1. it is due to the nature of certain insurance, banking and investment, management, consultancy or other intellectual services not possible to establish contract specifications for them in a manner that would permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures.

- 1.2. *the nature of the services or the risks attaching thereto do not permit prior overall pricing.*
- 1.3. *the nature of financial services, services involving the design of works or other intellectual services is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures.*
2. *The written determination required by paragraph 1 of this Article shall be included in the tender dossier.*
 3. *Following the receipt of requests to participate, a contracting authority shall invite to submit tender/proposal candidates that fulfil the minimum selection criteria specified in the contract notice and the tender dossier in accordance with Article 49-54 of this law. Candidates not so selected shall be eliminated from further participation.*
 4. *The contracting authority shall then negotiate with each tenderer to try to adapt its tender/proposal to the requirements that the contracting authority has set out in the contract notice and the tender dossier. During this process the contracting authority shall be required to identify and award the contract to the tenderer submitting the best and most economically advantageous tender/proposal.*
 5. *During the negotiations, a contracting authority shall ensure that all tenderers are treated in an equal and fair manner and that all tenderers have equal and timely access to the same information, with the exception of information relating to or contained in any competing tender.*
 6. *Provided that the possibility has been indicated in the contract notice or the tender dossier, a contracting authority may provide for the negotiated procedure to take place in successive stages in order to reduce over time the number of tenders to be negotiated by applying the award criteria that have been specified in the contract notice or the tender dossier.*

Article 35

Negotiated Procedures Without Publication of a Contract Notice

1. *A contracting authority may use negotiated procedures without publication of a contract notice to conduct a procurement activity only after it has complied with this Article. PPRC must be notified by the concerned contracting authority within two days of the date when decision about using such procedures has been taken. The contracting authority shall in the notification provide a detailed explanation of the facts considered and the justification for using the procedure.*
2. *A contracting authority may use negotiated procedures without prior publication of a contract notice to conduct a procurement activity having as its object the award of:*
 - 2.1. *any public contract:*
 - (i) *if, for objective and compelling technical or artistic reasons, the contract may be awarded only to a particular economic operator;*
 - (ii) *if, for reasons of protection of intellectual or industrial property right or other exclusive rights, the contract may be awarded only to a particular economic operator;*
 - (iii) *if, insofar as is strictly necessary for reasons of extreme urgency brought about by objectively verifiable events that were not reasonably foreseeable by the concerned contracting authority, such contracting authority cannot afford the time required to conduct any other procedure provided for by the present law. Provided, however, that if the circumstances creating the situation of extreme urgency can be attributed to the negligent or purposeful acts or omissions of a contracting authority, this provision may not be invoked;*
 - 2.2 *a supply contract:*
 - (i) *for additional deliveries by the original supplier where such additional deliveries are replacements for previously delivered products or installations*

or constitute an extension of current product deliveries or installations if a change of supplier would necessarily require the concerned contracting authority to accept products or installations having technical or other characteristics that are materially different from the products or installations previously acquired and these differences would result in incompatibility or disproportionate technical difficulties in operation and maintenance. Provided, however, that this Article 35.2.2(i) can only be invoked to cover one or more contracts for additional deliveries that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the supply contract covering the original deliveries; or

(ii) if the concerned contracting authority is a public service operator, for the purchase of commodities at a commodities market, commodities exchange, or similar open trading platform or system.

2.3. a service contract:

(i) that follows from a design contest conducted pursuant to open or restricted procedures, and that is required, under the applicable rules, to be awarded to the successful candidate;

(ii) to be awarded to a contracting authority that enjoys, pursuant to a legislative or regulatory normative or sub normative act, an exclusive right to provide such service.

2.4. a service or works contract:

(i) for the performance or execution of additional services or works that were neither included in the original conception of a previously awarded works project nor provided for in the concerned works contract previously concluded, but which have, through unforeseen circumstances, become necessary for the performance of the services or works described in such project and contract. Provided, however, that this Article 35.2.4(i) may only be invoked if (a) the contract covering such additional services or works is to be awarded to the economic operator performing the original services or works and (b) such additional services or works cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority or (c) when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion. Provided, further, that this Article 35.2.4(i) may only be invoked to cover one or more contracts for additional services or works that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the original contract.

(ii) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply the valuation rules of Chapter 4. Public authorities may use this procedure only during a period of two years after the conclusion of the original contract. Provided, however, that this Article 35.2.4(ii) can only be invoked to cover one or more contracts for new services that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the earlier services contract.

3. The conduct of a negotiated procedure without publication of a contract notice shall not in any way relieve a contracting authority of its obligation (i) to play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees, (ii) to ensure that the

contracted price is not higher than the concerned market price, and (iii) to carefully assess the quality of the concerned product, service or works.

LAW NO. 06/L –113 ON ORGANIZATION AND FUNCTIONING OF STATE ADMINISTRATION AND INDEPENDENT AGENCIES

**CHAPTER IV
ESTABLISHMENT, MERGER AND TERMINATION OF AGENCIES**

**Article 48
Establishment of a new Agency**

1. *The Law establishing an Executive Agency, or an Regulatory Agency (hereinafter: Agency) should at least include the following provisions:*
 - 1.1. *name;*
 - 1.2. *status of Agency (if it is executive, Regulatory or independent Agency);*
 - 1.3. *functions and competences of Agency;*
 - 1.4. *provisions for managing body of the Agency and supervision of performance of its activity, if different from provisions defined in this Law;*
 - 1.5. *deadline to appoint managing body of the Agency.*
2. *The law establishing an Agency should also determine:*
 - 2.1. *responsible ministry under whose subordination and/or supervision Agency is established and functions or defines that executive Agency functions under the Prime Minister`s responsibility; and*
 - 2.2. *local branches as well as administrative functions and their competencies.*
3. *Explanatory memorandum that accompanies the draft law on establishment should contain at least the following information:*
 - 3.1. *specification of said state functions and essential reasons for proposing the change, as well as justification for continuing public intervention in this area (public interest test);*
 - 3.2. *evaluation of performance of current institutional form for exercising the said function;*
 - 3.3. *analysis of institutional forms available for exercising relevant functions leading to the selection of proposed type of institution (test of options for exercising functions);*
 - 3.4. *explanation and justification for proposed changes in the organization of the managing body and supervision of performance/activity of institution, if different from those defined with this law;*
 - 3.5. *draft budget for the first budget year, including specification of operational costs related to the establishment of institutions;*
 - 3.6. *annual performance draft plan of the new body;*
 - 3.7. *limits of number of employees for the first budget year.*

**Article 49
Merger of existing agencies**

1. *If the law on establishment of an Agency defined the creation of a new Agency as result of merger or termination of at least two (2) existing agencies, in addition to what is provided in paragraphs 1. and 2. of Article 48 of this law, it should contain provisions for:*
 - 1.1. *defining all agencies that are merged/terminated;*

- 1.2. merger/termination date; and
- 1.3. regulating legal consequences on officials, property under administration, contracts, obligations towards third parties and further administrative procedures for agencies that are merged/terminated.
2. Regulation of legal consequences under sub-paragraph 1.3. paragraph 1. of this Article should provide for continuation of activity and respecting interests of existing officials and other parties involved.
3. Explanatory memorandum that accompanies the draft law on establishment, in addition to what is provided in paragraph 3. of Article 48 of this Law, should also contain a transition plan containing a list of tasks and deadlines for all activities of organizational nature that are necessary for the completion of reorganization process

Article 50 Termination of an Agency

1. Termination of an Agency includes liquidation of Agency and withdrawal from functions it has performed or transfer of all or parts of these functions to existing institutions either in another Agency or a ministry.
2. The Law on termination of an Agency should define:
 - 2.1. name of the Agency that is terminated;
 - 2.2. functions and competences of the terminated Agency that are not performed by a state institution;
 - 2.3. functions and competences of terminated Agency that were transferred to existing institutions and defining those institutions;
 - 2.4. termination date; and
 - 2.5. regulation of legal consequences on officials, property under administration, contracts, obligations towards third parties and further administrative procedures for agencies that are merged/terminated, according to paragraph 2. of Article 49 of this law.
3. Explanatory memorandum that accompanies the draft law on establishment, in addition to what is provided in paragraph 3. of Article 48 of this Law, should also contain a transition plan containing a list of tasks and deadlines for all activities of organizational nature that are necessary for the completion of reorganization process.

