THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Newsletter

July — December 2024

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Constitution of Kosovo - Chapter VIII

Constitutional Court

Article 112

[General Principles]

1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

2. The Constitutional Court is fully independent in the performance of its responsibilities.

Composition of the Constitutional Court

The Constitutional Court of the Republic of Kosovo is composed of 9 (nine) Judges.

The Judges of the Constitutional Court of the Republic of Kosovo are appointed in accordance with Article 114 [*Composition and Mandate of the Constitutional Court*] of the Constitution and Articles 6 and 7 of the Law on the Constitutional Court of the Republic of Kosovo.

Following the establishment of the Constitutional Court in 2009 and in accordance with the former Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution, 6 (six) out of 9 (nine) judges were appointed by the President of the Republic of Kosovo on the proposal of the Assembly.

Of the 6 (six) national judges 2 (two) judges served for a non-renewable term of 3 (three) years, 2 (two) judges served for a non-renewable term of 6 (six) years and 2 (two) judges served for a non-renewable term of 9 (nine) years.

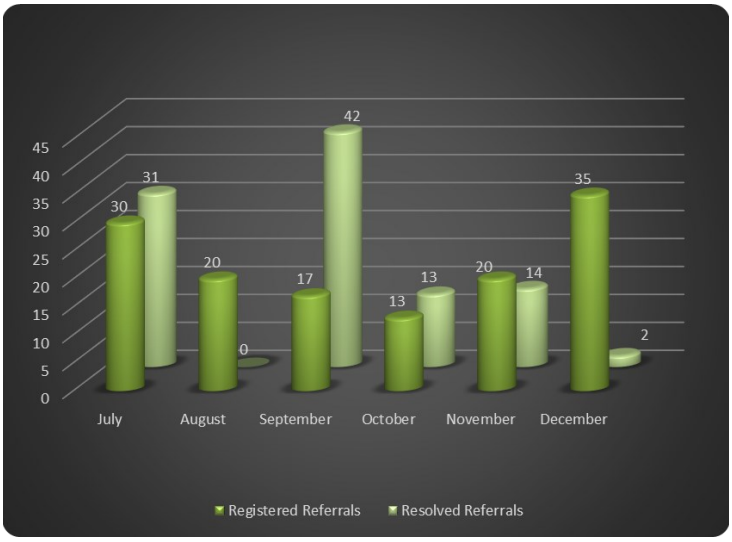
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

** The Court is currently composed of seven (7) judges.*

Status of cases

During the six-month period: 1 July – 31 December 2024, the Court has received 135 Referrals and has processed a total of 382 Referrals/Cases.
A total of 102 Referrals were decided or 26.63% of all available cases. During this period, 141 decisions were published on the Court's webpage.

The dynamics of received referrals by month (1 July - 31 December 2024)



The following are twenty five (25) judgments that the Court rendered during the six month period, 1 July - 31 December 2024:

- Judgment in Case KO157/23, submitted by: Vlora Dumoshi and 11 other deputies. The filed referral requested the constitutional review of Decision [no. 08-V-583] of the Assembly of the Republic of Kosovo, of 13 July 2023, on the dismissal of the member of the Board of the Procurement Review Body.
- Judgment in Case KI154/23, submitted by: Afrim Tafarshiku. The filed referral requested the constitutional review of Judgment [AC. No. 8304/2021], of 20 February 2023, of the Court of Appeals of Kosovo.
- Judgment in Case KO114/23, KO192/23, KO227/23 and KO229/23, submitted by: The Supreme Court of the Republic of Kosovo. The filed referral requested the constitutional review of paragraph 2 of article 4, paragraph 4 of article 432, and paragraph 2 of article 438 of the Criminal Procedure Code of the Republic of Kosovo No.08/L-032.
- Judgment in Case KO232/23 and KO233/23, submitted by: Abelard Tahiri and ten (10) other deputies; and Besian Mustafa and ten (10) other deputies. The filed referral requested the constitutional review of the Law No. 08/L-180 on amending and supplementing the Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo.
- Judgment in Case KO46/23, submitted by: Abelard Tahiri and nine (9) other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets.
- Judgment in Case KI199/22, submitted by: P.T.P. "Arta XH". The filed referral requested the constitutional review of the decision [E. Rev. no. 75/20] of the Supreme Court of the Republic of Kosovo dated 1 August 2022.
- Judgment in Case KI172/23, submitted by: Rejhane Ceka, Fiknete Ceka, Lejlane Ceka and Sara Ceka. The filed referral requested the constitutional review of Decision Rev. no. 216/2023, of 19 June 2023 of the Supreme Court of Kosovo in conjunction with Judgment [Ac. no. 3023/2020] of 7 April 2023, of the Court of Appeals of the Republic of Kosovo.
- Judgment in Case KI04/23, submitted by: Avdyl Bajgora. The filed referral requested the constitutional review of Decision [Rev. no. 43/2022] of 10 October 2022 of the Supreme Court of the Republic of Kosovo.
- Judgment in Case KO158/23, submitted by: Besnik Tahiri and nine (9) other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Law No. 08/L-142 on Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income.
- Judgment in Case KI272/23, submitted by: Ali Tahiri. The filed referral requested the constitutional review of the Decision [AKPA.II.No.163/23] of the Appellate Prosecution Office, of 1 November 2023.
- Judgment in Case KO248/23, submitted by: Ferat Shala and nine (9) other deputies of the Assembly of the Republic of Kosovo. The filed

