



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

Prishtina, on 27 December 2024
Ref. no.:AGJ 2600/23

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JUDGMENT

in

Case KO15/24

Applicant

The Ombudsperson Institution

**Constitutional review of Article 28 of Law no. 08/L-228 on General Elections
in the Republic of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The referral was submitted by the Ombudsperson Institution (hereinafter: the Ombudsperson).

Law on General Elections

2. The Applicant challenges the constitutionality of Article 28 (Gender Quota) of Law no. 08/L-228 on General Elections in the Republic of Kosovo (hereinafter: the Law on General Elections), adopted by Decision [no. 08-V-538] of 8 June 2023 of the Assembly of the Republic of Kosovo (hereinafter: the Assembly) and published in the Official Gazette of the Republic of Kosovo on 3 July 2023.

Subject matter

3. The subject matter of the referral is the constitutional review of Article 28 (Gender Quota) of the contested Law, which is claimed to be contrary to Articles 7 [Values], 24 [Equality Before the Law] and paragraph 1 of Article 45 [Freedom of Election and Participation] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on subparagraph (1), paragraph 2 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 29 (Accuracy of the Referral) and 30 (Deadlines) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as Rule 65 (Referral Pursuant to Sub-paragraphs 1 and 2 of Paragraph 2 of Article 113 of the Constitution and Articles 29 and 30 of the Law) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo no. 01/2023 (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 16 January 2024, the Ombudsperson submitted the referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 January 2024, the President of the Court by Decisions [No. GJR. KO15/24] and [No. KSH. KO15/24] appointed Judge Selvete Gërxhaliu - Krasniqi as Judge Rapporteur and the Review Panel, composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).
7. On 22 January 2024, the Ombudsperson was notified about the registration of the referral. On the same date, the referral was communicated to (i) the President of the Republic of Kosovo, (ii) the Prime Minister of the Republic of Kosovo, (iii) the President of the Assembly and (iv) the Central Election Commission (hereinafter: CEC) with the invitation to submit to the Court their eventual comments or of the deputies of the Assembly within 15 (fifteen) days from the day of receipt of the Court's notification. The CEC was requested to send a copy of the referral to all registered political entities, with the request that if they have comments, to submit them to the Court. The referral was also communicated to the Secretary of the Assembly, who was asked to submit to the Court all relevant documents to the contested Law.
8. On 23 January 2024, the CEC notified the Court that the referral KO15/24 was sent to all political entities registered with the CEC by e-mail, a regular and official way of communication of the CEC with political entities.
9. On 29 January 2024, the Secretary General of the Assembly submitted to the Court the following documents:

- (i) Draft Law on General Elections in the Republic of Kosovo, distributed to the deputies of the Assembly on 12 May 2023;
 - (ii) Report of the Functional Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency for consideration in principle of the Draft Law on General Elections in the Republic of Kosovo of 16 May 2023;
 - (iii) Minutes of the Functional Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency for consideration in principle of the Draft Law on General Elections in the Republic of Kosovo of 16 May 2023;
 - (iv) Decision [no. 08-V-538] of 8 June 2023 of the Assembly on the adoption in principle of the Draft Law on General Elections in the Republic of Kosovo;
 - (v) Minutes of the plenary session of the Assembly of the first review of the Draft Law on General Elections in the Republic of Kosovo, of 8 June 2023;
 - (vi) Transcript of the plenary session of the Assembly of the first review of the Draft Law on General Elections in the Republic of Kosovo, of 8 June 2023;
 - (vii) Decision [no. 08/L-228] of the Assembly of 8 June 2023 on the review of the Draft Law on General Elections in the Republic of Kosovo, with an expedited procedure/avoidance from the procedural deadlines set by paragraph 4 of Article 34 (Convening committee meeting), paragraph 4 of Article 52 (Agenda of the plenary session), paragraphs 1, 3 and 8 of Article 76 (Review of draft laws in committees) of the Rules of Procedure of the Assembly;
 - (viii) Report of the Functional Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency on the second review of the Draft Law on General Elections in the Republic of Kosovo, of 8 June 2023;
 - (ix) Minutes of the Functional Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency for the second review of the Draft Law on General Elections in the Republic of Kosovo, of 8 June 2023;
 - (x) Decision [no. 08-V-562] of 8 June 2023 of the Assembly on the adoption of Law no. 08/L-228 on General Elections in the Republic of Kosovo;
 - (xi) Minutes of the plenary session of the Assembly of 8 June 2023;
 - (xii) Transcript of the plenary session of the second review of Law no. 08/L-228 on General Elections in the Republic of Kosovo, of 8 June 2023; and
 - (xiii) Law no. 08/L-228 on General Elections in the Republic of Kosovo, adopted by the Assembly in June 2023, and promulgated by the Decree of 29 June 2023 of the President of the Republic of Kosovo.
10. On 5 February 2024, Ms. Saranda Bogujevci, deputy of the Assembly, submitted comments to the referral of the Ombudsperson on behalf of the Parliamentary Group of VETEVENDOSJE! Movement.
 11. On 6 February 2024, Mr. Abelard Tahiri, deputy, on behalf of the PDK Parliamentary Group, asked the Court for an additional deadline to submit comments regarding the Ombudsperson's referral.
 12. On 7 February 2024, the Court notified Mr. Abelard Tahiri for approval of the request for an additional deadline until 15 February 2024.
 13. On 8 February 2024, the Court notified: (i) the President of the Republic of Kosovo; (ii) the President of the Assembly; (iii) the Prime Minister of the Republic of Kosovo; and (iv) the CEC, about the receipt of comments from the Parliamentary Group of the VETEVENDOSJE! Movement! with the possibility of submitting responses to these comments, if they have, until 15 February 2024 and for the approval of the Court to

postpone the deadline for submitting comments until 15 February 2024 by Mr. Abelard Tahiri.

14. On 12 February 2024, the Parliamentary Group of the VETËVENDOSJE! Movement submitted additional information related to the referral.
15. On 11 March 2024, Judge Jeton Bytyqi took the oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.
16. On 25 July 2024, the Review Panel considered the Report of the Judge Rapporteur and decided that the Referral needs further consideration at a future session.
17. On 26 November 2024, the Judge Rapporteur recommended to the Review Panel through the Preliminary Report the inadmissibility of the referral. On the same day, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral and its assessment on merits, and the Court voted by eight (8) votes for and one (1) against that the referral is admissible.
18. On 19 December 2024, the Court unanimously decided that Article 28 (Gender Quota) of Law no. 08/L-228 on General Elections in the Republic of Kosovo is not contrary to Article 45 [Freedom of Election and Participation] of the Constitution of the Republic of Kosovo.

Summary of facts

19. On 19 April 2023, Mr. Abelard Tahiri, on behalf of the signatory deputies of the Assembly based on Article 79 [Legislative Initiative] of the Constitution, Article 5 (Right to Legislative Initiative) of Law no. 04/L-025 on Legislative Initiatives and point 3 of paragraph 1 of Article 70 (Proposal of the draft law) of the Rules of Procedure of the Assembly, proposed to the Assembly the Draft Law on General Elections in the Republic of Kosovo.
20. On 12 May 2023, the President of the Assembly sent the Draft Law on General Elections in the Republic of Kosovo to all deputies of the Assembly.
21. On 16 May 2023, the Functional Committee on Legislation recommended to the Assembly the adoption in principle of the Draft Law no. 08/L-228 on General Elections in the Republic of Kosovo.

First review

22. On 8 June 2023, the Assembly, based on Article 123 (Avoidance of the Rules of Procedure) of the Rules of Procedure of the Assembly by Decision [No. 08-V-539], decided that the review of the Draft Law on General Elections in the Republic of Kosovo should be done in an expedited procedure.
23. On the same date, at 10:00, the Assembly, with eighty-six (86 votes) for, no votes against and no abstentions, adopted, in principle, the Draft Law no. 08/L-228 on General Elections in the Republic of Kosovo.

Second review, adoption, decreeing and entry into force

24. On 8 June 2023, the Functional Committee on Legislation submitted the report with twenty (20) proposed amendments to the Draft Law no. 08/L-228 on General Elections in the Republic of Kosovo.
25. On 8 June 2023, at 16:30, the Assembly, after the second review, by Decision [No. 08-V-562] adopted Law no. 08/L-228 on General Elections in the Republic of Kosovo with seventy-nine (79) votes for, three (3) votes against and zero (0) abstentions.
26. On 19 June 2023, the Assembly proceeded Law no. 08/L-228 on General Elections in the Republic of Kosovo to the President of the Republic of Kosovo for decreeing and promulgation.
27. On 3 July 2023, Law no. 08/L-228 on General Elections in the Republic of Kosovo was published in the Official Gazette. Article 129 (Entry into force) stipulates that: *"This Law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo"*.
28. On 3 July 2023, Law no. 08/L-228 on General Elections in the Republic of Kosovo entered into force.

Applicant's allegations

29. The Ombudsperson considers that Article 28 (Gender Quota) of the contested Law is not compatible with Articles 7 [Values], 24 [Equality Before the Law] and paragraph 1 of Article 45 [Freedom of Election and Participation] of the Constitution.
30. The Ombudsperson emphasizes: *"[...] considers that the adoption of the contested law in an expedited procedure is not in compliance with the principles of the rule of law, namely transparency, while the setting of the 30% gender quota in the contested law is not in accordance with the constitutional values in terms of gender equality and non-discrimination."*
31. Based on this, the Ombudsperson challenges the adoption of the contested Law with an expedited procedure, namely the avoidance of the adoption of laws from the procedural deadlines set by the Rules of Procedure of the Assembly.

(i) Claims regarding the procedure for the adoption of the contested Law

32. In this regard, the Ombudsperson emphasizes that the Law on General Elections was adopted by the Assembly in an expedited procedure based on Article 123 (Avoidance of the Rules of Procedure) of the Rules of the Assembly, which prevented his "active participation" in providing comments regarding the contested Law. According to the Ombudsperson, the adoption of laws should be transparent, accountable and democratic, which are elements of legality and the principle of the rule of law.

(ii) Claims relating to Article 28 of the contested Law

33. The Ombudsperson specifically claims that: (i) the setting by law of a quota of 30% for each gender constitutes unjustified prejudice, considering that the gender ratio is almost 50% with 50% men and women; (ii) in electoral practice it is unlikely that political entities have sent for certification lists of candidates with 50% men and women; (iii) the criterion of 30% men and women provided by Article 28 of the Law on General Elections, only justifies unequal treatment because political entities meet the legal criteria to run in elections by sending the list of candidates with 30% of women on electoral lists; and, that (iv) Article 28 (Gender Quota) of the Law on General Elections, which sets the

minimum threshold of 30%, also contradicts the gender equality spirit provided by sub-paragraph 1.3 of paragraph 1 of Article 5 (General measures to prevent gender discrimination and ensure gender equality), paragraph 1, sub-paragraph 1.3 of Law No. 05/L-020 on Gender Equality.