Assessment of the admissibility of the Referral

61. The Court shall first examine whether the Referral submitted to the Court have fulfilled the admissibility criteria established in the Constitution, foreseen in the Law, and further specified in the Rules of Procedure.
62. In this regard, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes: “The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”.
63. The Court notes that the Applicants have filed their Referral pursuant to paragraph 5 of Article 113 of the Constitution, which provides as follows:

“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”.

64. Therefore, based on the above, a Referral submitted to the Court pursuant to paragraph 5 of Article 113 of the Constitution must: (i) be submitted by at least ten (10) deputies; (ii) contest the constitutionality of a law or decision adopted by the Assembly, regarding its substance and/or the procedure followed; and (iii) be submitted within eight (8) days from the date of adoption of the contested act.
65. In assessing the fulfillment of the first criterion, namely the required number of deputies of the Assembly to submit the respective Referral, the Court notes that the Referral was submitted by ten (10) deputies of the Assembly, a number which meets the criterion established through the first sentence of paragraph 5 of Article 113 of the Constitution to activate the Court.
66. Furthermore, in assessing the fulfillment of the second criterion, the Court notes that the Applicants challenge Law No. 08/L-209 on Sustainable Investments, which was adopted on 19 October 2023 by the Assembly of the Republic of Kosovo.
67. While regarding the third criterion, specifically the time limit within which the respective Referral must be submitted to the Court, the latter notes that the Referral was submitted by mail to the Court on 27 October 2023, while the Contested Law was adopted by the Assembly on 19 October 2023, which implies that the Referral was submitted within the deadline specified by paragraph 5 of Article 113 of the Constitution.
68. 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 contest the constitutionality of the contested act before the Court, as in the present case, they are an authorized party and consequently have the right to challenge the constitutionality of the Contested Law adopted by the Assembly.
69. In addition to the aforementioned constitutional criteria, the Court also takes into account Article 42 (Accuracy of the Referral) of the Law, which specifies the submission of the Referral based on paragraph 5 of Article 113 of the Constitution, which stipulates 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”.*

70. The Court also refers to Rule 72 [Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law] of the Rules of Procedure, which provides:

**Rule 72
[Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law]**

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

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

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

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

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

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

71. In terms of the two aforementioned provisions, the Court notes that the Applicants: (i) have entered their names and signatures in their respective Referral; (ii) have specified the Contested Law of the Assembly; (iii) have referred to specific articles of the Constitution with which they allege that the provisions of the Contested Law are not in compliance; and (iv) have submitted arguments in support of their allegations.
72. Consequently, considering the fulfillment of the constitutional and legal criteria regarding the admissibility of the respective Referral, the Court finds that the Referral of the Applicants is admissible and below will review its merits.

Merits of the Referral

I. Introduction

73. The Court first recalls that the applicants, respectively ten (10) deputies of the Assembly of the Republic of Kosovo, based on paragraph 5 of article 113 of the Constitution, request the constitutional review of the Contested Law which they claim is contrary to Article 7 [Values], Article 24 [Equality Before the Law], Article 119 [General Principles] of Chapter IX [Economic Relations] and Article 122 [Use of Property and Natural Resources] of the Constitution. These claims, in essence and according to the clarifications given in the part of this Judgment that is related to the claims and responses of the interested parties before the Court, are opposed by the Office of the Prime Minister and the Parliamentary Group of the VETËVENDOSJE! Movement.
74. The Court emphasizes that the essence of the issues that the applicants have raised are related to the claims according to which the Contested Law is contrary to Article 122 [Use of Property and Natural Resources] of the Constitution, because it has not established reasonable conditions with law on the use of natural resources of the Republic of Kosovo on the basis of which the Council established by Article 21 (Council) of the Contested Law can issue the relevant decisions; (i) is contrary to Article 24 [Equality Before the Law] of the Constitution, because by Article 35 (Special selection of investor) of the Contested Law, the special selection of the investor is enabled, creating the possibility of arbitrariness in the selection of the strategic investor through a direct negotiation procedure by the Investment Council and making it impossible to ensure a favorable legal environment for the market economy, freedom of economic activity, security of property, as well as violating the right to equal treatment of all investors, both internal and external; (iii) is contrary to the principle of legal certainty because by articles 52 and 53 of the Contested Law, Law No. 04/L-220 on Foreign Investments and Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo are repealed, among other things, not addressing the issue of the scope of legal provisions on foreign investors and investors benefiting from the status of strategic investor who were beneficiaries of the repealed legal provisions,

moreover that with the establishment of the Investment and Export Agency (AIE) and the Agency for Innovation and Enterprise Support in the Republic of Kosovo (AIPNK), as well as the abolition of the Agency for Investment and Enterprise Support in the Republic of Kosovo, public officials of the latter have no legal certainty regarding their employment relationship status and their arrangement.

75. On the other hand, and as elaborated in detail in the part related to the claims of the applicants and the corresponding counter-arguments in the relevant comments and responses, the Office of the Prime Minister, among other things, emphasizes that the Contested Law, (i) encompasses provisions whose main purpose is the promotion and protection of investments in the Republic of Kosovo and that the protection of investments cannot be less favorable than that provided by law; (ii) ensures the prohibition of discrimination against the investor and the investment, which is also applied to the status of the strategic investor but acquired on the basis of the repealed laws; (iii) establishes equality and eliminates the possibility of discrimination in treatment; (iv) defines clear rules by which an Investment Council is guided as a state body that operates based on the principles of transparency, unlike issues of dominant position or monopoly, which represents abuse in the market; (v) the Division for the Management of Public Officials according to the Law on Public Officials systematizes the officials within the state administration based on the written and published rules within the Law on Public Officials.
76. Whereas, the Parliamentary Group of the VETËVENDOSJE! Movement, among other things, emphasized that: (i) the Court should reject the referral as manifestly ill-founded because the applicants have not sufficiently supported the claims that the Contested Law is contrary to a constitutional provision, also specifying, among other things, that (ii) the Contested Law is in full compliance with the spirit and letter of the Constitution and that it is not contrary to Articles 7 [Values], 24 [Equality Before of the Law], 119 [General Principles] and 122 [Use of Property and Natural Resources] and is partially in compliance with Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 for the establishment of the framework for the verification of foreign direct investments in the EU; and (iii) the Contested Law does not have a retroactive effect, through which no acquired right is violated or limited, on the contrary, the latter advances the legal and institutional infrastructure in favor of investors.
77. The Court further reiterates that the applicants challenge the Contested Law in its entirety, claiming its incompatibility with the Constitution, but not necessarily by providing concrete arguments regarding all provisions of the Contested Law separately. Taking into account the arguments presented by the applicants, the Court will further subject to the constitutional review (i) article 21 (Council) of the Contested Law related to the establishment of the Investment Council; (ii) article 35 (Special selection of investor) of the Contested Law related to the possibility of special selection of the investor; and (iii) articles 52 (Transitional provisions) and 53 (Abrogation) of the contested law related to the repeal of Law no. 04/L-220 on Foreign Investments and Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo and the abolition of the Agency for Investments and for the Support of Enterprises in the Republic of Kosovo and the rights of the officials of this Agency.
78. In this line of argumentation, the Court will first elaborate: (i) the basic principles of the free market economy according to the Constitution and legislation in force of the Republic of Kosovo; (ii) as far as it is relevant in the circumstances of the present case, the relevant principles stemming from international instruments and that relate to the free market economy, including the principles that originate from the practice of the relevant Opinions of the Venice Commission; and then (iii) will apply these principles in the constitutional review of the Contested Law.