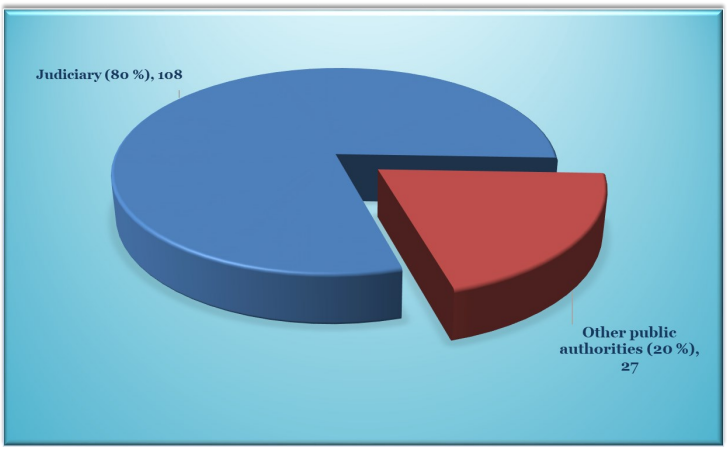
referral requested the constitutional assessment of the Law No. 08/L-209 on Sustainable Investments.

- Judgment in Case KI272/23, submitted by: Ali Tahiri. The filed referral requested the constitutional review of the Decision [AKPA.II.No.163/23] of the Appellate Prosecution Office, of 1 November 2023.
- Judgment in Case KI23/24, submitted by: Agim Zogaj. The filed referral requested the constitutional review of the Judgment [AC-I-21-0836-A0001] of the Appellate Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters, of 26 October 2023.
- Judgment in Case KI190/22, submitted by: Ramiz Isaku. The filed referral requested the constitutional review of the Judgment [AC-I-21-0642] of 31 August 2022, of the Appellate Panel of the Special Chamber of the Supreme Court the Republic of Kosovo.
- Judgment in Case KI190/22, submitted by: Ramiz Isaku. The filed referral requested the constitutional review of the Judgment [AC-I-21-0642] of 31 August 2022, of the Appellate Panel of the Special Chamber of the Supreme Court the Republic of Kosovo.
- Judgment in Case KI103/24, submitted by: Sylejman Zeneli. The filed referral requested the constitutional review of the Judgment [Rev.no.485/2022] of the Supreme Court of the Republic of Kosovo, of 5 January 2023.
- Judgment in Case KI177/22, submitted by: Pashk Bibaj. The filed referral requested the constitutional review of the Judgment [AC-II-21-0058] of the Appellate Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters, of 23 October 2022.
- Judgment in Case KI49/23, submitted by: Shaban Dulahu and others. The filed referral requested the constitutional review of the Judgment the Supreme Court of the Republic of Kosovo [ARJ-UZVP.NR.109/2022], of 20 October 2022.
- Judgment in Case KI36/23, submitted by: "Dona-Impex" l.l.c. The filed referral requested the constitutional review of the Judgment [E. Rev. no 45/2021] of the Supreme Court of the Republic of Kosovo, of 10 November 2022.
- Judgment in Case KI43/24, submitted by: Merita Visoka, Eroll Visoka and Melinda Visoka. The filed referral requested the constitutional review of the Decision of the Supreme Court of the Republic of Kosovo [Rev. no. 382/2023], of 17 October 2023.