34. First, the Ombudsperson states: *“According to Article 13 of Law no. 05/L-020 on Gender Equality: “Ombudsperson is an equality body that handles cases related to gender [...]”. Moreover, gender equality is guaranteed by the Constitution and is ensured as a fundamental value for the democratic development of society (Article 7.2 of the Constitution).”*
35. Following this, the Ombudsperson specifies: *“The Law on General Elections, Article 28, paragraph 1, stipulates that in ‘each political entity’s candidate list, at least thirty percent (30%) shall be male and at least thirty (30%) per cent shall be female, with one candidate from each gender included at least once in each group of three candidates, counting from the first candidate in the list.’ Paragraph 2 states that ‘this provision has no application to lists consisting of one or two candidates.’ The Ombudsperson notes that this wording in paragraph 1 and paragraph 2 does not differ from Law no. 03/L-073 on General Elections in the Republic of Kosovo, already repealed by the contested law. The only novelty in this article is included in paragraph 3, which stipulates that the CEC shall allocate additional public funds, in the amount of one percent (1%) of the total amount allocated to the political entity, for each mandate won by women over the thirty percent (30%) quota at the time of certification. The CEC plans an additional budget for this purpose after every elections.”*
36. In connection with the above-mentioned case, the Ombudsperson emphasizes: *“[...] the establishment by law of the quota (at least 30%) for each gender represents a kind of unjustified prejudice, considering that the gender ratio between the genders is almost 50% to 50%, with minor differences. The Ombudsperson is based on 2022 World Population Prospects data, according to which the percentage at the world level between the genders is 50.3% for men and 49.7% for women. Also, reference was made to EUROSTAT data, according to which in the European Union there are almost 5% more women than men. On 1 January 2022, there were 228 million women and 218 million men in the EU. This corresponds to a ratio of 104.6 women per 100 men, which means that there were 4.6% more women than men. Whereas, according to Kosovo Agency of Statistics data from the 2011 population census in Kosovo, the gender ratio turns out to be 50.34% male and 49.66% female. It is noted that the trend of the percentage between men and women is almost equal, so the imposition of the 30% quota, as done in the repealed law and also in the contested law is contrary to equality before the law, practically and legally, in terms of gender equality.”*
37. Following the above allegations, the Ombudsperson refers to the case law of the European Court of Human Rights (hereinafter: ECtHR), namely case *Dakir v. Belgium* (application no. 4619/12, Judgment of 11 July 2017, paragraph 65), whereby the ECtHR: *“[...] reiterates that a general policy or measure which has disproportionate prejudicial effects on a group of individuals can be regarded as discriminatory even if it does not specifically target the group and there is no discriminatory intent. However, this is only the case if such a policy or measure has no “objective and reasonable” justification, that is if it does not pursue a “legitimate aim” or if there is no “reasonable relationship of proportionality” between the means employed and the aim sought to be achieved”* and case *S.A.S. case v. France*, application no. 43835/11, Judgment of 1 July 2014, paragraph 161.
38. Secondly, the Ombudsperson notes: *“Determining the quota (at least 30%) for each gender does not seem to represent unequal treatment between men and women,*

however in practice there have been no cases when political entities have sent for certification the lists of candidates with 50% women and 50% men. Setting the 30% criterion justifies unequal treatment because political entities meet the legal criterion to run in elections by sending the list of candidates with 30% women to the electoral lists, while the rest is left to their will, therefore in practice women continuously remain under-represented."

39. *Following this, the Ombudsperson specifies: "[...] most of the lists of political entities that have run in the general elections of 14 February 2021, were represented with 30% women and 70% men, where even then the legal criterion for gender quota was that in the lists of political entities each gender is represented with not less than 30%. In practice it is observed that women were represented by 30% while men by 70%. Whereas, it was noted that in almost all the lists of candidates of political entities, every third candidate was a woman, while the first two candidates were men." According to him : "[...] such a legal determination of at least 30% (Article 28) does not promote equality before the law, while in practice it has resulted that it has prevented women from being present on the electoral lists with equal participation with men."*
40. *Thirdly, the Ombudsperson considers: "Having regard to the definition in paragraph 1, of Article 28, which sets the minimum threshold of 30%, it is noted that this provision is contrary to the spirit of equality between the genders and contrary to the Law on Gender Equality, Article 5, paragraph 1, subparagraph 1.3, according to which it is established: '1. In order to prevent and eliminate gender discrimination and achieve gender equality, Republic of Kosovo Institutions which include bodies at all levels of legislative, executive, judicial and other public institutions shall be responsible to implement legislative and other measures including: 1.3. gender mainstreaming of all policies, documents and legislation."*
41. *In addition, the Ombudsperson specifies: "[...] considering that the Assembly of the Republic of Kosovo during the review and adoption of the contested law, has not taken into account the obligations deriving from the Law on Gender Equality, as a special law related to gender equality, considers that in this case the constitutional provisions regarding equality before the law have been violated."*
42. *The Ombudsperson referring to the Electoral Code of Belgium, namely Article 117 bis specifying that "as a model example of inclusion of gender mainstreaming in legislation, according to which: "[...] the difference between all candidates of each gender within the same list cannot be greater than one. Moreover, the same article stipulates that the first two candidates on the electoral lists cannot be of the same gender."*
43. *Fourth, Ombudsperson points out: "[...] paragraph 3 of Article 28 of the contested Law can be seen as a special measure to achieve gender equality, but the quota (at least 30%), set for the candidate lists of political entities running in elections, remains disputed because it violates equality before the law and in this case represents indirect discrimination."*
44. *In terms of limiting the rights and fundamental freedoms, Ombudsperson emphasizes that the fundamental rights and freedoms can be limited only within the meaning of Article 55 of the Constitution and hereinafter refers to the case of the Court KO131/12, with the Applicant *Shaip Muja and 11 deputies of the Assembly of the Republic of Kosovo*, Judgment, of 15 March 2013.*
45. *Regarding the latter, the Ombudsperson specifies: "[...] although the quota set out in the contested law does not constitute a limitation of the right, its presentation as a*

minimum limit of participation in the present case is not proportionate and does not reflect gender equality, and as such is not in line with the principle of non-discrimination. Also, such a determination is contrary to the legitimate aim pursued for the achievement of gender equality, as required by the Constitution 'The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of society, equal opportunities for participation of women and men in political, economic, social, cultural and other areas of social life. In addition, such a determination violates the essence of the guaranteed right, which in this case is the right to be elected, the right to participate and the right to equality before the law.'

46. Finally, the Ombudsperson requests the Court to assess whether Article 28 (Gender Quota) of the contested Law is compatible with Articles 7 [Values], 24 [Equality Before the Law] and paragraph 1 of Article 45 [Freedom of Election and Participation] of the Constitution.

Comments submitted by the Parliamentary Group of VETEVENDOSJE! submitted to the Court on 24 February 2024

47. Based on comments made by Ms. Saranda Bogujveci, on behalf of the Parliamentary Group of the VETEVENDOSJE! Movement to the referral of the Ombudsperson, the same are related to (i) the claims of the Ombudsperson for the procedure of adoption of the contested Law; and (ii) the claims regarding the constitutionality of Article 28 of the contested Law.
48. First, regarding the adoption and publication of the contested Law, the Parliamentary Group of the VETEVENDOSJE! Movement emphasized that: *“Regarding the review and adoption of Law no. 08/L-228 on the General Elections, the Assembly of Kosovo decided to shorten the deadlines for each phase, starting from the deadline for submitting amendments, the review of the draft law and amendments by the Responsible-Reporting Committee, the review of the draft law and the report with amendments by the Standing Committees, the submission of the report with recommendations by the Responsible-Reporting Committee and the second review of the draft law in plenary session. Despite the above, the procedural issues of the Assembly are not a constitutional issue. On this issue are a series of decisions of the Constitutional Court that clarify that the regulation and internal actions of the Assembly are a matter for the Assembly itself. Above all, the deputies have their full constitutional right to decide on the agenda of the Assembly session, the order and deadlines for reviewing the draft laws.”*
49. Parliamentary Group of the VETEVENDOSJE! Movement referred to the cases KI45/20 and KI46/20 (with Applicants *Tinka Kurti and Drita Millaku*, Judgment, of 26 March 2021) of the Court, through which in its paragraph 142 it was noted that: *“the Court also clarifies the fact that although Article 6.8 of the Law on Gender Equality provides that: ‘Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies.’”*
50. According to the Parliamentary Group of VETEVENDOSJE! MOVEMENT *“The Assembly as a legislator has not formulated this percentage as a mandatory legal quota but has formulated it rather in the form of a constitutional, legal and factual ideal that the democratic society of the Republic of Kosovo should achieve and that only after its achievement the true factual equality is ensured. Thus, the 50% regulated in Article 6.8 of the Law on Gender Equality is not a legal quota for mandatory representation as is the 30% regulated in Article 27 of the Law on General Elections which specifically presents the obligation: ‘In each political entity’s candidate list, at*

least thirty percent (30%) shall be male and at least thirty (30%) per cent shall be female [...]."

51. Regarding indirect discrimination in the context of Articles 7 and 24 of the Constitution, the Parliamentary Group of the VETËVENDOSJE Movement! emphasized that: *"It is precisely as a result of paragraph 3 of Article 24 in conjunction with Article 7 of the Constitution that the Law by the contested Article sets out the minimum quota of gender inclusion on the candidate lists of political entities, without limiting in any way the possibility of exceeding the quota. Moreover, paragraph 3 of the contested article not only does not constitute indirect discrimination, as the Applicant claims, but it aims precisely to stimulate, in addition to the legal minimum of gender inclusion in the lists, the inclusion and election of women deputies beyond the 30% threshold. The claim of the Applicant - the Ombudsperson, furthermore the generalized finding that "paragraph 3 of Article 28 of the contested Law [...] remains disputed due to the fact that it violates equality before the law and in this case presents indirect discrimination." Without any reasoning or reasoned interpretation, it is unfounded, unfair, irresponsible, consequently invalid."*
52. Regarding the margin of appreciation of the legislator in setting the gender quota, the Parliamentary Group of the VETËVENDOSJE! Movement referring again to paragraph 143 of the Judgment in cases KI45/20 and KI 46/20 of the Court, through which it was assessed that: *"Although the constitutional ideal and spirit of the Constitution reflected in Article 7 aim at achieving 50% to 50% de facto equality between the two genders, the Constitutional Court is aware that it is not within its competence to set new public policies, nor to assess whether a public policy to date is good or appropriate. It is also not up to the Court to re-establish new legal quotas or increase the percentage of legal gender representation quotas in favor of either gender. The legislators of the Republic of Kosovo are the ones who have set the 30% quota as the only applicable legal quota, which should be maintained in any circumstance until the competent authorities decide to make legal changes in this regard, if they deem it necessary. It is also the legislators who have set 50% as the constitutional ideal of equal gender representation, emphasizing that equal gender representation is achieved only when 50-50 representation is provided for each gender."*
53. Regarding the claim of the Applicant that the gender quota should be set at 50% for both genders, the Parliamentary Group of VETËVENDOSJE Movement! counter-argue: *"First, the maximum 50-50 quota for electoral lists, as requested by the Applicant, is an extreme that is outside the European norm and, second, the 30% quota, as foreseen in the Law with the contested article, is fully consistent with the average of the states of Europe. Furthermore, it should be noted that, according to European experience, although gender quotas are an effective tool for increasing the presence of women in political bodies, they do not automatically result in an equal representation of women and men. Gender quotas aim to improve gender balance in politics. They determine the minimum percentages of women candidates for election, usually on party lists. Thus, in order to increase the efficiency of the implementation of the gender quota, there may also be provisions for ranking in the list. This action is part of the Law with the contested article. The Constitutional Court of the Republic of Kosovo, in Judgments in cases KI45/20 and KI46/20, states that: The purpose of setting quotas, as further analysis will show, is related to the need to advance gender equality within a society until factual equality is achieved when quotas become unnecessary. The Applicant, while it may not be enough with the minimum guarantee of 30% for each gender and, this is legitimate in the general field of commitment to the ideal of full gender equality, it does not offer any credible constitutional or legal, or even theoretical, argument on how setting the minimum quota is an obstacle to achieving the ideal representation of gender equality."*