II. General Principles

1. Market economy with free competition as a value of the constitutional order and the basis of the economic regulation of the Republic of Kosovo

79. The Court first points out that it has elaborated the principles related to the market economy based on free competition, as a constitutional value and the basis of the economic regulation of Kosovo in case [KO173/22](#), applicant *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of the Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, Judgment of 24 November 2023.
80. As far as it is relevant in the circumstances of the present case, the Court initially recalls that the Constitution consists of a unique entirety of constitutional principles and values on the basis of which the Republic of Kosovo has been built and must function. The norms provided by the Constitution must be read in conjunction with each other, because that is the only manner through which their exact meaning derives. Constitutional norms cannot be taken out of context and interpreted mechanically and in isolation from the rest of the Constitution. This is due to the fact that the Constitution has an internal cohesion, according to which each part is connected to the other. Any ambiguity of the norms must be interpreted in the spirit of the Constitution and its values (see, among others, the Court cases: [KO173/22](#), cited above, paragraph 128; [KO72/20](#), applicant: *Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of the Decree of the President of the Republic of Kosovo, No. 24/2020, of 30 April 2020, Judgment of the Court of 28 May 2020, paragraph 549; and [KO100/22](#), applicant: *Abelard Tahiri and ten (10) other deputies* and [KO101/22](#), applicant: *Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo*, constitutional review of Law no. 08/L-136 on Amending and Supplementing Law no. 06/L-056 on the Prosecutorial Council of Kosovo, Judgment of the Court of 24 March 2023, paragraph 153).
81. In the aforementioned context and in the following, the Court emphasizes that based on the first article of the Constitution of the Republic of Kosovo, namely Article 1 [Definition of State], the Republic of Kosovo is “*an independent, sovereign, democratic, unique and indivisible state*”. The “*democratic*” definition of the state of the Republic of Kosovo, among other things and as far as it is relevant to the circumstances of the present case, is complemented by three (3) essential constitutional provisions, namely Article 3 [Equality Before the Law], Article 7 [Values] and Article 16 [Supremacy of the Constitution] of the Constitution.
82. First, Article 3 of the Constitution, among other things, specifies that (i) the Republic of Kosovo is governed democratically, with full respect for the rule of law, through its legislative, executive and judicial institutions; and (ii) the exercise of public authority in the Republic of Kosovo is based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all communities and their members. Second, Article 7 of the Constitution, specifies that the constitutional order of the Republic of Kosovo, among other things, and as far as it is relevant in the circumstances of the present case, is based on the principles of democracy, respect for human rights and freedoms, the rule of law, property rights, environmental protection, social justice, pluralism, separation of state power and market economy. This article, insofar it is relevant for the circumstances of the present case, is also supported through (i) Article 21 [General Principles] of the Constitution, based on which, among other things, fundamental human rights and freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo, and (ii) Article 55 [Limitations on Fundamental Rights and Freedoms] according to which, among other things, the fundamental rights and freedoms guaranteed by this Constitution can be limited only by

law and only to the extent that it is necessary fulfill the purpose for which, in an open and democratic society limitation is allowed. Finally, and importantly, Article 16 of the Constitution specifies that: (i) the Constitution is the highest legal act of the Republic of Kosovo and that laws and other legal acts must be in accordance with this Constitution; (ii) the Republic of Kosovo respects international law; and (iii) each person and body in the Republic of Kosovo is subject to the provisions of the Constitution (see, among others, the Court cases: [KO173/22](#), cited above, paragraph 130; [KO100/22](#) and [KO101/22](#), cited above, paragraph 155).

83. Relevant to the circumstances of the present case, there are also two categories of provisions of the Constitution, namely Article 10 [Economy] and those of Chapter IX [Economic Relations] of the Constitution. First, Article 10 of the Constitution specifies that the market economy with free competition is the basis of the economic regulation of the Republic of Kosovo, thus defining the principle of the free market economy, which is the basis of the economic order of the Republic of Kosovo, and as such, it is characterized by the principle of freedom of economic activity and free competition, in principle, without the intervention of the executive power. Secondly, Chapter IX related to economic relations, consists of four (4) articles, respectively, Article 119 [General principles], Article 120 [Public Finances], Article 121 [Property] and Article 122 [Use of Property and Natural Resources] in the context of the basic principles that define economic relations in the Republic of Kosovo (see, the Court case: [KO173/22](#), cited above, paragraph 131).
84. As far as it is relevant in the circumstances of the present case, Article 119 of the Constitution defines the general principles related to the market economy and which must be read and interpreted in connection with Articles 7 and 10 of the Constitution. The joint reading of these articles defines the market economy with free competition as the basis of the economic regulation of the Republic of Kosovo. This article, namely Article 119 of the Constitution, in ten paragraphs establishes the general principles that regulate economic relations in the Republic of Kosovo (see, the Court case: [KO173/22](#), cited above, paragraph 132).
85. In what follows, the Court reiterates that Article 119 of the Constitution defines the obligation of the Republic of Kosovo to (i) ensure a favorable legal environment for the market economy, freedom of economic activity and security of public and private property according to the definitions of its first paragraph; (ii) to prohibit all actions that restrict free competition through the establishment or abuse of a dominant position or practices that restrict competition, except when these are explicitly permitted by law, according to the provisions of the third paragraph thereof; and (iii) to establish independent bodies for the regulation of the market when the market itself cannot sufficiently protect the public interest according to the provisions of paragraph five thereof. Beyond the aforementioned obligations of the Republic of Kosovo, Article 119 of the Constitution, among other things, and as far as it is relevant to the circumstances of the present case, also determines that the Republic of Kosovo (i) ensures equal legal rights for all investors and all domestic and foreign enterprises, according to the provisions of paragraph two thereof; and (ii) promotes well-being for all its citizens, encouraging sustainable economic development and guarantees consumer protection in accordance with the law (see, the Court case: [KO173/22](#), cited above, paragraph 133).
86. Furthermore, the Court points out that paragraph 6 of Article 119 of the Constitution, which guarantees the free transfer of profit and capital invested abroad for foreign investors, in accordance with the law, aims to create a favorable climate for foreign investment by ensuring that profits and invested capital can be transferred abroad without undue obstacles. Consequently, this provision also means that the freedom to transfer profit and capital will be regulated in accordance with the law, thus establishing a clear and transparent legal framework for these actions. Such an approach helps to balance the needs of investors with the national interests of Kosovo, ensuring that the process is in

accordance with the legal obligations and ratified international agreements of the Republic of Kosovo. In this context, guaranteeing the free transfer of profit and capital contributes to the promotion of a stable and reliable economic environment for foreign investments, promoting the economic development of Kosovo.