- Judgment in Case KI84/22, submitted by: Slavica Đorđević. The filed referral requested the constitutional review of Decision the Supreme Court of the Republic of Kosovo [Rev. No. 170/2021], of 19 October 2021.
- Judgment in Case KI11/24, submitted by: Zekë Jasiqi. The filed referral requested the constitutional review of Decision of the Court of Appeals of the Republic of Kosovo [PN. no. 1420/23], of 15 November 2023.
- Judgment in Case KI105/24, submitted by: Imrije Kadriu. The filed referral requested the constitutional review of the Judgment of the Court of Appeals of the Republic of Kosovo [Ac. no. 2125/22], of 23 February 2024.
- Judgment in Case KI117/23, submitted by: "Exclusive" l.l.c. The filed referral requested the constitutional review of the Decision of the Supreme Court of the Republic of Kosovo [E. Rev. no. 1/2023], of 17 January 2023.
- Judgment in Case KI118/23, submitted by: Shehide Muhadri. The filed referral requested the constitutional review of the Judgment of the Court of Appeals of the Republic of Kosovo [Ac. no. 530/2016], of 30 March 2023.
- Judgment in Case KO15/24, submitted by: The Ombudsperson Institution. The filed referral requested evaluation of the constitutionality of Article 28 of Law no. 08/L-228 on General Elections in the Republic of Kosovo.
- Judgment in Case KO283/23, submitted by: Abelard Tahiri and 9 other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Decision [no. 08-V-668] of 15 December 2023, of the Assembly of the Republic of Kosovo, on dismissal of Mr. Agron Beka from the position of a member of the Kosovo Prosecutorial Council.

Alleged violators of rights

- 108 Referrals or 80% of Referrals refers to violations allegedly committed by court's decisions;
- 27 Referrals or 20% of Referrals refers to decisions of other public authorities;

Alleged violators of rights
(1 July - 31 December 2024)

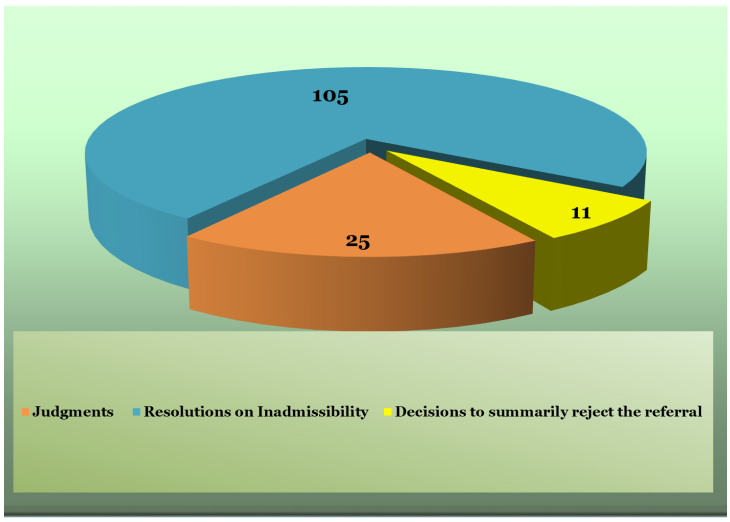


Sessions and Review Panels

During the six-month period: 1 July - 31 December 2024, the Constitutional Court held 15 plenary sessions and 122 Review Panels, in which the cases were resolved by decisions, resolutions and judgments. During this period, the Constitutional Court has published 141 decisions. The structure of the published decisions is the following:

- 25 Judgments;
- 105 Resolutions on Inadmissibility;
- 11 Decisions to summarily reject the Referral

Structure of decisions
(1 July - 31 December 2024)