54. Parliamentary Group of the VETËVENDOSJE! Movement emphasize that Article 28 of the Law challenged by the Applicant cannot be understood in isolation but must be understood in interdependence with paragraph 6 of Article 111 (Distribution of Seats) of the Law on General Elections and in this context add: *“Taking this into account, the contested Article 28 of the contested Law, paragraph 1, cannot be seen as an isolated provision, on the contrary it is a provision interdependent with Article 111, paragraph 6 of the Law with the contested Article. However, the Applicant, handling the contested article, paragraph 1 as unrelated to Article 111, paragraph 6 of the Law, with or without knowledge, distorts the substance of the content of the legal regulation of gender quota for the Assembly of Kosovo. Moreover, apart from offering no relevant argument on how the gender quota harms the under-represented gender, the Applicant’s intent is not entirely clear. It is not clear why the minimum quota of 30% of the underrepresented gender in the Assembly of the Republic of Kosovo is contested. On the one hand, the Applicant does not explain how this minimum gender representation quota set out in Article 111 paragraph 6 may be applied without the contested Article paragraph 1. On the other hand, the Applicant does not clarify the logical objection, that if the minimum gender quota of 30% for each gender in the contested article, paragraph 1 is contrary to the Constitution, how is it not then contrary to the same Constitution and regulation in content and with the same purpose, defined in Article 111, paragraph 6 of the Law.”*
55. Parliamentary Group of the VETËVENDOSJE! Movement referring to paragraphs 142 and 143 of Judgment of cases KI45/20 and KI46/20 of the Court, highlights the latter's finding regarding the character of the minimum 50% quota provided by the Law on Gender Equality: *“Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies.”* The Assembly as a legislator has not formulated this percentage as a mandatory legal quota but has formulated it more in the form of a constitutional, legal and factual ideal that the democratic society of the Republic of Kosovo must achieve and that only after its achievement true factual equality is ensured. Thus, the 50% regulated in Article 6.8 of the Law on Gender Equality is not a legal quota for mandatory representation as is the 30% regulated in Article 27 of the Law on General Elections which specifically presents the obligation: *“In each Political Entity’s candidate list, at least thirty (30%) percent shall be male and at least thirty (30%) percent shall be female [...]”*
56. In this context, the Parliamentary Group of VETËVENDOSJE! Movement add: *“From the above mentioned in this letter, it is evident that the Applicant’s claim that the contested Article 28 of the Law is contradictory is completely ungrounded. On the contrary, this article constitutes a necessary condition for the implementation of Article 111, paragraph 1, for the allocation of seats in the Assembly of the Republic of Kosovo, guaranteeing a minimum representation of 30% of each gender. If the Applicant claims that the minimum limit of 30% for each gender is insufficient, then this is not a constitutional issue, because it falls within the scope of drafting and designing public policies.”*
57. Parliamentary Group of the VETËVENDOSJE! Movement claim that the Applicant has “misunderstood” the 30% gender quota and stress: *“The Applicant, in an unfounded and completely prejudicial manner, in fact finds that 30% is not the minimum but the maximum allowed. In other words, the Applicant foresees, on the basis of previous conduct of political entities and on the basis of a repealed law, that the minimum representation of 30% of women, as an affirmative legal provision for inclusion in the electoral lists, will be the maximum representation in these lists. According to the*

Applicant, the minimum of 30% is the maximum inclusion of women in the electoral lists. Thus, the contested article of the Law fully fulfils the premises of Article 24, paragraph 3 of the Constitution, due to the fact that 30%, as a minimum threshold is an affirmative provision, represents the most meaningful measure to achieve equal representation of women and men in the electoral lists and in the Assembly of Kosovo. (See paragraphs 54 and 57, in conjunction with paragraphs 3, 26 and 40 of Judgment of the Constitutional Court of Kosovo KO13/15 of 2015)."

58. In this regard, the Parliamentary Group of the VETËVENDOSJE! Movement further claims: *"What can be argued with precision is that the minimum threshold does not stop, but on the contrary, it encourages parties to increase the level of representation of women in electoral lists and in the Assembly, according to the conditions and opportunities offered by the demographic, social, economic and political factors of a country. Therefore, the Applicant, in argumentative terms, has failed to explain why the contested article of the Law is contrary to the principle of equality before the law and to any "serious situation of discrimination" (see paragraph 61, Case KO 13/15 of the Constitutional Court)."*
59. In the context of equality before the law, the Parliamentary Group of the VETËVENDOSJE! Movement emphasizes: *"Another aspect of fulfilling the premises of Article 24 of the Constitution is defined in prohibiting the limitation of the maximum threshold of gender representation of men and women. Therefore, women, according to the legislation in force, have the full right to find their representation in the electoral lists and in the Assembly, starting from the minimum threshold of 30% or more. In this regard, the Constitutional Court in case KO13/15, paragraph 59, affirms this principle, pointing out that "Also, the Constitutional Council of France, in a decision of 1982, rejected as unconstitutional a proposal to limit the maximum percentage of either sex on the lists of candidates in municipal elections to 75 per cent. The Council considered that quotas were contrary to the constitutional principles of equality and universality which prohibited any division into categories of the electors and of the people to be elected."*
60. Regarding the claim of the Applicant related to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, the Parliamentary Group of VETËVENDOSJE! Movement replicate: *"Article 55 of the Constitution stipulates rightly and correctly that there can be no question of proportionality without restriction. Therefore, in order to express the principle of proportionality, there must be a restriction of a fundamental freedom or right. The Applicant points out that the gender quota does not represent a restriction but is disproportionate, while Article 55 states that the restriction of fundamental freedoms and rights can be done by law but must be proportionate. So, the principle of proportionality finds its existence in the limitation."*
61. Regarding Article 45 of the Constitution in the context of the 30% gender quota, the Parliamentary Group of VETËVENDOSJE! Movement emphasizes: *"The Gender Quota of 30% as a minimum threshold is not a criterion that violates the right to be elected neither under the Constitution nor under the contested article of the Law. On the contrary, the contested article, as an affirmative provision, further facilitates the right to be elected for women in representative bodies. In this way, the premises of Article 45 of the Constitution are fulfilled, which constitutionally and legally guarantees the right to be elected and the guarantee of the minimum threshold as an affirmative measure, which fully gives meaning and harmonizes the contested article with Article 45 of the Constitution. Thus, no article of the Law, including the contested article, provides for any limitation on the candidacy of women in the electoral lists of political parties. Moreover, in paragraph 1 of the contested article, in addition to setting the*

representation quota of at least 30% for each gender, it has also expressly defined the manner of ranking candidates in the lists of candidates for general and local elections.”

62. Parliamentary Group of the VETËVENDOSJE! Movement affirm that the Constitution but also the international agreements and instruments provided for in Article 22 of the Constitution do not define a gender quota and add: *“The conventions presented in Article 22 of the Constitution of the Republic of Kosovo do not include in any article or in any additional protocol the prohibition of the minimum gender quota, let alone the 30% quota. The latter do not define either the maximum quota in the cases of electoral lists or in any other case. There is no provision in them that encourages member states to impose maximum gender quotas on electoral lists. Therefore, the Constitution of Kosovo, drafted in contemporary times, which guarantees gender equality, has not included in any provision the definition of gender quota as either minimum or maximum. Because it is widely known and accepted that the ideal of equality is helped but not guaranteed by quotas. In this sense, the Constitutional Court, in case KO13/15, paragraphs 45 and 53, states that “The abovementioned constitutional safeguards of gender equality are in line with many constitutions of democratic countries and international instruments and recommendations, and as seen from the above references, the Constitution of the Republic of Kosovo equally contains the internationally recognized safeguards for gender equality.”*
63. Regarding the referral of the Applicant in general, the Parliamentary Group of the VETËVENDOSJE! Movement claim: *“Therefore, if the Applicant’s logic were followed, then, if the same principle was followed, according to the referral of the Applicant, the concrete non-discrimination, within the meaning of the Applicant, would have to be followed by the election of representatives of both genders 50% to 50%, for each post and for each institution in the Republic of Kosovo, now and immediately. But the Applicant is not asking questions about other public bodies, but only about political parties and their electoral lists. These questions of the Applicant have nothing to do with representation in the Assembly, but with lists of political parties. Because the election result, regardless of what quota is decided, depends on the popular vote, which is also the constitutional institution that decides how many women and how many men it will send to the Assembly.”*
64. The Parliamentary Group of the VETËVENDOSJE! Movement conclude: (i) We consider that the Applicant’s questions and allegations are ungrounded; (ii) Contested Article 28 of Law no. 08/L - 228 on the General Elections in the Republic of Kosovo, contested by the Applicant - Ombudsperson, is compatible with the Constitution.

I. RELEVANT PROVISIONS OF THE CONSTITUTION

Article 3 [Equality Before the Law]

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

2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.

Article 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.*

2. *The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.*

Article 24 **[Equality Before the Law]**

1. *All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*

2. *No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*

3. *Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*

Article 45 **[Freedom of Election and Participation]**

“1. *Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.*

2. *The vote is personal, equal, free and secret.*

3. *State institutions support the possibility of every person to participate in public activities and everyone’s right to democratically influence decisions of public bodies.”*

II. Relevant provisions of Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and European Convention on Human Rights

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 21

“1. *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*

2. *Everyone has the right of equal access to public service in his country.*

3. *The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”*

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 25

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.”

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 14

(Prohibition of discrimination)

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Protocol no. 1 on European Convention on Human Rights

Article 3

(Right to free elections)

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

III. Relevant provisions of the legislation in force

LAW No. 05/L -020 ON GENDER EQUALITY

Article 5

General measures to prevent gender discrimination and ensure gender equality

[...]

2. Any provision which is in contradiction to the principle of equal treatment under this Law shall be repealed.

Article 6

Special measures

“1. Public institutions shall take temporary special measures in order to accelerate the realization of actual equality between women and men in areas where inequities exist.

2. Special measures could include:

2.1. quotas to achieve equal representation of women and men;

[...]

8. Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies.”

Article 13 Ombudsperson

“Ombudsperson is an equality institution that handles cases related to gender discrimination, in accordance with procedures established by the Law on Ombudsperson.”

LAW No. 05/L-021 ON THE PROTECTION FROM DISCRIMINATION

Article 6 Other justified treatments

Notwithstanding Articles 3 and 4 of this law it is not deemed a discrimination a distinction in treatment which is based on differences provided on grounds of Article 1 of this Law, but which as such represents real and determinant characteristic upon employment, either because of the nature of professional activities or of the context in which such professional works are conducted, if that provision, criterion or practice is justified by a legitimate purpose and there is a reasonable relationship of proportionality between the means employed and the targeted aim.

RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

(published in the Official Gazette on 9 August 2022)

CHAPTER XX TRANSPARENCY OF THE ASSEMBLY

Article 123 Avoidance of the Rules of Procedure

- “1. Upon the proposal of at least six (6) MPs, the Assembly decides with 2/3 of the present MPs to avoid the procedural deadlines of the Rules of Procedure.
2. Avoidance can be done when it is not in conflict with the provisions of the Constitution of the Republic of Kosovo.”