87. According to the clarifications as above, the Court recalls that the legislative power, has the competence to determine the general principles of the economic system through the law-making process, including the competence that through the law (i) ensures a favorable environment for the market economy, freedom of economic activity and security of public and private property; (ii) determines exceptions to the principles of free competition; (iii) to establish independent bodies for the regulation of the market when the market itself cannot sufficiently protect the public interest; and (iv) guarantee consumer protection (see, the Court case: [KO173/22](#), cited above, paragraph 134).
88. Furthermore, the e Court also emphasizes the fact that economic operators also have the quality of a legal entity, and to whom, based on paragraph 4 of Article 21 of the Constitution, the fundamental rights and freedoms provided for in the Constitution also apply to legal entities, insofar as they are applicable. Consequently, economic operators enjoy all the fundamental rights and freedoms guaranteed by Chapter II of the Constitution, insofar as they are applicable. The same can be limited only to the criteria and conditions defined in Article 55 of the Constitution and consequently, any interference with these rights must (i) be “*prescribed by law*”; (ii) to “*pursue a legitimate aim*”; and (iii) be “*proportionate to the aim pursued*” (see, the Court case: [KO173/22](#), cited above, paragraph 135).
89. Based on the above clarifications, the Court emphasizes that the market economy is a value of the Republic of Kosovo and any intervention of the state in this freedom and value should be done only by the law and in accordance with the definitions and limitations defined by the Constitution (see, the Court case: [KO173/22](#), cited above, paragraph 136).
90. The same principles regarding the market economy also originate from the commitment of the Republic of Kosovo to be included in the Euro-Atlantic integration processes as defined in the preamble of its Constitution. This commitment of the Republic of Kosovo is also reflected through the adoption of Law no. 05/L-069 on Ratification of the Stabilization and Association Agreement between the EU and Kosovo on 2 November 2015. This international agreement, based on articles 16 and 19 of the Constitution of Kosovo, respectively, among others, is part of the internal legal system and has precedence over the laws of the Republic of Kosovo. The latter aims at supporting the Republic of Kosovo for strengthening democracy and the rule of law, contributing to political, economic and social stability, aligning legislation with community law and supporting Kosovo to complete the transition towards a functional market economy. In this way, the SAA is an agreement that has created a process of association of the parties in order to stabilize and prepare the Republic of Kosovo for the eventual membership in the EU (see, the Court case: [KO173/22](#), cited above, paragraph 137).
91. In the aforementioned context, the Court emphasizes that beyond the obligations arising from Articles 16 and 19 of the Constitution, respectively, the principle of the rule of law contained in Articles 3 and 7 of the Constitution, among other things, also includes the principle of the supremacy of the law and respecting the hierarchy of laws and the principle of legal certainty. These constitutional principles determine that a law must not only be in harmony with the Constitution but also with binding international agreements and which, based on the Constitution, have precedence over laws. More precisely, the Court emphasizes that respecting the hierarchy of normative acts is an obligation derived from the principle of the rule of law and coherence in the legal system. The hierarchy of normative acts, sanctioned in Article 16 and 19 of the Constitution, defines the relationship between legal norms, which are based on the relation of their

superposition/subordination. Based on Articles 16 and 19 of the Constitution, the Republic of Kosovo implements the international law binding on it, ranking the ratified international agreements, which are part of the internal legal system, in the hierarchy of normative acts that have force before laws (see, the Court case: [KO173/22](#), cited above, paragraph 138; see, among others, decisions No. 30, of 02.11.2022; no. 14, of 21.03.2014 of the Constitutional Court 43 cited in Decision No. 21 of 18.04.2023, (V-21/23), paragraph 91 of the Constitutional Court of Albania).

92. Finally, and taking into account, the importance of the principles originating from the scope of Regulation (EU) 2019/452 of the European Parliament and of the Council, dated 19 March 2019, for the creation of a framework for the review of foreign direct investments in the EU, as well as the respective obligations reflected in the SAA, further, and insofar as it is relevant in the circumstances of the present case, the Court will elaborate on these acts.

2. Market economy based on free competition according to EU regulations, as well as the principles stemming from the Venice Commission's Reports

93. In the following, and as far as it is relevant to the circumstances of the present case, the Court will elaborate (i) the relevant principles according to Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the EU, which has been partially transposed in the contested law; and (iii) the principles stemming from the Opinions of the Venice Commission.

(i) The relevant principles according to the [Regulation \(EU\) 2019/452](#) of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the EU

94. On 10 April 2019, the EU Regulation on screening of foreign investment entered into force and became fully operational on 11 October 2020. The main objectives of the Regulation on Foreign Direct Investment (hereinafter: FDI) are to provide an EU-wide cooperation framework between Member States and the Commission and establish common criteria to identify the risks associated with the acquisition or control by foreign investors of strategic assets that may threaten security or public order.
95. Regulation (EU) 2019/452 is the first set of EU-level rules to address the issue of FDIs. The Court notes that the EU Regulation does not aim at the complete harmonization of FDI control mechanisms in the EU, nor the replacement of FDI control at the national level with a screening mechanism at the EU level. Instead, it promotes cooperation, information sharing and a minimum level of transparency regarding FDI control between the European Commission and EU member states. In the following, some important issues of the Regulation are presented:

What is the aim of the Regulation?

Providing an EU framework for the screening of direct investments from non-EU countries on the grounds of security or public order. It establishes:

- (-) a possibility for EU member states to have transparent, predictable and non-discriminatory mechanisms for examining foreign direct investments (FDIs), on the grounds of security or public order;*
- (-) cooperation procedures between the Member States and the European Commission on FDIs likely to affect security or public order;*
- (-) the possibility for the Commission to issue opinions, and for the Member States to issue comments, on these investments.*

The key points of the Regulation

The Regulation does not harmonize national screening systems. Consequently, nothing prevents an EU Member State from deciding whether or not to have a national screening mechanism, or whether or not to screen a particular FDI.

Obligations for EU member states:

- (-) may maintain, amend or adopt FDI screening mechanisms;*
- (-) can decide whether to have FDI screening mechanisms and if so, they must: ensure that these mechanisms are transparent, do not discriminate between non-EU countries, protect confidential and commercially sensitive information and operate within deadlines;*
- (-) allow foreign investors and companies to appeal against screening decisions;*
- (-) have the necessary measures in place to identify and prevent circumvention of the screening mechanisms and screening decisions,*
- (-) notify the Commission of the existing screening mechanisms by 10 May 2019 and report any new ones within 30 days from the moment of application;*
- (-) must annually submit details of the FDI on their territory during the previous calendar year to the Commission the by 31 March;*
- (-) must appoint contact points to implement the legislation, in the same way as the Commission.*

In their assessment of FDIs on the grounds of security or public order, Member States and the Commission may consider the potential effect of FDIs on:

- (-) critical physical or virtual infrastructure, ranging from energy, transport and defence to electoral, financial and other infrastructure;*
- (-) critical technologies and dual-use items, such as artificial intelligence, robotics, energy storage and biotechnologies;*
- (-) critical supplies, such as energy or raw materials, and food security;*
- (-) access to sensitive information, including personal data;*
- (-) freedom and pluralism of the media; and*
- (-) whether the foreign investor:
is directly or indirectly controlled by a non-EU government, including state bodies or armed forces, has already been involved in activities affecting the security or public order of a member state, poses a serious risk of being involved in activities of illegal or criminal.*

3. The principles stemming from the reports of the Venice Commission “Legal foundations of the economic system during a period of transition from a planned to a market economy” [CDL\(1994\)009e-restr](#), Strasbourg, 28 February 1994

96. The Court recalls that the Venice Commission, through its 1994 report on the legal basis of the economic system during the transition period from a planned to a market economy, identified the main elements of the legal basis of the economic system during the transition period from a planned to a market economy. Based on this report, and among others, emphasis is placed on the importance of “*the formal recognition of freedom of economic activity, [...]*” and most importantly, “*principle of free competition, based on economic freedom and the equality principle, which relates to competition between different individuals and between individuals and the state*”.
97. The aforementioned Venice Commission report also dealt with the respective roles of the constitution and legislation in the economic field. In this regard, the Venice Commission, among other things, emphasized that even though “*[in the economic field] constitutions necessarily form the basis of states' legal and economic system*”, their role should remain

“a modest one since they are not appropriate vehicles for the detailed regulation of the principles governing market economies”. In this way, according to the opinion of the Commission, *“[constitutions must not be used to establish detailed rules and regulations; this is better left to ordinary legislation]”*. Thus, in the view of the Venice Commission, any reference in the Constitution to the principle of state intervention in the economic sphere should be limited to *“an exception to the principle of economic freedom, justified by the general interest”*. Restrictive measures for economic freedom must be approved by the legislator and in accordance with the principle of proportionality. According to the report, the restrictions on economic freedom must be: (i) *“specific and limited, and must be justified by the general interest or the need to maintain public order”*; (ii) prescribed by law; and (iii) *“necessary, effective and commensurate with the requirements and the gravity of the situation”*. The report further elaborates on the role of legislation in the economic sphere, saying that it should *“translate the basic principles laid down in the constitution into detailed form”*. It also provides that the law may enable the executive to *“draw up the detailed regulations”* based on the guidelines and policy principles defined in the relevant law.