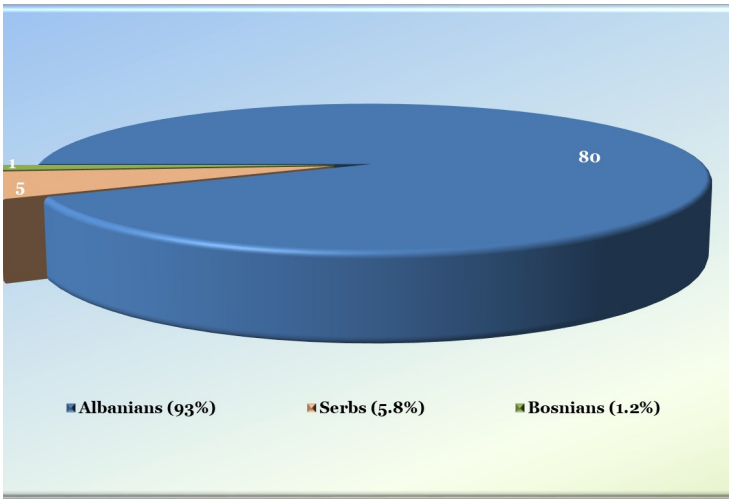


Access to the Court

The access of individuals to the Court is the following:

- 80 Referrals were filed by Albanians, or 93%;
- 5 Referrals were filed by Serbs, or 5,8%;
- 1 Referral was filed by Bosnians, or 1,2%;

Ethnic structure of the Applicants
(1 July - 31 December 2024)



12 July 2024

The judges of the Constitutional Court of the Republic of Kosovo, Mrs. Selvete Gërxhaliu – Krasniqi and Mr. Jeton Bytyqi, stayed for a work visit to the Constitutional Council of the Republic of France, with headquarters in Paris. During the visit to the French Constitutional Council, judge Gërxhaliu – Krasniqi and judge Bytyqi were initially received in a meeting by the General Secretary of this institution, Mr. Jean Maïa, who informed them more closely about the standard procedures for reviewing cases and submitted requests, about the functioning of the legal department, as well as about the way of preparing draft decisions before their final approval.

Following the visit, Judge Gërxhaliu – Krasniqi and Judge Bytyqi were also received in a separate meeting by the President of the Constitutional Council of France and the former French Prime Minister, Mr. Laurent Fabius. On the second day of the visit, judges Gërxhaliu – Krasniqi and Bytyqi met with the two judges, members of the Constitutional Council of France, Ms. Corinne Luquiens and Mrs. Véronique Malbec, where the topic of discussion, among others, were the various constitutional issues addressed in the field of human rights and the application of the case law of the European Court of Human Rights.

The visit of judges Gërxhaliu – Krasniqi and Bytyqi was carried out in continuation of the cooperation of the Constitutional Court of the Republic of Kosovo with the French courts, namely, the Constitutional Council, the State Council and the Court of Cassation of France.

18 July 2024

The President of the Constitutional Court of the Republic of Kosovo, Ms. Gresa Caka–Nimani, received in a meeting the Ambassador of the United Kingdom to Kosovo, Mr. Jonathan Hargreaves. After extending her welcome, President Caka – Nimani informed Ambassador Hargreaves about the work done by the Court hitherto, the challenges faced and the efforts to overcome such challenges, as well as the good cooperation with counterpart courts in the region and beyond. She expressed her gratitude for the continuous support that the British Government has provided to the Constitutional Court and other institutions in the country in enhancing professional and infrastructural capacities.

Ambassador Hargreaves, after thanking President Caka – Nimani for the reception, highlighted that the diplomatic mission of the United Kingdom in Kosovo remains committed to strengthening the justice sector and protecting the independence of the judicial system in the country.

9 September 2024

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani and judge Remzije Istrefi – Peci, received in a joint meeting an official delegation from the Federal Constitutional Court of Germany.