IV. Contested and relevant provisions of Law no. 08/L-228 on General Elections in the Republic of Kosovo

Article 28 Gender Quota

“1. In each political entity’s candidate list, at least thirty percent (30%) shall be male and at least thirty (30%) per cent shall be female, with one candidate from each gender included at least once in each group of three candidates, counting from the first candidate in the list.

2. This provision has no application to lists consisting of one or two candidates.

3. *The CEC shall allocate additional public funds, in the amount of one percent (1%) of the total amount allocated to the political entity, for each mandate won by women over the thirty percent (30%) quota at the time of certification. The CEC plans an additional budget for this purpose after every elections.*”

Article 111 Distribution of Seats

“[...]”

4. *All the votes received by the candidates who are on the open list of the political subject are counted separately. The candidate lists shall be reordered in descending order based on the number of votes received for each candidate.*

5. *The seats allocated to a Political Entity in paragraph 2 of this Article shall be distributed to the candidates on the Political Entity’s candidate list as reordered in paragraph 4 of this Article, starting from the first candidate on the list in descending order, until the number of seats allocated to the Political Entity is exhausted, regardless to the number of votes of candidates. Additional seats allocated to Political Entities representing the Kosovo Serb community and other nonmajority communities as in paragraph 3 of this Article shall be distributed to the subsequent candidates on the Political Entity’s candidate list reordered as in paragraph 4 of this Article.*

6. *If, after the allocation of seats as set out in paragraph 5 of this Article, the candidates of the minority gender within a Political Entity have not been allocated at least thirty percent (30%) of the total seats for that Political Entity, the last elected candidate of the majority gender will be replaced by the next candidate of the opposite gender on the reordered candidate list until the total number of seats allocated to the minority gender is at least thirty percent (30%). This paragraph does not apply to the allocation of seats from a list consisting of one (1) or two (2) candidates.*

7. *No person who is a member of another elected legislative body may take a seat in the Assembly. An Assembly member who is or becomes a member of another elected legislative body after he takes up his or her seat in the Assembly, shall forfeit his or her mandate in the Assembly.*

8. *A person whose mandate is forfeited under this article shall be replaced in accordance with the provisions of Article 112 of this law.”*

Article 112 Replacement of Assembly Members

“1. *Seats allocated in accordance with the present Law are held personally by the elected candidate and not by the Political Entity. A member’s mandate may not be altered or terminated before the expiry of the mandate except by reason of:*

1.1. *the conviction of the member for a criminal offence for which he or she is sentenced to prison term as provided by the Article 70 paragraph 3 sub-paragraph (6) of the Constitution;*

1.2. *the failure of the member to attend for six (6) consecutive months a session of the Assembly or the Committee(s) of which he or she is a member, unless convincing cause is shown as per Rules of Procedure of the Assembly;*

1.3. *the member’s forfeiture of his or her mandate under Article 30 of this Law;*

1.4. *the death of the member;*

1.5. *mental or physical incapacity as determined by final Court decision; or*

1.6. *the resignation of the member.*

2. *A member of the Kosovo Assembly the term of which ceases pursuant to paragraph 1 of this Article shall be replaced as follows:*

2.1. *by the next eligible candidate of the same gender who won the greatest number of votes of the reordered candidate list of the Political Entity on whose behalf the member contested the last election if in such a case the guarantee of the mandatory minimum representation of the underrepresented gender is not violated, in the quota of thirty percent (30%) of the political entity.*

2.2. *only if there are no other eligible candidates regardless to his/her votes on the candidate list, by the next eligible candidate on the candidate list of the political entity that has had the largest quotient of votes under the formula set out in Article 111 paragraph 4 of this Law in the most recent election of the same type; and*

2.3. *if the member is an independent candidate, by the next eligible candidate on the candidate list of the Political Entity that had the next largest quotient of votes under the formula set out in Article 111 paragraph 4 of this Law.*

3. *Upon a seat becoming vacant, the Speaker of the Assembly shall make a request in writing to the President for the vacancy to be filled. Such request shall include an explanation as to how the vacancy arose.*

4. *Upon receipt of a request under paragraph 3 of this Article, President shall, if the explanation provided is satisfactory, request the CEC to recommend the name of a person to fill the vacancy. The CEC shall, within five (5) working days of being requested to do so, provide the President with the name of the next eligible candidate under paragraph 2 of this Article.”*

V. Relevant documents of international organizations

A. At the United Nations level

Resolution [1706 \(2010\)](#) on increasing women’s representation in politics through the electoral system adopted by Parliamentary Assembly on 27 January 2010;

Resolution [2111 \(2016\)](#) on Assessing the impact of measures to improve women’s political representation adopted by Parliamentary Assembly on 21 April 2016;

Guidelines for States on the effective implementation of the right to participate in public affairs, Report of the Office of the United Nations High Commissioner for Human Rights (20 July 2018)

B. At the Council of Europe level

(i) Recommendations

Recommendation Rec (2003) 3 on Balanced participation of women and men in political and public decision-making, adopted by the Committee of Ministers of the Council of Europe on 12 March 2003 and explanatory memorandum

(ii) Opinions and reports of the Venice Commission

Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report [[CDL-AD \(2002\) 23 rev](#)] - Adopted by the Venice Commission on 5-6 July and 18-19 October 2002;

Report on the impact of electoral systems on women's representation in politics Adopted by the Council for Democratic Elections on 14 March 2009 and the Venice Commission, on 12-13 June 2009;

Guidelines [CDL-AD\(2010\)24](#) on political party regulation, by OSCE/ODIHR and Venice Commission, adopted at its 84th Plenary Session, on 15-16 October 2010;

Report on electoral law and electoral administration in Europe [CDL-AD\(2020\)023](#)], adopted by Venice Commission, on 8-9 October 2020.

Assessment of the admissibility of the Referral

65. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution and specified by the Law and foreseen by the Rules of Procedure.
66. In this regard, the Court refers to the relevant provisions of the Constitution, the Law and the Rules of Procedure, according to which the Ombudsperson may appear as an Applicant before this Court:

Constitution of the Republic of Kosovo

**Article 113
[Jurisdiction and Authorized Parties]**

"[...]

2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister and of regulations of the Government;

[...]."

**Article 135
[Ombudsperson Reporting]**

"[...]

4. The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution."

Law on the Constitutional Court

**Article 29
(Accuracy of the Referral)**

“ 1 . A referral pursuant to Article 113, Paragraph 2 of the Constitution, shall be filed by either one fourth (¼) of the deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo, the Government or the Ombudsperson.

2. A referral that a contested act by virtue of Article 113, Paragraph 2 of the Constitution shall indicate, inter alia, whether the full content of the challenged act or certain parts of the said act are deemed to be incompatible with the Constitution.

3. A referral shall specify the objections put forward against the constitutionality of the contested act.”

The Rules of Procedure of the Constitutional Court

**Rule 65
(Referral Pursuant to Sub-paragraphs 1 and 2 of Paragraph 2 of Article 113 of the Constitution and Articles 29 and 30 of the Law)**

“(1) A referral filed under this Rule must fulfil the criteria established in subparagraphs (1) and (2) of paragraph (2) of Article 113 of the Constitution and Articles 29 (Accuracy of the Referral) and 30 (Deadlines) of the Law.

(2) When filling a referral pursuant to paragraph (2) of Article 113 of the Constitution, the authorized party shall indicate, inter alia, whether the full content of the challenged act or certain parts thereof and what parts of that act are deemed to be incompatible with the Constitution.

(3) The authorized party shall specify in the referral objections regarding the constitutionality of the challenged act.

(4) The referral under this Rule must be filed within a period of six (6) months from the day of entry into force of the challenged act.”

67. The Court will further assess (i) whether the referral has been submitted by the authorized party, as stipulated in subparagraph (1) of paragraph (2) of Article 113 of the Constitution and paragraph 1 of Article 29 of the Law; (ii) the nature of the contested act; (iii) the accuracy of the referral, as required by paragraphs 2 and 3 of Article 29 of the Law and sub-rule 2 and 3 of Rule 65 of the Rules of Procedure; and (iv) whether the referral has been submitted within the six (6) month deadline, after the entry into force of the contested act, as established in Article 30 of the Law and sub-rule 4 of Rule 65 of the Rules of Procedure.

(i) Regarding the authorized party and the contested act

68. The Ombudsperson based on Article 113.2 (1) of the Constitution is authorized to refer to the Court the issue of compatibility with the Constitution of (i) laws; (ii) Presidential decrees; (iii) Prime Minister decrees; and (iv) Government regulations. Article 29 of the Law specifies that the Ombudsperson is an authorized party before the Court and Rule 65 of the Rules of Procedure is invoked in the respective articles cited above of the Constitution and the Law.

69. In the context of the circumstances of the present case, the Court notes that the Ombudsperson, in the capacity of the Applicant, challenges before the Court the constitutionality of Article 28 of Law no. 08/L-228 on General Elections in the Republic of Kosovo, respectively a “law” adopted by the Assembly.
70. Accordingly, the Court finds that before it is a referral submitted by the Ombudsperson, which based on the abovementioned articles of the Constitution, Law and Rules of Procedure, is a party authorized to refer before the Court, *inter alia*, the issue of compliance of “laws” with the Constitution. Consequently, the Ombudsperson is an authorized party and challenges an act for which he has constitutional authority to challenge.

(ii) Regarding the accuracy of the referral and the specification of objections

71. The Court recalls that Article 29 of the Law and Rule 65 of the Rules of Procedure stipulate that the referral filed in the context of Article 113. 2 (1) of the Constitution specify (i) whether the whole contested act or particular parts of this act are considered to be contrary to the Constitution; and (ii) specify the claims raised against the constitutionality of the contested act.
72. The Court notes that Ombudsperson challenges the constitutionality of Article 28 (Gender Quota) of the contested Law claiming that it is not in compliance with articles 7 [Values], 24 [Equality Before the Law] and paragraph 1 of Article 45 [Freedom of Election and Participation] of the Constitution.
73. Based on the above, the Court finds that the Applicant in the proceedings before the Court specifically challenged the constitutionality of the specific article of the contested Law.

(iii) regarding the time limit

74. The Court recalls that Article 30 (Deadlines) of the Law and Rule 65 (4) of the Rules of Procedure stipulate that the referral referred under Article 113.2 (1) of the Constitution must be filed within six (6) months after the entry into force of the contested act.
75. In this context, the Court notes that the Law on General Elections entered into force on 18 July 2023, while it was challenged in the Court on 16 January 2024, and consequently, it was submitted to the Court within the deadline provided by the aforementioned provisions.

(iv) Conclusion on the admissibility of the referral

76. The Court finds that the Applicant: (i) is an authorized party; (ii) challenges a law of the Assembly; (iii) has specified that he challenges the constitutionality of the specific provision of the contested Law; (iv) submitted claims against the specific provision of the contested Law; (v) has submitted a referral for constitutional review of the specific provision of the contested Law within the time limit set by the Law.
77. Therefore, the Court declares the Referral admissible and will now examine its merits.