III. Application of the aforementioned principles in the constitutional review of the Contested Law

98. Following and applying the general principles detailed above, the Court will: (i) assess the constitutionality of Article 21 of the Contested Law, regarding the establishment of the Investment Council; (ii) the constitutional review of Article 35 of the Contested Law, in terms of the possibility of special selection of the investor; and (iii) the constitutional review of articles 52 and 53 of the Contested Law, in terms of the principle of legal certainty that is related to the repeal of Law no. 04/L-220 on Foreign Investments and Law no. 05/L- 079 on Strategic Investments in the Republic of Kosovo and the abolition of the Agency for Investments and Enterprise Support in the Republic of Kosovo and the rights of the officials of this Agency.

1. Constitutional review of Article 21 of the Contested Law

99. The Court firstly recalls that the applicants claim that Article 21 of the Contested Law is contrary to Article 122 of the Constitution, because it does not define reasonable conditions by law for the use of the natural resources of the Republic of Kosovo, also limiting free competition and enabling arbitrariness of the Government, respectively of the Investment Council in its decision-making.

100. In the aforementioned context, the Court emphasizes that in issues of organization of the economic system, the state, respectively the Government and the Assembly, have a wide margin of action, always in accordance with the market economy system with free competition, which is the basis of the economic regulation of the Republic of Kosovo, and at the same time it is embodied as an economic concept in the Constitution of Kosovo.

101. In this context, the Court also notes that the Investment Council, by Article 21 of the Contested Law, has the following competencies:

Article 21 (Council)

4. The Council shall have the following responsibilities:

4.1. approve action plans and publish reports on the promotion and protection of investments, paying attention to the identification of interests, improving the environment of economic activity, development opportunities and comparative advantages of the Republic of Kosovo;

- 4.2. issue decisions on strategic investments as defined by Article 36 of this Law;*
- 4.3. publish invitations and negotiate agreements concluded with strategic investments as defined by Articles 29 and 35 of this Law;*
- 4.4. define measures, procedures, terms and obligations of the public authorities related to the design and implementation of strategic investment projects;*
- 4.5. oversee the implementation of strategic investments;*
- 4.6. request screening of investments and issue decisions on screening as defined by Chapter VII of this Law.*
- 4.7. Performs other functions related to the field of investments and exports determined by the decision of the Government.*

102. The Court notes that this article determines the role and responsibilities of the Council in the field of investments and exports in the Republic of Kosovo, including in relation to the evaluation, selection, implementation, supervision, and decision-making regarding strategic investment projects, as well as the approval of action plans and reports on the promotion and protection of investments and exports, paying attention, according to the provisions of the Contested Law, to the removal of barriers to investments and the improvement of the economic activity environment.
103. In the following, related to the above-mentioned case, the Court also recalls that such a similar competence was defined by Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo, which had authorized the Interministerial Committee for Strategic Investments to exercise its responsibilities, which, among other things, had to do with: (i) evaluating proposals for strategic projects; (ii) issuing the decision on the establishment of the operational group for the preparation, supervision and implementation of each individual project for strategic investments and the appointment of the head of the operational group; (iii) monitoring the implementation of strategic projects; (iv) evaluating and approving the recommendations of the Agency for Investments and Enterprise Support to the Government for issuing the decision on granting strategic investment status, for rejecting the proposal for granting strategic investment status and for canceling the decision on granting investment strategic status ; (v) the negotiation with the investment entity as well as the conclusion of the strategic investment agreement after issuing the decision to grant the strategic investment status.
104. The Judgment emphasizes that article 21 of the Contested Law determines the role and responsibilities of the Council in the field of investments and exports in the Republic of Kosovo, including in relation to the evaluation, selection, implementation, supervision, and decision-making regarding strategic investment projects, as well as the approval of action plans and reports on the promotion and protection of investments and exports, also paying attention, according to the provisions of the Contested Law, to the removal of barriers to investments and the improvement of the economic activity environment. This fits with the overall goal of the state to increase the competitiveness and economic development of the country. Also, Article 21 of the Contested Law defines the responsibilities of the Council in the implementation and supervision of strategic investments, by drafting measures, procedures and deadlines for investment projects. These responsibilities help ensure a favorable environment for investors and improve the business climate in Kosovo.
105. In the context of the competencies and responsibilities of the Council, the Judgment emphasizes Article 93 [Competencies of the Government] of the Constitution, according to which, the Government promotes the economic development of the country. In exercising this competence, the Government is conditioned by respecting the principles related to the market economy stemming from the Constitution, namely (i) respecting the values of the Republic of Kosovo, including the market economy with free competition and

respecting the fundamental rights and freedoms, including for economic operators, as defined in Articles 7 [Values] and 10 [Economy] of the Constitution respectively; (ii) respecting the provisions of Article 119 [General Principles] of the Constitution, according to which, *inter alia*, the Republic of Kosovo has the obligation to establish mechanisms whereby it shall ensure a favorable legal environment for a market economy, freedom of economic activity, and safeguards for private and public property, shall ensure equal legal rights for all investors and all domestic and foreign enterprises, and shall ensure that a foreign investor is guaranteed the right to freely transfer profit and invested capital outside the country in accordance with the law; and (iii) ensuring that the natural resources of the Republic of Kosovo shall enjoy their special protection in accordance with the law as defined in Article 122 [Use of Property and Natural Resources] of the Constitution.

106. Furthermore, the Court recalls that Article 122 [Use of Property and Natural Resources] of the Constitution stipulates that natural resources, including water, airspace, mining resources and others, enjoy special protection in accordance with the law. In this direction, this article defines the rights and obligations of the people of the Republic of Kosovo in terms of the use of natural resources as well as the fulfillment of international obligations, in the context of international economic cooperation. This includes the establishment of areas of special interest by the Assembly for their special guarantee and protection by state institutions. Also, this article clarifies that restrictions on the rights of owners and other rights on the exploitation of assets of special interest to Kosovo and compensation for such restrictions are regulated by law, authorizing the Assembly to regulate these issues by law.
107. The Court also clarifies that paragraph 2 of Article 122 of the Constitution, which establishes the special protection of Kosovo's natural assets, aims to preserve and protect these assets and natural resources in the interest of the Republic of Kosovo. This provision ensures that natural resources and assets of special importance are treated with special care and protection by the state. It establishes a constitutional obligation for these assets to enjoy their special protection in accordance with the law, implying that the legislation must define the mechanisms and measures necessary for their protection. On this basis, Kosovo has adopted relevant legislation for assets and natural resources that enjoy special protection, including and not limited to: (i) Law no. 04/L-147 on waters of Kosovo; Law no. 08/L-145 on integrated pollution prevention and control; Law no. 08/L-025 on protection of air from pollution; Law no. 03/L-233 of nature protection; Law no. 02/L-102 on noise protection; as well as Law no. 03/L-025 on environmental protection. The Court emphasizes that the implementation of the Contested Law, beyond the obligations arising from Article 122 of the Constitution, must also be in accordance with the aforementioned laws.
108. Applying the constitutional principles as above, the Court assesses that the establishment of an Investment Council does not result in harming the market economy based on free competition, moreover that its decision-making is subject to constitutional guarantees, including in the context of fundamental rights and freedoms, ratified international agreements and other applicable laws of the Republic of Kosovo, including the right to legal remedies and judicial protection of rights, according to the provisions of articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.
109. As a consequence, and according to the clarifications provided, the Court has held that Article 21 (Council) of the Contested Law is not in contradiction with paragraph 1 of Article 7 [Values], paragraphs 1 and 2 of Article 119 [General Principles] of the Constitution, and paragraph 2 of Article 122 [Use of Property and Natural Resources] of the Constitution.