During the conversation, President Caka – Nimani initially notified the delegation composed of advisors and legal researchers of the Federal Constitutional Court of Germany, about the history of state-building and the development of the constitutional judiciary in Kosovo, the establishment of the Constitutional Court and the drafting of the Constitution of the Republic of Kosovo, as well as with the assistance provided by many international donors in building infrastructural and professional capacities of the Court. In the following, President Caka – Nimani also discussed the

consolidation of the Court's case law over the years, the most important cases it handled, the application of the case law of the European Court of Human Rights in decisions of the Court, as well as the excellent cooperation with the Venice Commission and the constitutional courts of other member states.
She expressed a special thanks to the Federal Constitutional Court of Germany for the help provided to the Constitutional Court of Kosovo since the first days of its establishment, highlighting the support provided by the German Government for professional workshops with the regular judiciary, as well as for the continuous support in efforts for the membership of the Court in international professional forums.
Meanwhile, Judge Remzije Istrefi – Peci notified the German guests more closely about the access of citizens to the Court, the organization of the open Court days, as well as about the periodic meetings and visits that pupils, students and members of the legal community carry out in cooperation with the Constitutional Court.

18 September 2024

The President of the Constitutional Court of the Republic of Kosovo, Ms. Gresa Caka – Nimani, received the new Head of the EU Office and EU Special Representative in Kosovo, Mr. Aivo Orav.
After wishing him success in his new duty, President Caka – Nimani informed Mr. Orav about the history of the establishment of the Constitutional Court, which followed the adoption of the Constitution of the Republic of Kosovo in 2008, the most important decisions of the Court over the years and the progress achieved in consolidating its case law.
She expressed special gratitude for the continuous support that European institutions and other international donors have given to the Constitutional Court in consolidating its professional and infrastructural capacities.
President Caka – Nimani further emphasized the important role that the Constitutional Court continues to have in the democratic development processes of the country, as well as the application of the case law of the European Court of Human Rights in its decision -making.
Ambassador Orav, on his part, confirmed that support for strengthening the rule of law in the country and for an independent judicial system remains a priority of the EU institutions.

20 September 2024

The Judge of the Constitutional Court of the Republic of Kosovo, Mrs. Remzije Istrefi – Peci, received in a meeting a group of students and young researchers from German universities, who are staying in Prishtina as part of the study visit: "Newborn – Finding identity in Kosovo".
After thanking them for the visit, Judge Istrefi – Peci initially provided a brief description of the history of our country, the transitional period until the declaration of independence, the adoption of the Constitution of the Republic of Kosovo, and the establishment of the Constitutional Court.
She further informed the young students about the initial composition of international judges of the Court, the most important decisions issued by this Court over the years, the good cooperation relations with regional and European counterpart courts, and efforts for membership in various international professional forums.
Judge Istrefi – Peci also highlighted the consolidation of the case law of the Constitutional Court in implementing the European Convention on Human Rights and the application of the case law of the European Court of Human Rights in each of its decisions.
The students expressed their interest in to be informed in more detail regarding the nature and number of submitted cases, the cases submitted by members of non-majority communities, and the access of citizens to the Court.

4 October 2024

At the invitation of the President of the Constitutional Council of France, Mr. Laurent Fabius, the President of the Constitutional Court of the Republic of Kosovo, Ms. Gresa Caka – Nimani, paid an official visit to Paris

President Caka – Nimani was invited to participate in "The Night of Law", a traditional event organized by the Constitutional Council of France to commemorate the anniversary of the adoption of the French Constitution.
Organized simultaneously not only in Paris but also throughout France, "The Night of Law" brings together each year the most eminent figures from constitutional courts worldwide, justice institutions, parliamentary assemblies, bar associations, law faculties of the most prestigious universities, and international experts in constitutional law.

9 October 2024

The judges of the Constitutional Court and the Supreme Court of the Republic of Kosovo, following the organization of joint professional workshops, participated in the workshop organized with the support of the German Foundation for International Legal Cooperation "IRZ", which was held in Thessaloniki. The conference was attended by Mrs. Gresa Caka-Nimani, President of the Constitutional Court, Mr. Fejzullah Rexhepi, President of the Supreme Court, Mr. Albert Zogaj, Chair of the Judicial Council of Kosovo, the German experts engaged by the "IRZ" Foundation, Prof. Dr. Michael Eichberger, former judge of the Federal Constitutional Court of Germany, Dr. Matthias Hartwig, former senior research fellow at the "Max Planck" Institute for Public Law and Comparative International Law in Germany, and other judges and advisors from both local courts. Mohamed Montasser Abidi, head of the section from IRZ, was part of the conference via video link. The topics discussed at this conference were: "Right to property", "Trial in absentia" and "Right of access to a court", while the panelists were judges: Nexhmi Rexhepi, Jeton Bytyqi and Remzije Istrefi-Peci from the Constitutional Court, and Rrustem Thaqi, Afrim Shala and Zenel Leku from the Supreme Court of Kosovo.
The German experts engaged by the IRZ brought their perspective and experience of the regular judiciary and the German constitutional judiciary to each panel of the topics covered.