Merits of the referral

I. INTRODUCTION

78. The Court recalls that the Applicant, namely the Ombudsperson, in his referral (i) challenges the procedure of adoption of the Law on General Elections, namely the procedure of avoidance from the Rules of Procedure of the Assembly, as defined by Article 123 (Avoidance of the Rules of Procedure) of this Rules and (ii) challenges the constitutionality of Article 28 (Gender Quota) of the Law on General Elections. More specifically, the Ombudsperson claims that Article 28 (Gender Quota) of the Law on General Elections is contrary to Articles 7 [Values], 24 [Equality Before the Law] and paragraph 1 of Article 45 [Freedom of Election and Participation] of the Constitution.
79. Regarding the former, the Court recalls that the Ombudsperson emphasizes that the Law on General Elections was adopted by the Assembly in an expedited procedure as defined by Article 123 (Avoidance of the Rules of Procedure) of the Rules of the Assembly, which prevented him from "*active participation*" in providing comments regarding this law. According to the Ombudsperson, the adoption of laws should be transparent, accountable and democratic, elements of "*legality*" and the "*principle of the rule of law*".
80. While regarding his request for constitutional review of Article 28 (Gender Quota) of the Law on General Elections, the Ombudsperson essentially claims that Article 28 (Gender Quota) of the Law on General Elections is contrary to Articles 7 [Values] and 24 [Equality Before the Law] of the Constitution, as well as paragraph 1 of Article 45 [Freedom of Election and Participation]. Specifically, the Ombudsperson emphasizes that (i) the setting by law of a quota of 30% for each gender constitutes unjustified prejudice; (ii) in electoral practice "*it has not happened that political entities have sent for certification lists of candidates with 50% males and females*"; and, that (iii) Article 28 (Gender Quota) of the Law on General Elections, which sets the minimum threshold of 30%, also contradicts the gender equality spirit provided by Article 1.3 of paragraph 1 of Article 5 (General measures to prevent gender discrimination and ensure gender equality), paragraph 1, sub-paragraph 1.3 of Law no. 05/L -020 on Gender Equality (hereinafter: the Law on Gender Equality).
81. The above claims of the Ombudsperson are counterargued by the Parliamentary Group of VETĚVENDOSJE! Movement, which, in the sense of the procedure of adoption of the Law on General Elections, specify that the procedure of adoption of this law is based on the Rules of Procedure of the Assembly, and the same does not raise constitutional issues, while in the sense of the Ombudsperson's claim of non-compliance of Article 28 of the Law on General Elections with the Constitution, the the Parliamentary Group of VETĚVENDOSJE! specify that: (i) the Ombudsperson's claims are ungrounded; and that (ii) Article 28 (Gender Quota) of the Law on General Elections is in compliance with the Constitution, in essence, because this provision determines the legal quota of representation in electoral lists. In the sense of the latter, the Parliamentary Group of VETĚVENDOSJE! specifies that the setting of a thirty percent (30%) quota in the electoral lists (i) is a legal quota, while the definitions of the Law on Gender Equality are a constitutional ideal; (ii) the latter does not constitute indirect discrimination, because this minimum threshold is an affirmative measure aimed at maintaining gender balance in politics; and (iv) it does not infringes upon the right to elect, guaranteed by Article 45 of the Constitution.
82. Regarding the claim of the Ombudsperson related to his request for constitutional review of Article 28 of the Law on General Elections, the Court notes that the essence of the issue raised by the Ombudsperson refers to the aspect of determining the minimum quota of 30% in the electoral lists. Having said this, this definition in Article 28 of the Law on General Elections, as an affirmative measure, relates to the principles established by Article 7 [Values] of the Constitution and the "*right to be elected*" guaranteed by Article 45 of the Constitution, in conjunction with Article 3 of Protocol no. 1 of the European Convention on Human Rights (hereinafter: ECHR).

II. Regarding the allegations related to the procedure of adoption of the Law on General Elections

83. The Court notes that the Assembly, on 8 June 2023, based on paragraph 1 of Article 65 [Competencies of the Assembly] and Article 123 (Avoidance of the Rules of Procedure) of the Rules of the Assembly, by Decision (No.-08-V-539) established that:

"1 . Review of the Draft Law no. 08/L-228 for the General Elections in the Republic of Kosovo, is conducted by an expedited procedure-avoidance of the procedural deadlines provided by Article 34 paragraph 4, Article 52 paragraph 1 and Article 76, paragraphs 3 and 8 of the Rules of Procedure of the Assembly."

84. The Rules of Procedure of the Assembly, in its Article 123 (Avoidance of the Rules of Procedure), stipulates that upon the proposal of at least six (6) deputies, the Assembly decides by 2/3 (two-thirds) of the deputies present to avoid the procedural deadlines of the Rules of Procedure when such decision-making does not contradict the provisions of the Constitution. Based on this provision, the procedure by which the Law on General Elections was adopted has also been conducted. More specifically, the Court recalls that (i) the legislative initiative for the approval of the Draft Law was taken on 19 April 2023; (ii) the Draft Law was served on the deputies of the Assembly on 12 May 2023; (iii) on 16 May 2023, the Functional Committee on Legislation recommended to the Assembly in principle the adoption of the Draft Law no. 08/L-228 on General Elections in the Republic of Kosovo; (iv) the Assembly adopted the contested Law at first reading on 8 June 2023; (v) before the second reading procedure, namely on 8 June 2023, the Assembly, based on Article 123 of the Rules of Procedure, decided to avoid the procedural deadlines of the Rules of Procedure; (vi) the report of the Functional Committee of the Assembly, of 8 June 2023, contained twenty (20) proposed amendments to the Draft Law no. 08/L-228 on General Elections in the Republic of Kosovo, while (vii) on the same day, at 16:30, on 8 June 2023, was held the plenary session of the Assembly, in which the Law on General Elections in the second reading procedure was adopted.
85. The Court notes that in order to avoid the procedural deadlines of the Rules of Procedure of the Assembly, only the proposal of six (6) deputies of the Assembly and the vote of 2/3 (two-thirds) of the deputies of the Assembly present and voting are required.
86. In this context, the Court recalls that based on Article 76 [Rules of Procedure] of the Constitution, the Rules of Procedure of the Assembly should be adopted by 2/3 (two-thirds) of all deputies of the Assembly, while according to the same Regulation, the deviation from any of its procedural deadlines has been enabled only by a 2/3 (two-thirds) majority of deputies present and voting. Moreover, the Court points out the fact that the deputies of the Assembly themselves, through the adoption of the Rules, set procedural deadlines in the context of the law-making process in the Assembly and in the context of the circumstances related to (i) national security or/and even the declaration of a state of emergency in the Republic of Kosovo. The Court notes that, notwithstanding these provisions, the Law on General Elections, which relates to general elections in the Republic of Kosovo, has been adopted by departing from all procedural deadlines in the Assembly.
87. The Court recalls the fact that based on the Constitution, namely Articles 4 [Form of Government and Separation of Power], 63 [General Principles] and 65 [Competencies of the Assembly] thereof, the lawmaking is one of the most essential functions of the Assembly and among the most essential functions of the representatives of the people, namely the deputies of the Assembly (see, in this regard, case of the Court [KO216/22 and KO220/22](#), Applicants, KO216/22, *Isak Shabani and 10 (ten) other deputies of the*

Assembly of the Republic of Kosovo; KO220/22, Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo, Constitutional review of Articles 9, 12, 46 and 99 of Law No. 08/L-197 on Public Officials, Judgment of 2 August 2023, paragraph 210).

88. In the context of the above, the Court first underlines the fact that the exercise of legislative power is the most essential function of the Assembly as established in Articles 4 [Form of Government and Separation of Power], 63 [General Principles] and 65 [Competencies of the Assembly] of the Constitution. This same function, and insofar as it is relevant for the circumstances of the present case, is exercised in the manner established in Article 79 [Legislative Initiative] and Article 80 [Adoption of Laws] of the Constitution, while the deputies exercise their function in the best interest of the Republic of Kosovo and in accordance with the Constitution, laws and rules of procedure of the Assembly, as specified in Article 74 [Exercise of Function] of the Constitution. Moreover, the Constitution establishes a special role for the Assembly Committees, with emphasis on the law-making process. More precisely, and in this context, the latter in Article 77 [Committees] establishes the categories of committees, classifying them as permanent, operational and *ad hoc*, emphasizing the importance of their composition, including the role of non-majority communities and delegating the relevant role and procedures at the level of the Rules of Procedure of the Assembly. The Constitution establishes a special role for the Committee on Rights and Interests of Communities in its Article 78, stipulating, among other things, and as far as it is relevant for the circumstances of the present case, the possibility that: (i) at the request of any member of the Presidency of the Assembly, that any proposed law will be submitted to the Committee on Rights and Interests of Communities; and (ii) the available time of two weeks for the Committee to make recommendations regarding the proposed law if it chooses (see, *inter alia*, cases no. KO216/22 and KO220/22, cited above, paragraph 204).
89. Despite the fact that the Rules of the Assembly itself defines the avoidance of procedural deadlines, only in the context of circumstances related to national security/even the declaration of a state of emergency in the Republic of Kosovo, the Law on General Elections, which relates to general elections in the Republic of Kosovo, has been issued in avoidance of all procedural deadlines in the Assembly. However, the Ombudsperson in his referral only nominally raises the claim for an expedited procedure for the adoption of the Law on General Elections, and in this regard does not specify and provides relevant arguments on how in the procedure of adoption of this law the principles of legality and rule of law have been violated in this case.
90. Therefore, the Court should find that the procedure regarding the issuance of the contested Law has not been argued to be contrary to “*the principle of legality, as one of the primary principles of the rule of law*”, as alleged by the Applicant, guaranteed also by Articles 7 of the Constitution, in conjunction with paragraph 1 of Article 65 of the Constitution.
91. Having said that, the Court, based on its case law related to the procedure for adopting laws in the Assembly, again reiterates that the exercise of legislative power, which primary function is the legislative process, cannot be continuously reduced to the provisions of Article 123 of the Rules of the Assembly through which 2/3 (two-thirds) of the deputies present and voting may decide to circumvent all procedural deadlines of the same Rules, including the review of draft laws, as is the case in the circumstances of the present case and which define the essential principles of the state administration of the Republic of Kosovo and which are not even related to those circumstances in which the Assembly itself, by its Rules, has exceptionally defined an “*expedited procedure*” or/and an “*urgent procedure*” of law-making in cases where the relevant draft laws are

exclusively related to matters of national security, public health or emergency. The Court in this context recalls Article 74 [Exercise of Function] of the Constitution, according to which the deputies of the Assembly of Kosovo exercise their function in the best interest of the Republic of Kosovo and in accordance with this Constitution, the laws and rules of procedure of the Assembly (see, Court cases [KO216/22](#) and [KO220/22](#), cited above, paragraph 214).

III. Regarding the constitutionality of Article 28 of the contested Law

A. General Principles

(i) General principles of the Constitution and case law of the Court

92. The Court initially refers to Article 45 [Freedom of Election and Participation] of the Constitution, which stipulates:
- “1. Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.
2. The vote is personal, equal, free and secret.
3. State institutions support the possibility of every person to participate in public activities and everyone’s right to democratically influence decisions of public bodies.”*
93. With regard to electoral rights, the Court also refers to the International Instruments and Agreements contained in Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution which are directly applicable and are part of the legal order of the Republic of Kosovo (see, inter alia, case no. [KO162/18](#), Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 19 December 2018, paragraph 36 and [KI207/19](#), Applicant *Social Democratic INITIATIVE, New Kosovo Alliance and Justice Party*, cited above, paragraph 107).
94. Protocol no. 1 of the ECHR, by Article 3 (Right to free elections), stipulated: *“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”*
95. The Court, referring to its case-law, has emphasized that Article 45 of the Constitution consists of three (3) separate paragraphs, each of which has the relevant elements and rules. Namely, the first paragraph of Article 45 of the Constitution establishes the right to elect (active right of vote) and the right to be elected (passive right of vote). Furthermore, the second paragraph of Article 45 of the Constitution guarantees that the vote is personal, equal, free and secret. Moreover, they are in harmony with the five fundamental principles of the European electoral heritage summarized in the Code of Good Practice and in the relevant Explanatory Report, which include universal, equal, free, secret and direct suffrage (see, inter alia, case [KI69/21](#), applicants *Partia Liberale Egjiptiane (PLE) Partia Rome e Bashkuar e Kosovës (PREBK)*, Judgment, of 20 April 2023, paragraph 135).
96. Further, the Court notes that based on the constitutional definitions, the Republic of Kosovo is determined for a constitutional order in which gender equality constitutes one of the fundamental values. This value has a direct impact on the democratic development of society and the implementation of equal opportunities for women and men in political, economic, social, cultural and other areas of social life.