2. Constitutional review of article 35 of the Contested Law

110. The Court first recalls that the applicants claim that Article 35 of the Contested Law violates the principle of equality before the law from Article 24 of the Constitution, because it creates opportunities for arbitrariness in the procedures for selecting the strategic investor. Moreover, according to the applicants, the Contested Law makes it impossible to ensure the favorable legal environment for the market economy; (ii) freedom of economic activity; and (iii) security of public and private property; as well as violates (iv) the right to equal treatment of all investors, both internal and external, because it limits free competition by creating conditions for a dominant position in the market, including the establishment of practices that limit free competition as one of the basic principles of economic relations in the Republic of Kosovo.
111. In the aforementioned context, the Court draws attention to Article 35 of the Contested Law, which, among other things, establishes:

Article 35
Special selection of the investor

- 1. The Council may open a call to select a partner for the implementation of the strategic investment, according to the evaluation criteria in line with the legislation in force.*
- 2. Notwithstanding paragraph 1 of this Article, the Council may select by direct negotiation the trust company as the proposer, implementer or partner for the implementation of the strategic investment, according to the evaluation criteria in line with the legislation in force. The business organization with a reputation and internationally recognized references in terms of economic activity, business ethics and advanced corporate governance, proven by financial and auditing institutions, shall be considered a trust company.*
- 3. The Council may enter into a preliminary agreement with the proposer, implementer or partner under this Article. The agreement may replace the proposal from Article 33 of this Law, but must be in accordance with the general conditions from Article 24 of this Law.*

112. The Court notes that based on Article 35 (Special selection of the investor) of the Contested Law, it is determined that the Council can publish an invitation to select the partner for the implementation of the strategic investment, according to the evaluation criteria in accordance with the legislation in force.
113. In this regard, in the context of the legislation in force, the Court notes that the Law on Public Procurement aims to ensure the most efficient, transparent and fair use of public funds and resources. This goal is accomplished by defining a series of specific conditions and rules that must be implemented by all parties involved in public procurement processes. Consequently, the Court finds that the Law on Public Procurement contains provisions that aim to protect the integrity of the use of public funds through efficiency, transparency and fairness, clearly defining the procedures, rights and obligations of all parties involved.
114. In what follows, the Court notes that, as an exception to this rule of publishing the invitation to select the partner for the implementation of the strategic investment, by paragraph 2 of Article 35 (Special selection of the investor) of the Contested Law, the Council can select by direct negotiation the trusted company as a proposer, implementer or partner for the implementation of the strategic investment, according to the evaluation criteria determined through the applicable law. In this regard, the Contested Law, by its Article 24 (General conditions), establishes the general conditions for the announcement

of strategic investment, including related to employment, increased production and export, regional development and environmental sustainability, and which are also related to the state objectives of Article 14 (National objectives) that are intended to be fulfilled through the promotion and protection of investments and priority sectors for investments in the Republic of Kosovo according to the provisions of Article 15 (Priority sectors) of the Contested Law.

115. In this regard, the Court notes that the Council may conclude preliminary agreements with the proposer, implementer or partner under this article. The agreement according to this article can replace the strategic investment proposal, in terms of the review deadlines by the Investment and Export Agency (AIE) defined in Article 33 (Review period) of the Contested Law, but it must be in accordance with the general conditions of Article 24 (General conditions) of the Contested Law, which must be met to announce the strategic investment, respectively:
- (i) the project must help *in fulfilling national objectives*, which include: (a) increasing production and export; (b) promoting the circular economy; (c) increasing the competitiveness of local industry; (d) development of innovation and technology; (e) strengthening the industrial ecosystem; (f) workforce training and employment; (g) empowerment of youth, women, non-majority communities and marginalized groups; (h) sustainability of population movement; (i) engagement of the diaspora; (j) regional development; (k) environmental sustainability;
 - (ii) the project must *coincide in the priority sectors* for investment in Kosovo, which include: (a) manufacturing and processing industry; (b) agriculture; (c) information and communication technology; (d) education and training, research and innovation; (e) health; (f) tourism; (g) sewage and waste management; (h) transportation; (i) energy; (j) mining;
 - (iii) the proposer has proven the financial ability to implement the investment;
 - (iv) the project must be in accordance with the requirements for documents and data for the proposer and the strategic investment project according to Article 30 (Strategic investment proposal) of the Contested Law;
 - (v) the project must have been subjected to supplementary verification if required according to chapter VII of the Contested Law and a decision has been given to authorize the investment, according to Article 40 (Determination screening) of the Contested Law;
 - (vi) The strategic investment must reach the value of at least ten (10) million euro.
 - (vii) Priority should be given to the selection of the project that has the greatest value and helps the most in fulfilling the state objectives from Article 14 of this law, especially the objectives of employment, increased production and export, regional development and environmental sustainability.
116. Further, based on Article 16 (Facilitations) of the Contested Law, the Court notes that in the context of fulfilling state objectives through investment in priority sectors, the investor can benefit from a set of facilities, where the following stand out: (i) facilities in import for the purpose of production or processing, such as the import of machinery, raw material, semi-products or other products; (ii) exemption from export duty; (iii) subsidies for the salaries of citizens of the Republic of Kosovo employed or trained according to the legal norms in force; (iv) support for research and development; (v) support in the purchase of manufacturing or processing machinery; (vi) advantage in access to industrial and technological parks; (vii) support for access to finance; (viii) support for the purchase of goods and services from domestic suppliers; (ix) support through administrative burden reduction and coverage or reduction of administrative cost; (x) other facilities determined by the legislation in force.
117. Based on the above analysis, in the context of addressing the claims of the applicants, the Court first points out that the Contested Law proclaims the equality before the law of

foreign investors, who have the same legal rights and obligations as local investors. More precisely, (i) based on Article 6 (Equality Before the Law) of the Contested Law, the equality of all investors before the law has been determined; (ii) based on Article 7 (Protection and security) of the Contested Law, the investor and investments enjoy full and continuous protection and security in accordance with the legislation in force; (iii) based on Article 8 (Respect of rights) of the Contested Law, public institutions are obliged to respect the investor's rights defined according to the legislation in force, by (a) developing the procedure in accordance with the legislation in force; (b) acting in accordance with the principle of proportionality and other procedural principles; (c) giving reasonable opportunities to the investor to present facts and arguments in the administrative procedure, as far as the nature of the procedure and the public interest allow; and (d) enabling the exercise of legal remedies according to the Constitution and the law; while (iv) based on paragraph 2 of Article 8 (Respect of rights) of the Contested Law, the rights defined by the latter may be limited in case of violation of public order, morality, state security, public health, environment and legislation in force.

118. The Court emphasizes that the aforementioned rights also stem from the Constitution. More precisely, Article 119 of the Constitution, among other things, and as far as it is relevant to the circumstances of the present case, also determines that the Republic of Kosovo ensures equal legal rights for all investors and all domestic and foreign enterprises, according to the provisions of paragraph two thereof. Furthermore, by paragraph 4 of Article 21 [General Principles], the Court clarifies that the fundamental rights and freedoms provided for in the Constitution also apply to legal entities, as far as they are applicable, further defining by Article 24 [Equality Before the Law] of the Constitution, that everyone is equal before the law and that everyone enjoys the right to equal legal protection, without discrimination. Finally, the Court clarifies that any legal dispute that may be related to the acquired rights of legal entities, namely domestic or foreign economic operators, is subject to the right to legal remedy and judicial protection of rights according to applicable laws and regulations of Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.
119. The Court also emphasizes that the alignment of Kosovo's legislation with EU legislation is an international obligation stemming from the SAA between Kosovo and the EU. Consequently, Article 74 of the SAA between Kosovo and the EU outlines Kosovo's obligation to align its national legislation with the EU *acquis*, as well as its effective implementation. In this context, the area covered by the Contested Law, which consists of the investment area that is also related to the trade area, is one of the priority areas reflected in paragraph 3 of Article 74 of the SAA. This means that in the early stages of the approximation of legislation, Kosovo should focus on "*fundamental elements of the EU acquis in the field of the Internal Market, and in the field of Freedom, Security and Justice, as well as on trade-related areas. At a further stage, Kosovo shall focus on the remaining parts of the EU acquis.*" (see article 74.3 of the SAA, the relations between Kosovo and the EU).
120. The Court also recalls that Article 98 (Investment promotion and protection) of the SAA, determines the obligation for the contracting parties, namely for Kosovo on the one hand and the EU on the other, to focus on the protection of foreign direct investments, creating a favorable climate for domestic and foreign private investments that is essential for the economic and industrial revitalization of Kosovo. In this regard, this article of the SAA also establishes an obligation for the Republic of Kosovo to improve the legal framework so as to favor and protect investments.
121. The Contested Law, based on its Article 1 (Purpose), defines as the purpose of the law: the promotion, support and protection of sustainable investments and exports in Kosovo, including the determination of priority sectors for development. Moreover, the Contested Law, according to its provisions, concludes that it is partially in accordance with

Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union. Kosovo has taken such an approach to the screening of foreign investments from EU legislation, namely from the partial transposition of **Regulation (EU) 2019/452** of the European Parliament and of the Council, of 19 March 2019 establishing a framework for the screening of foreign direct investments into the EU. The regulation in question consists in ensuring the cooperation between the European Commission and the EU member states, to establish common criteria for the identification of risks related to the acquisition or control by foreign investors of strategic assets that may threaten security or public order.

122. In the aforementioned context, the Court emphasizes that the Contested Law foresees the possibility of an additional or complementary verification of the potential investment, especially if the investment intended or carried out by a foreign person is likely to affect public order or state security. This provision reflects the responsibility of the Council to ensure that strategic investments are in line with the interests and priorities of the country, determining the necessary measures to protect the security and stability of the state. In the framework of this supplementary verification, special attention is paid to compliance with: (i) norms against money laundering, *offshore* investments and terrorist financing; (ii) relevant legislation for the implementation of international sanctions; (iii) in case of unfair trade, the Republic of Kosovo has the right to protect its state resources, in accordance with the relevant legislation on foreign trade.
123. In particular, the supplementary verification pays special attention to compliance with the legislation against money laundering, “*offshore*” investments and terrorist financing, based on the legislation in force and international guidelines. Likewise, the Council has the obligation to verify compliance with the legislation on the implementation of international sanctions. In case of unfair trade, the Law stipulates that the Republic of Kosovo has the right to protect its state resources in accordance with the legislation on foreign trade. Consequently, these provisions help in ensuring the sustainability and integrity of the strategic investment process in Kosovo (see Article 40 of the contested law).
124. In this regard, taking into account the fact that the partners for the implementation of strategic investments are selected through a public process, while exceptionally the selection of the partner for strategic investments through the direct negotiation procedure is subject to the criteria defined in the Contested Law, including the provisions of the applicable Law on Public Procurement, but also the right to a legal remedy according to the provisions of Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution, it follows that in the context of Article 35 (Special selection of the investor) of the Contested Law, the guarantees of paragraphs 1 and 2 of Article 119 [General Principles] of the Constitution have not been violated. Having said that, the Court also clarifies that this assessment does not mean the legality and/or constitutionality of the Council’s decision-making in the context of the special selection of the investor, which may be subject to the assessment of legality by regular courts and constitutionality by the Constitutional Court according to the provisions of paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution.
125. Finally, according to the clarifications given above, the Court finds that Article 35 (Special selection of the investor) of the Contested Law, is not contrary to paragraphs 1 and 2 of Article 119 [General Principles] of the Constitution.

3. Constitutional review of articles 52 and 53 of the Contested Law

126. The Court first recalls that the claims of the applicants regarding this issue focus on two directions, namely (i) the claim that the repeal of two laws, namely Law No. 04/L-220 on

Foreign Investments and Law No. 05/1-079 on Strategic Investments in the Republic of Kosovo, as a result of the Contested Law, creates legal uncertainty for investors who have acquired the status of strategic investor; and (ii) the claim that with the establishment of two new agencies, namely the Investment and Export Agency (AIE) and the Agency for Innovation and Enterprise Support in the Republic of Kosovo (AIPNK), abolishing the existing Agency for Investment and Enterprise Support in Republic of Kosovo, legal uncertainty is created for public officials who are part of the agency which is abolished in the context of their employment relationships.

127. In the context of analyzing the concrete claims of the applicants, the Court first brings to attention article 52 (Transitional provisions) and 53 (Abrogation) of the Contested Law:

Article 52
Transitional provisions

1. *Regulation and organization of AIE and AISEK shall be regulated by special sub-legal acts.*
2. *Investment and Enterprise Support Agency in the Republic of Kosovo, established with the Law No.04/L-220 for Foreign Investments, exercises all competences within the Ministry of Industry, Entrepreneurship and Trade, until the entry into force of sub-legal acts in accordance with paragraph 1 of this Article.*
3. *Upon the structuring of the Agency according to this Article:*
 - 3.1 . *The Ministry undertakes the systematization of civil servants.*
 - 3.2. *AIE and AISEK shall each take the responsibilities, properties under administration, contracts, obligations to third parties and ongoing administrative procedures related to their scopes.*

Article 53
Abrogation

Upon entry into force of this Law, the Law No. 04/L-220 on Foreign Investment and Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo shall be abrogated.

128. The Court also highlights article 18 of the Contested Law which stipulates:

Article 18
The establishment of the agencies

1. *Upon entry into force of this Law, Investment and Enterprise Support Agency in the Republic of Kosovo (KIESA) established with the Law on Foreign Investment shall be seized, and instead of it, following agencies shall be established:*
 - 1.1. *Agency of Investments and Exports (AIE);*
 - 1.2. *Agency for Innovation and Support to Enterprises in the Republic of Kosovo (AISEK).*

129. Based on the assessment of the aforementioned provisions, the Court clarifies that: (i) by Article 53 (Abrogation) of the Contested Law, two prior laws are repealed, namely, Law no. 04/L-220 on Foreign Investments and Law no. 05/1-079 on Strategic Investments in the Republic of Kosovo; while (ii) by Article 52 (Transitional provisions) in conjunction with Article 18 (Establishment of the agencies) of the Contested Law, the Agency for Investments and for the Support to Enterprises in the Republic of Kosovo are abolished. The latter is replaced by two other Agencies, established based on Article 18

(Establishment of the agencies) of the Contested Law, namely the Investments and Exports Agency and the Agency for Innovation and Enterprise Support in the Republic of Kosovo, functions, competencies and organization of which is also defined through the Contested Law.