97. In this respect, the need to create equal opportunities creates for the state positive obligations for the use of various instruments and measures, including legal norms, in order to eliminate factual inequalities between women and men. In the context of ensuring gender equality, the Law on General Elections defines the gender quota of under-represented gender representation in the 30% quota. The issue of under-represented gender in the applicable legislation is called “minority gender”, without specifying which gender it is specifically, due to the fact that at different times the minority gender may be one or the other (see, cases of the Court [KI45/20](#) and [KI46/20](#) Applicant *Tinka Kurti and Drita Millaku*, Judgment of 26 March 2021, paragraph 74).
98. The Court in its case-law has considered that the meaning of the intended equality “*has another dimension, namely positive discrimination or the determination of a gender quota for the representation of women in the capacity of the underrepresented gender, which is considered to be in line with the spirit of constitutional ideals and the constitutional identity of the Republic of Kosovo. Consequently, the constitutional principles of gender equality and nondiscrimination remain crucial and that the issue of gender quotas, for historical and cultural reasons, as well as the elimination of factual inequalities between women and men, is in line with the spirit of the constitutional normative system. Finally, the concept of gender equality and non-discrimination is dynamic and evolves towards meeting the sublime ideal of equality in representation of women and men in the 50% to 50% ratio*” (see the cases of the Court [KI45/20](#) and [KI46/20](#) Applicant *Tinka Kurti and Drita Millaku*, cited above, paragraph 131).
99. With regard to Article 45 of the Constitution, the Court notes that this constitutional norm guarantees the right to elect (the active aspect of the vote) as well as the right to be elected (the passive aspect of the vote) (see, for more on these two aspects, the cases of the Constitutional Court where various issues related to Article 45 of the Constitution have been addressed: [KI01/18](#), with Applicants *Gani Dreshaj and the Alliance for the Future of Kosovo (AAK)*, Judgment of 4 February 2019 ; [KI48/18](#), Applicants *Arban Abrashi and the Democratic League of Kosovo*, Judgment of 4 February 2019). More specifically, the passive aspect of the vote that is reflected in the right to be elected, represents a specific right relevant in the present case, it belongs to the candidates as individuals, namely as natural persons, who run in the elections, at local or central level, as well as political entities, respectively legal entities running in elections, at local or central level.
100. Further, paragraph 3 of Article 45 of the Constitution stipulates: “*State institutions support the possibility of every person to participate in public activities and everyone’s right to democratically influence decisions of public bodies.*”
101. The Court also recalls that according to its case-law, in terms of electoral rights, it has stipulated “*that this measure set out in the Law on General Elections, namely the determination of the minimum representation of the minority gender to a minimum of 30%, as such is necessary in order to enable the representation of the under-represented gender in the Assembly, namely women. As such, this definition of the law on gender quotas, in principle, does not constitute a violation of the voting rights*” (see, paragraph 134 of the Judgment of the Court in cases [KI45/20](#) and [KI46/20](#), Applicant *Tinka Kurti and Drita Millaku*, cited above).
- (i) *General principles according to international documents at the level of the United Nations and the Council of Europe*
- a) *At the level of the United Nations*

102. Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) specifies that: “[a] *Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination [...]*”.
103. Based on the Guidelines issued to States on the effective implementation of the right to participate in public affairs through the Report of the Office of the United Nations High Commissioner for Human Rights, it was emphasized that states should develop an effective legal framework for the exercise of electoral rights, including with respect to the electoral system and electoral dispute mechanisms, in compliance with their international human rights obligations and through a non-discriminatory, transparent, gender-responsive and participatory process. States should take proactive measures to strengthen the equal representation and participation of women and groups that are discriminated against in electoral processes. These may, *inter alia*, prove necessary and appropriate, and include that states should introduce and effectively implement quota systems and reserved seats in elected bodies for women and underrepresented groups, after an in-depth assessment of the potential value of different kinds of temporary special measures (see, Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs, Report of the Office of the United Nations High Commissioner for Human Rights, 20 July 2018, paragraph 31).

b) At the level of the Council of Europe

104. The Court initially notes that the relevant instruments and documents relating to equal representation in political decision-making and gender quotas include but are not limited to: (i) Resolution 1706(2010) of the Parliamentary Assembly of the Council of Europe, on enhancing the representation of women in politics through the electoral system adopted on 27 January 2010; (ii) Resolution 2111 (2016) of the Parliamentary Assembly of the Council of Europe on impact assessment of measures to improve the political representation of women, adopted on 21 April 2016; (iii) Recommendation Rec (2003) 3, of the Committee of Ministers of the Council of Europe, *Balanced participation of women and men in political and public decision-making, adopted on 12 March 2003 and explanatory memorandum*; (iv) Recommendation Rec 1899 (2010) “*Increasing the representation of women in politics through the electoral system*”, adopted on 27 January 2010; and (v) the Venice Commission Code of Good Practice in Electoral Matters [CDL-AD (2002) 23 rev)], adopted on 5-6 July and its Explanatory Report, adopted on 18-19 October 2002.
105. Initially the Court notes that under Resolution 1706(2010) of the Parliamentary Assembly of the Council of Europe “*the change of the electoral system to a more favourable system for the representation of women in politics, especially with the adoption of gender quotas, may lead to more gender balanced, and thus more legitimate, political and public decision-making*” (see, paragraph 4 of Resolution 1706 (2010)).
106. Specifically, through this Resolution it is noted: “*The Assembly considers that the lack of equal representation of women and men in political and public decision making is a threat to the legitimacy of democracies and a violation of the basic human right of gender equality, and thus recommends that member states rectify this situation as a priority by: 6.3. reforming their electoral system to one more favourable to women’s representation in parliament: 6.3.1.in countries with a proportional representation list system, consider introducing a legal quota which provides not only for a high proportion of female candidates (ideally at least 40%), but also for a strict rank-order rule ..., and effective sanctions (preferably not financial, but rather the non-*

acceptance of candidacies/candidate lists) for non-compliance [...].” (see, paragraph 6 of Resolution [1706 \(2010\)](#)).

107. Subsequently, through Resolution 2111 (2016), the Parliamentary Assembly of the Council of Europe determined that (i) “*electoral quotas are the most effective means of achieving significant, rapid progress, provided that they are correctly designed and consistently implemented. Quotas should be adapted to the electoral system in force, set ambitious targets and be coupled with stringent sanctions for non-compliance.*”; and (ii) “*In the light of these considerations, the Assembly calls on the Council of Europe member and observer States [...] they should, in particular: [...] introduce applicable sanctions for non-compliance with positive measures, such as the rejection of lists of candidates.*” (see, paragraphs 2 and 15 of Resolution [2111 \(2016\)](#)).
108. While in the Recommendation Rec (2003) 3, of the Committee of Ministers of the Council of Europe, it is specified that “*balanced participation of women and men in political and public decision making is a matter of the full enjoyment of human rights, of social justice and a necessary condition for the better functioning of a democratic society*” (see, the preamble of Recommendation [Rec \(2003\) 3](#)).
109. Recommendation Rec 1899(2010) on increasing the representation of women in politics through the electoral system encourages Council of Europe member states to increase the representation of women by establishing quotas. According to this Recommendation “*in countries with a proportional representation list system, consider introducing a mandatory quota which provides not only for a high proportion of female candidates (ideally at least 40%), but also for strict rank-order rule, for example, a “zipper” system of alternating male/female candidates, or that each group of three candidates on the list (1-3, 4-6, 7-9, etc.) consists of at least one candidate of the underrepresented gender. With ranking rules like these, female candidates do not risk being placed too low on the list to have a real chance of being elected. Countries with majority or pluralistic systems are encouraged to present the principle of each party choosing a candidate between at least one female and one male candidate in each party district or to find other ways to ensure increased representation of women in politics. Where quotas are mandated, there are concerns that these quotas will essentially create a ceiling for gender advancement by requiring parties to retain women in low-level countries to ensure compliance* (see, paragraphs 2.1.1 and 2.1.2 of Recommendation 1899(2010)).
110. In addition, the Court also refers to the Code of Good Practice in Electoral Matters, through which in its point 2.5 (Gender Equality) it is determined that: “*Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis*”; while its paragraph 25 specifies that: “*Moreover, the scope of these rules depends on the electoral system. In a fixed party list system, parity is imposed if the number of men and women who are eligible is the same. However, if preferential voting or cross-voting is possible, voters will not necessarily choose candidates from both sexes, and this may result in an unbalanced composition of the elected body, chosen by voters*” see, Code of Good Practice on Electoral Matters (see, Guidelines and Explanatory Report) (CDL-AD (2002) 23 rev), adopted by the European Commission for Democracy Through Law (“Venice Commission”) at its 51st and 52nd meeting and its Explanatory Report (5-6 July and 18-19 October 2002).

(ii) *Relevant reports and opinions of the Venice Commission*

111. In the following, and in the specific context of gender quotas in lists of political parties, the Court will refer to: (i) the Declaration on Women’s Participation in Elections,

- adopted by the Venice Commission on 9-10 June 2006; (ii) the Report [CDL-AD (2009)029] on the impact of electoral systems on the representation of women in politics, adopted by the Council for Democratic Elections on 14 March 2009 and the Venice Commission adopted on 12-13 June 2009; (iii) the Report [CDL-AD(2020)023] on electoral law and election administration in Europe, adopted on 8-9 October 2020; and (iv) the CDL-AD Guidelines [AD\(2010\)24](#) on the regulation of political parties, approved by the OSCE/ODIHR and the Venice Commission adopted on 15-16 October 2010.
112. The Venice Commission emphasized *“the obligation to ensure a composition of the candidates’ lists alternating men and women”* (see, *inter alia*, the Declaration on Women’s Participation in Elections [(CDL-AD(2006)020), adopted by the Venice Commission on 9-10 June 2006).
 113. According to the Report of the Council for Democratic Elections and the Venice Commission on the impact of electoral systems on the representation of women in politics, it is specified that gender quotas aimed at improving gender balance in politics in principle determine the minimum percentages of female candidates for elections on party lists. In addition, there may be provisions for listing. Gender quotas may be legally established (*“legal quotas”*, *“mandatory quotas”* or *“compulsory quotas”*) or they may be voluntarily approved by political parties (*“voluntary quota”* or *“party quota”*). Legal quotas are mandatory for all parties that submit candidates to parliament, while party quotas have only a self-binding character for the respective party. Both types of quotas can play an important role in the electoral process (see, Report on the Impact of Electoral Systems on the Representation of Women in Politics, adopted by the Council for Democratic Elections on 14 March 2009 and the Venice Commission adopted on 12-13 June 2009, paragraphs 19-23).
 114. The same Report also explains that by the end of 2008, twelve (12) Council of Europe member states had adopted legal quotas for national elections. However, the Report clarifies: *“these quotas differ considerably both in the required minimum percentages of female candidates on the lists as well as in the possible ranking-order provisions for the lists. Provisions on legal sanctions for non-compliance differ, too. Still more common are voluntary quotas: In the majority of Council of Europe member states at least one parliamentary party has adopted voluntary party quotas. Reserved seats for women in parliament are a special type of quota, strongly related to the electoral system [...]”* (see, paragraphs 22 and 23 of the Report [CDL-AD(2009)029] cited above).
 115. This Report, in the context of reflecting the states that have included gender quotas in their respective electoral systems, explains that Latin America plays a leading role in the use of legal gender quotas for national elections (see, states like Argentina, Bolivia, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama, Peru, and Venezuela), (see paragraph 86 of the Report [CDL-AD (2009)029]).
 116. The Report further clarifies that this principle of balanced participation of women and men means the presence of women and men in the context in question in such a way that neither gender constitutes more than sixty nor less than forty (40%) percent of the total. This formula goes beyond the mere legal gender quota and it is reinforced in Recommendation Rec (2007) 17 of the Committee of Ministers to member states on gender equality standards and mechanisms (see, paragraph 87 of the Report [CDL-AD(2009)029]). The Venice Commission, based on this 2009 Report, again noted that it had reiterated that: *“Given the profound under-representation of women, however, quotas should be viewed as compensation for existing obstacles to women’s access to parliament. They can help to overcome structural, cultural and political constraints*

on women's representation. Since legal quotas are mandatory by nature, they seem to be preferable to party quotas. However, voluntary quotas can, additionally or alternatively, contribute to an increase of women's representation, especially if they are implemented by the major parliamentary parties. In order to be effective, gender quotas should provide for at least 30% of women on party lists, while 40% or 50% is preferable ." (see, paragraph 261 of CDL-AD Report (2020) 023 on Electoral Law and Election Administration, cited above).

117. Based on this report it results that (i) while only a few countries foresee the equal percentage of women and men on party lists (Belgium) or among the "total number of party candidates (France), in most cases the minimum required of both genders is lower: 40% in Spain, 35% in Slovenia, 33% in Bosnia and Herzegovina and Portugal, 30% in Albania, " the former Yugoslav Republic of Macedonia" and Serbia, and 15% of party/bloc lists in Armenia." and (ii) some of these countries also offer rules for listing. In Spain this is in every 5th place, while in Armenia women should only be placed in every 10th position. In Bosnia and Herzegovina there should be one candidate of underrepresented gender between the top two positions on the list, two candidates among the top five and three among the top eight. In Belgium the first two positions (in 2002: the first three) should not be filled by candidates of the same gender. However, none of the legal quotas provides for a "chain system", where every other candidate on the list must be a woman (see, paragraphs 90-91 of the Report [CDL-AD (2009) 029]).
 118. The Venice Commission further specifies that gender quotas are intended to improve gender balance in politics. They determine the minimum percentages of female candidates for elections, usually on party lists. In addition, there may be provisions for ranking in the list. Gender quotas can be set legally ("legal quota", "mandatory quota" or "compulsory quota") or they can be voluntarily approved by political parties ("voluntary quota" or "party quota"). Legal quotas are mandatory for all parties that submit candidates to parliament, while party quotas have only a self-binding character for the respective party. Both types of quotas can play an important role in the electoral process. By the end of 2008, twelve Council of Europe member states had adopted legal quotas for national elections (see, paragraphs 19-23 of the Report [CDL-AD(2009)029], cited above).
 119. It is important to ensure that such quotas effectively allow women the ability to advance to leadership positions instead of creating *de facto* restrictions on their progress. It is good practice to periodically review quotas to assess whether they should be maintained at the same level or whether their number should be increased, particularly at low-levels of governance. (see, Guidelines [CDL-AD\(2010\)24](#) on the Regulation of Political Parties, adopted by the OSCE/ODIHR and the Venice Commission adopted on 15-16 October 2010, paragraph 102).
- (iii) *General principles according to the case law of the ECtHR, the CJEU and the constitutional courts in electoral matters*
120. The ECtHR, in its consolidated case-law, emphasized that the advancement of gender equality is a major goal in the member states of the Council of Europe. This means that significant reasons would have to be put forward before a treatment change due to gender could be considered as compatible with the ECHR. Furthermore, the Court has held that nowadays the advancement of the equality of the sexes in the member States of the Council of Europe prevents the State from lending its support to views of the man's role as primordial and the woman's as secondary (see, ECtHR case, *Staatkundig gereformeerde Partij v Netherlands*, n. [58369/10](#), Decision of 10 July 2012, paragraphs 72 and 73).

121. In an election case examined by Slovenia's Constitutional Court, the Applicants submitted lists of candidates for election to the National Assembly. The competent election commissions found that the lists did not contain a sufficient number of women candidates and therefore did not meet the condition set out in Article 43.6 of the Law on National Assembly Elections, namely gender quota. They rejected the lists, excluding them from the elections. The applicants submitted complaints to the Supreme Court, which confirmed the decisions of the electoral commissions. Subsequently, they filed constitutional complaints alleging violations of the right to run in elections, as they should have been given the opportunity to correct candidate lists or electoral commissions should have removed the necessary number of male candidates from their lists.
122. The Constitutional Court of Slovenia recalled that Article 43.4 of the Constitution requires the law to provide for measures to promote equal opportunities for men and women to be elected to state and local community bodies. It clarified that this provision includes the constitutional basis of Article 43.6 of the Law on Elections of the National Assembly, which stipulates that in the list of candidates each gender cannot constitute less than thirty-five percent (35%) of the actual total number of female and male candidates on the list. The Constitutional Court of Slovenia explained that according to the principle of periodic elections, elections should be conducted at regular intervals and all necessary electoral tasks should be performed within a relatively short period of time. The deadlines set by the Slovenian Constitution for elections to the National Assembly are particularly short and therefore the adoption of very short deadlines in the law governing these elections is justified. The distinction between formal and essential shortcomings of candidate lists is a means of ensuring that all candidate lists are available on time. A formal deficiency is a deficiency that can be corrected without having to perform any new electoral duties in the appointment procedure, while the deficiency that requires the performance of additional duties is of a substantial nature. According to the National Assembly Election Law, election commissions are only authorized to require formal deficiencies to be corrected. If the list of candidates is not compiled in accordance with the required gender quota, this does not represent a formal, but rather essential deficiency; the entire nomination procedure would have to be repeated to correct it. Therefore, an election commission is not authorized to request that such a deficiency be corrected. It should reject it. Slovenia's Constitutional Court also added that an election commission cannot interfere with the candidate list to ensure that it meets the gender quota as it lacks the legal basis and expression for this. It stressed that it is not contrary to the Constitution if political parties are required to act diligently when nominating candidates. If they do not do this, the rejection of the candidate list entails an interference with the right to vote that should be attributed to their lack of care and not the behavior of state authorities. It concluded that the conditions set by Article 55b.2 of the Law on the Constitutional Court had not been met and did not admit constitutional complaints for consideration on merits (see, Decision Up-716/18 and Up-745/18 of the Constitutional Court of Slovenia, of 17 May 2018).
123. The same applicants also filed a claim with the Court of Appeals. Their submission to the ECtHR was registered as the case *Meta Zevnik and others v. Slovenia*.
124. In case *Meta Zevnik and others v. Slovenia*, the Applicants complained to the ECtHR that the 35% electoral quota on the basis of which the list of candidates was rejected has violated their rights guaranteed by Article 3 (Right to free elections) of Protocol no. 1 of the ECHR. The ECtHR had emphasized that: “*The ECtHR finds it particularly important to note that Contracting States must be given a wide margin of appreciation in this sphere, seeing that there are numerous ways of organising and running electoral systems and a wealth of differences, inter alia, in historical development, cultural diversity and political thought within Europe, which it is for*

each Contracting State to mould into its own democratic vision" (see, the case of the ECtHR, *Meta Zevnik and others v. Slovenia*, no. [54893/18](#), Decision of 12 November 2019, paragraph 31).

125. Further, the CJEU in case *Abrahamsson and Leif Anderson v. Elisabeth Fogelqvist* regarding the validity of the Swedish legislation providing for the rule that an underrepresented gender candidate possessing sufficient qualifications to perform the job in a position should be accorded priority unless "*difference between the qualifications of the candidates is so great that it would violate the objectivity criterion in appointment*" found that the law with automatic effect accorded priority to candidates of the underrepresented gender. The fact that the provision in question prevented automatic priority only in cases where there was a significant difference in qualifications was not sufficient to prevent the disproportionate effects of that provision (see, in the case of CJEU *Abrahamsson and Leif Anderson v. Elisabeth Fogelqvist*, 6 July 2000).
126. A 2012 civil lawsuit was filed in the Electoral Court of the Federal Judiciary of Mexico. The contested acts included the National Action Party's decision to cancel several nominations for federal representatives and senators, on the principle of relative majority in accordance with the gender quota set out in section 219 of the Federal Election Code. The General Council of the Federal Election Institute approved the replacement of the nominations mentioned. After hearing the case, the Electoral Court of the Federal Judiciary of Mexico certified the contested acts. In light of the principles guaranteeing equality and non-discrimination, the Electoral Court of the Federal Judiciary of Mexico reasoned that the purpose of Article 219 of the Federal Electoral Code is to ensure equal opportunities and gender equality in political life and to promote the political participation of both genders, offering them the possibility of equal access to official positions in popular elections. The Electoral Court of Mexico's Federal Judiciary ruled that the claimants' complaints were ungrounded. The reason is that even though domestic nominations have been won under party procedures, the replacement made by the proposing party was justified on the basis of the principles of the democratic rule of law, which includes gender equality in the integration of nominations. This principle should be taken into account irrespective of the method of selection within the party (see, Decision SUP-JDC-475 of the Electoral Court of the Federal Judiciary of Mexico, of 24 April 2012).
127. On the basis of the proposal of the Democratic Party of Women, the Constitutional Court of Croatia reviewed the compliance with the Constitution of articles or parts of articles 8, 12, 13 and 14 of the Law on Amendments to the Election of Members of the Law on the Croatian Parliament and took a decision on their abrogation, i.e. articles or parts of articles 9.4.2.3, 20.4, 20.7, 21.2, 21a.2 of the consolidated text of the Law on the Election of Members of the Croatian Parliament were abolished. Croatia's Constitutional Court also reviewed the mandatory "*gender quota*" on candidate lists. Croatia's Constitutional Court stated in its decision that the legal rule, according to which at least forty percent (40%) of members of each gender should be on the candidate lists, should remain in force. The Constitutional Court of Croatia stated that the legal obligation stipulating that a minimum of forty percent (40%) of members of each gender should be included in the candidate lists was still in force in the 2015 parliamentary elections and a fine for disobedience was also provided for (see, Decision U-I-1397/2015 of the Constitutional Court of Croatia, of 24 September 2015).