130. Initially and related to the claims that the repeal of the two previous laws through the Contested Law is contrary to the principle of legal certainty and the acquired rights of foreign investors acquired through the repealed laws, the Court emphasizes that the adoption, amendment and/or repealing laws is within the competence of the Assembly of the Republic of Kosovo, according to the provisions of articles 65 [Competencies of the Assembly], 80 [Adoption of Laws] and 81 [Legislation of Vital Interest] of the Constitution, always on the condition that the values of the Republic of Kosovo are respected according to the provisions of Article 7 [Values] of the Constitution, which also includes the principle of legal certainty and the criterion of “clarity” and “foreseeability” of laws.
131. In this regard, the Contested Law was rendered based on the aforementioned constitutional authorizations of the Assembly and taking into account the content of the final provisions of the Contested Law, in the Court’s assessment, the principle of legal certainty does not appear to have been violated. This, in principle, because (i) Article 53 of the Contested Law clearly states that with the entry into force of this Law, Law No. 04/L-220 on Foreign Investments and Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo are repealed; (ii) according to paragraph 2 of Article 52 (Transitional provisions) of the Contested Law, the Agency for Investments and for the Support of Enterprises in the Republic of Kosovo established by Law No. 04/L-220 on Foreign Investments, exercises all powers within the Ministry of Industry, Enterprise and Trade, until the entry into force of the sub-legal acts which determine that the regulation and organization of the Investment and Export Agency as well as the Agency for Innovation and Enterprise Support in the Republic of Kosovo, are regulated by separate sub-legal acts; (iii) in addition, the Contested Law in subparagraph 3.2 of Article 52 (Transitional provisions), specifies that the agencies established through it, each assume the responsibilities, properties under administration, contracts, obligations to third parties and ongoing administrative procedures, and as a consequence, any right acquired based on previous laws, is subject to the guarantees of the Contested Law and moreover, any legal dispute that may be related to the acquired rights of legal entities, namely economic operators based in the repealed laws as above, is subject to the right to legal remedy and judicial protection of rights according to the applicable laws and the provisions of Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.
132. In the context of assessing the aforementioned claims of the applicants, the Court considers it necessary to analyze the fulfillment of the criteria required by the *Rule of Law Checklist*. In this regard, the Court refers to the aspect of foreseeability of laws, and specifically to the following question: Does the new legislation clearly determine whether (and which) previous legislation has been repealed or amended? (See *Rule of Law Checklist* [[CDL-AD\(2016\)007](#)] adopted by the Venice Commission at the 106th plenary session, in Venice, on 11-12 March 2016, 3. Foreseeability of the laws, p.15).
133. In response to the question posed by the Rule of Law Checklist, the Court assesses that the Contested Law meets the standards of the Rule of Law Checklist, clearly listing the repealed laws which are clearly mentioned. Such an approach in the Court’s assessment, in addition to meeting the criteria set by the rule of law checklist, also provides transparency and legal certainty for investors, helping them to have full knowledge of the applicable laws. Therefore, the Court assesses that the Contested Law does not bring legal uncertainty for strategic investors who have benefited from the laws that were in force, since they carry the rights and obligations in accordance with the respective laws at the time in which they entered into a contract with the state of Kosovo. Consequently, the

Contested Law does not have a retroactive effect, because all the requests which have already been submitted on the basis of two repealed laws, namely Law No. 04/L-220 on Foreign Investments and Law No. 05/1-079 on Strategic Investments in the Republic of Kosovo, will be handled on the basis of these two laws, including the guarantees stemming from the Constitution.

134. On the other hand, and related to the abolition of the Agency for Investments and Enterprise Support in the Republic of Kosovo, including the status of its public officials, the Court clarifies that the establishment of Independent Agencies is within the competence of the Assembly according to the provisions of Article 142 [Independent Agencies] of the Constitution. Beyond the constitutional guarantees, according to the clarifications given, the issues related to the establishment, but also the merger and extinction of the Agencies, including the executive ones as is the case in the circumstances of the Contested Law, are regulated by Article 48 (Establishment of a new Agency), Article 49 (Merger of existing agencies) and Article 50 (Termination of an agency) of Law no. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies. The latter, in the context of the termination of an Agency, by subparagraph 2.5 of Article 50 (Termination of an Agency) regulates the legal consequences related to the relevant public officials, property under administration, contracts, obligations to third parties and ongoing administrative procedures of the merged/terminated agencies. In addition, paragraph 2 of Article 49 (Merger of existing agencies) determines that the regulation of legal consequences must ensure the continuity of the activity and the respect of the interests of the existing officials and other parties involved.
135. In this regard, the Court finds that the issues related to the termination of an agency, in the context of addressing the legal consequences caused by this termination, in the way they are regulated in Law No. 06/L-113 on Organization and the Functioning of the State Administration, are properly addressed in the Contested Law.
136. In addition, and in the context of the rights of public officials employed in the agency that is being terminated, the Contested Law, in Article 52 (Transitional provisions), determines that the relevant Ministry of Industry, Entrepreneurship and Trade undertakes the relevant systematization of civil servants according to the provisions of Law no. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies. According to the explanations given, this systematization is subject to the guarantees of Law no. 08/L-197 on Public Officials, including the right to legal remedies and judicial protection of rights, according to the provisions of the Law on Public Officials, but also articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.
137. As a result, and according to the clarifications given above, the Court finds that Articles 52 (Transitional provisions) and 53 (Abrogation) of the Contested Law are not contrary to paragraphs 1 and 2 of Article 119 [General Principles] of the Constitution.

Request for interim measure

138. 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 is rendered regarding the said referrals.
139. 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 stipulates that *“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”*.

140. Based on the aforementioned provision, on 21 November 2023, the Court requested the President, the President of the Assembly, and the Secretary of the Assembly to take into account the conditions defined by paragraph 2 of Article 43 of the Law.
141. Therefore, considering 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 consideration and, as such, is rejected (see, *mutatis mutandis*, the Court's Judgment in cases KO100/22 and KO101/22, KO100/22, with applicants: *Abelard Tahiri and ten (10) other deputies* and KO101/22, with applicants: *Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo*, (cited above), paragraph 411, and the Judgment in cases KO216/22 and KO222/22, with the applicant *Isak Shabani and 10 (ten) other deputies* and KO220/22, with applicant: *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, (cited above) paragraph 405).

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 (5) and 116 (2) of the Constitution, Articles 20, 27 and 42 of the Law, and in accordance with Rules 45, 48 (1) (a) and 72 (1) of the Rules of Procedure, on 20 June 2024, unanimously:

DECIDES

- I. TO DECLARE the referral admissible;
- II. TO HOLD that Articles 21 (Council), 35 (Special selection of the investor), 52 (Transitional provisions), and 53 (Abrogation) of Law No. 08/L-209 on Sustainable Investments, are not in contradiction with paragraph 1 of Article 7 [Values], paragraphs 1 and 2 of Article 119 [General Principles], and paragraph 2 of Article 122 [Use of Property and Natural Resources] of the Constitution;
- III. TO REJECT the request for interim measures.
- IV. TO DECLARE 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-209 on Sustainable Investments shall be sent to the President of the Republic of Kosovo for promulgation;
- V. TO NOTIFY this Judgment to the parties;
- VI. TO HOLD that this Judgment is effective as of 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

Enver Peci

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.