B. Court's assessment

128. The Court emphasizes that the scope of this referral in terms of substance, respectively the essence of the issue covered by this Judgment, is compliance with the Constitution

of Article 28 of the Law on General Elections, namely the assessment whether the quota determination of at least thirty (30%) representation of each gender in the list of political entities running in elections, violates the electoral rights established in Article 45 [Freedom of Election and Participation] of the Constitution. In order to assess the constitutionality of Article 28 of the Law on General Elections, the Court first and *inter alia* has elaborated (i) the general principles of the Constitution and the ECHR relating to the right to be elected and to participate; (ii) instruments and documents adopted at the level of the United Nations and the Council of Europe relating to the taking of affirmative measures for equal representation in politics; (iii) summaries of the recommendations of the Council of Europe and the opinions and reports of the Venice Commission on gender quota in electoral lists as special measures to address the factual inequality between genders in political representation; and (iv) the case law of the Court, the ECtHR, the CJEU, and the courts of other countries regarding the electoral rights and gender quota.

129. The Court initially reiterated that the need to create equal opportunities, as established in the contested provision, namely Article 28 of the Law on General Elections, creates positive obligations for the state for defining different measures, including legal norms, in order to equal gender representation in politics. In the context of ensuring gender equality, the contested Article 28 of the Law on General Elections establishes a minimum quota, which specifies that the electoral lists, respectively the lists of candidates of the political entity running in the general elections, must be at least thirty (30%) percent male and at least thirty (30%) percent female. In the spirit of this legal definition, the Court clarified that according to the Constitution, while everyone is equal before the law, the principles of equal protection do not prevent the imposition of the necessary measures for the protection and advancement of the rights of individuals and groups who are in an unequal position because such special measures represent instruments by which the state, respectively the Republic of Kosovo, develops the policy of equal opportunities and such measures can be applied until the the goal for which they are set is achieved.
130. In this regard, the Court also noted the recommendations and opinions of the Committee of Ministers of the Council of Europe and the Venice Commission, respectively, which stress that gender electoral quotas can be considered as “*an appropriate and legitimate measure to increase the parliamentary representation of women*”, and in this spirit the Council of Europe member states are required to allow positive actions or special measures to be adopted in order to achieve balanced representation in political and public decision-making.
131. The Court underlined that Article 45 [Freedom of Election and Participation] of the Constitution guarantees the right to elect (the active aspect of vote), as well as the right to be elected (the passive aspect of vote). More specifically, the passive aspect of vote that is reflected in the right to be elected represents a specific right relevant in this case, belongs to candidates as individuals, respectively as natural persons, who run in elections, at the local or central level, as well as political entities, respectively legal persons running in elections, at the local or central level. The rights guaranteed by Article 45 [Freedom of Election and Participation] of the Constitution and Article 3 (Right to free elections) of Protocol no. 1 of the ECHR are essential rights towards the establishment and maintenance of the foundations of an effective and valid democracy that is guided by the rule of law. In this regard, the ECtHR through its case-law has underlined that States are free to invoke *their specific “purposes”* when restricting the exercise of this right to the condition that such purposes are: (i) in accordance with the principle of the rule of law; and (ii) the general objectives of the Convention.

132. The Court assesses that the minimum representation quota of thirty percent (30%) of both genders, in the context of the competence of the Assembly as a legislator and the margin of appreciation is determined depending on the circumstances and the obligation for continuous progress for equal participation of both genders in the electoral process, as the main pillar of the development of democracy. However, the Court reiterates that (i) it is not its duty to question the selection of the legislator's public policy as long as it is not unreasonable and contrary to the principles enshrined in the Constitution and international good practices; and (ii) the focus of the assessment of the Law on General Elections is always in terms of respecting constitutional norms and fundamental human rights and freedoms, and never the assessment of the selection of public policy that has led to the adoption of the law set by the legislator.
133. In terms of determining gender quotas by Law, the Judgment also refers to the position of the European Court of Human Rights, which through its case-law emphasized that Contracting States should be given a wide margin of appreciation in this sphere, seeing that there are numerous ways of organizing and running electoral systems and a multitude of differences, *inter alia*, in historical development, cultural diversity and political opinion within Europe, which each Contracting State should shape in its democratic vision.
134. In this respect, the Court points out at the Recommendation of the Parliamentary Assembly of the Council of Europe, through which the member states of the Council of Europe are encouraged to increase the representation of women by establishing quotas. In addition, based on these recommendations and the opinions of the Venice Commission, the Judgment clarifies that the latter as common denominators have (i) the establishment of a minimum quota of representation in electoral lists of political entities and (ii) a determination of the zipper system of candidates from each gender or from one candidate of each gender included at least once in each group of three candidates in case of a quota of thirty percent (30%), the latter with the intention that the candidates of the less represented gender do not risk being placed too low on the list and have a real opportunity to be elected.
135. In terms of the former, and based on the elaboration elaborated in the Judgment, the Court emphasizes that the minimum quota of thirty percent (30%) set by Article 28 (Gender Quota) of the Law on General Elections, based on the constitutional provisions and relevant international practice as elaborated above, is a necessary affirmative measure, for the protection and advancement of the rights of individuals and groups who are in an unequal position and which is applied only until the purpose for which it is set is achieved. Determining the extent of this, namely gender representation quotas in the lists of political entities running in elections, is not defined by the Constitution, leaving the necessary space to the legislative power, namely the Assembly to determine the amount of this quota, in accordance with the positive obligations of the state to achieve the constitutional ideal of gender equality in the Republic of Kosovo, and which, once determined, must be strictly enforced.
136. As outlined above, a number of Council of Europe Member States have put in place such mechanisms in the relevant laws governing the definition of electoral lists of political entities running in elections. Resolution 1706(2010) of the Parliamentary Assembly of the Council of Europe recommends that in countries with a system of proportional representation lists, consideration should be given to introducing a legal quota which provides not only for a high proportion of women candidates (ideally at least forty percent (40%)), but also for a strict rule of ranking positions. According to the explanations given in this Judgment, the average quota set for gender representation in the Council of Europe member states, which have set gender quotas, is from twenty percent (20%) to forty percent (40%).

137. On the other hand, and related to the Ombudsperson's claims for equal representation obligation for each gender in the amount of fifty percent (50%), the Court recalls that it has already addressed this issue through its case law, including cases KI45/20 and KI46/20. In this case, among other things, it was emphasized that: *"It is also not up to the Court to re-establish new legal quotas or increase the percentage of legal gender representation quotas in favor of either gender. The legislators of the Republic of Kosovo are the ones who have set the 30% quota as the only applicable legal quota, which should be maintained in any circumstance until the competent authorities decide to make legal changes in this regard, if they deem it necessary. It is also the legislators who have set 50% as the constitutional ideal of equal gender representation, emphasizing that equal gender representation is achieved only when 50-50 representation is provided for each gender"* (see, paragraph 143 of the Judgment in cases KI45/20 and KI46/20).
138. In terms of the second, respectively in terms of ranking, the Court considers that the determination in paragraph 1 of Article 28 of the Law on General Elections that the electoral lists contain from one candidate of each gender included at least once in each group of three (3) candidates, counted by the first candidate in the list, is also based on the recommended international standards, as elaborated in this Judgment. In this context, the Court notes that the law guarantees one candidate of each gender included in each group of three (3) candidates, but this is the minimum limit of representation of the underrepresented gender. The Court stresses that the balanced participation of women and men in political and public decision-making is a matter of full enjoyment of human rights, social justice and a necessary condition for the better functioning of a democratic society (see, inter alia, the Explanatory Memorandum to Recommendation Rec (2003) 3 of the Committee of Ministers of the Council of Europe on *"Balanced participation of women and men in political and public decision-making"*).
139. Further, the Court, noting paragraph 3 of Article 28 of the Law on General Elections, which stipulates that the Central Election Commission allocates additional public funds, in the amount of one percent (1%) of the total amount allocated to the political entity, for each mandate won by women over thirty percent (30%) quota at the time of certification, considers that such determination is also in accordance with the recommendations at the level of the CEDAW Convention and the Council of Europe, which recommend that legislation should enable financial support for political entities that enable balanced gender representation. Unlike the previous Law on General Elections, this definition of the current Law constitutes a novelty, and therefore motivates political entities to include more women on the lists of candidates for general elections.
140. Further, and in the sense of the Ombudsperson's claim related to the intended purpose of fifty percent (50%) representation established in the Law on Gender Equality, the Court, referring to paragraph 8 of Article 6 (Special Measures) of Law no. 05/L -020 on Gender Equality aimed at achieving factual equality 50% to 50% between the two genders, in the context of the historical evolution of the concept of gender equality, explains that (i) the concept of gender equality is dynamic and progressively evolves in terms of fulfilling the sublime ideal of equality in representing women and men in the ratio fifty percent (50%) to fifty percent (50%); (ii) however, in terms of the assessment of the contested Law, the quota of thirty percent (30%) clearly represents the minimum threshold of gender representation of the underrepresented gender, but not the highest threshold of representation of the underrepresented gender.
141. Furthermore, as noted in its current case-law, the Court is aware that it is not within its competence to set new public policies nor to assess whether a current public policy is

good or appropriate. It is also not up to the Court to reestablish new legal quotas or increase the percentage of legal quotas of gender representation in favour of either gender. The legislators of the Republic of Kosovo are those who have set the quota of thirty percent (30%) as a legal quota in the electoral lists of political entities, which must be maintained in all circumstances unless the competent authorities decide to make legal changes in this regard, if and when they consider such a thing as necessary, as long as they respect the constitutional definitions and well-established international standards, in particular those that guarantee that the vote is personal, equal, free and secret. It is also lawmakers who have set fifty percent (50%) as the ideal of equal gender representation, stressing that equal gender representation is only achieved when 50-50 representation is provided for each gender. Having said that, both are laws adopted by the Assembly and it is up to the latter to gradually achieve the determinations it has itself approved towards achieving constitutional ideals.

142. In this sense, the Assembly has the full powers to advance the level of the above quota related to the lists of political entities running in elections, always in the context of a necessary measure, until the goal to realize gender equality in the Republic of Kosovo has been achieved and always in accordance with the standards set through the mechanisms of the Council of Europe, elaborated in this Judgment.
143. Finally, the Court, taking into account the insufficient argumentation of the Applicant on the one hand, and the wide margin of appreciation accorded to the legislators in matters of public policy selection and the trend of representation from twenty percent (20%) to forty percent (40%) followed by the Council of Europe member states, which have established gender quotas, considers that the determination of the minimum quota of thirty percent (30%) in the candidate lists of political entities running in the general elections is not in contradiction with Article 45 [Freedom of Election and Participation] of the Constitution, in conjunction with Article 3 (Right to free elections) of Protocol no. 1 of the ECHR.
144. Therefore, the Court finds that Article 28 (Gender Quota) of the Law on General Elections is not contrary to the right to be elected guaranteed by Article 45 [Freedom of Election and Participation] of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to subparagraph (1) of paragraph 2 of Article 113 of the Constitution, in accordance with Articles 22, 29 and 30 of the Law and based on Rule 48 (1) (a) of the Rules of Procedure, on 19 December 2024:

DECIDES

- I. TO DECLARE, by eight (8) votes for and one (1) against, the Referral admissible;
- II. TO HOLD, unanimously, that Article 28 (Gender Quota) of Law no. 08/L-228 on General Elections in the Republic of Kosovo is not contrary to Article 45 [Freedom of Election and Participation] of the Constitution of the Republic of Kosovo.
- III. TO NOTIFY this Judgment to the parties;
- IV. TO PUBLISH this Judgment in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 4 of Article 20 of the Law;
- V. TO HOLD that this Judgment is effective from 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

Selvete Gërxhaliu-Krasniqi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.