19 October 2024

Judge of the Constitutional Court of the Republic of Kosovo, Mr. Jeton Bytyqi, stayed on a two-day visit to Budva in Montenegro, at the invitation to participate in the Regional Conference on Human Rights and the Environment, organized by the Council of Europe within the project on Human Rights and Sustainable Environment in Southeast Europe. The conference enabled the exchange of expert discussions between members of the judiciary, prosecutions, civil society and legal experts from the countries of Southeast Europe regarding the legislation and case law of different European countries in relation to human rights and the environment.
Among other things, the topic of discussion at the conference was to raise awareness of the essential connection between human rights and environmental protection issues, as well as identifying challenges and best practices in this area.

4 November 2024

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, visited

Podgorica on an official visit, invited to participate in the solemn ceremony marking the 60th anniversary of the establishment of the Constitutional Court of Montenegro. During her stay in the Montenegrin capital, President Caka-Nimani met with the President of the Constitutional Court of Montenegro, Mrs. Snezhana Armenko, with whom she discussed, among other things, the possibilities of deepening further cooperation between the two constitutional courts.
In the framework of the solemn ceremony organized in Podgorica, the president Caka-Nimani also held meetings with the current and former Presidents of the Constitutional Courts of regional and other European countries.

6 December 2024

A delegation of judges of the Constitutional Court of the Republic of Kosovo, led by the President of the Court, Mrs. Gresa Caka – Nimani, stayed for an official visit in Brno, Czech Republic. On the first day of the two-day visit, the judges of the Constitutional Court of Kosovo visited the Constitutional Court of the Czech Republic, where they were received by the President, Mr. Josef Baxa, and other judges of this Court.
Within the framework of the visit to the Constitutional Court of the Czech Republic, a joint workshop was also held between the judges of the two constitutional courts. After the opening remarks by President Caka – Nimani and President Baxa, the first session of the workshop continued with a presentation by Czech constitutional judge Mr. Tomáš Langášek on the constitutional aspects of disciplinary responsibility of judges. The second session continued with a presentation by the judge of the Constitutional Court of Kosovo, Mr. Nexhmi Rexhepi, on the issue of constitutional review of judicial reforms in the country. On the second day of the visit, the delegation of judges of the Constitutional Court of Kosovo visited the Supreme Court of the Czech Republic, where they were received by the President, Mr. Petr Angyalossy, and other judges. The total number of cases handled, efficiency in decision-making, and the relationship with the constitutional court were among the topics discussed in the joint meeting. The visit of the delegation of judges of the Constitutional Court of the Republic of Kosovo to Brno concluded with a joint

meeting with the judges and the President of the Supreme Administrative Court of the Czech Republic, Mr. Karel Šimka. The visit of the delegation of judges of the Constitutional Court of the Republic of Kosovo to the Czech Republic was made possible with the support of the Council of Europe Office in Prishtina, within the framework of the "Support to the Constitutional Court in Applying and Disseminating European Human Rights Standards" project.

18 December 2024

With a solemn ceremony held in the presence of the senior state representatives, the diplomatic corps,

local and foreign organizations, academia, civil society and the media, the solemn ceremony of handover of the office of the President of the Constitutional Court of the Republic of Kosovo took place between the outgoing President, Ms. Gresa Caka – Nimani and the elected President, Mr. Nexhmi Rexhepi, whose mandate begins on 31 December 2024.

In her address, President Caka – Nimani, after elaborating on the importance of the Constitutional Court for the protection of democratic values and the weight and historical symbolism of the Constitution of the Republic of Kosovo, among other things, emphasized that "protecting this Constitution – is not simply a duty. Protecting this Constitution is the highest act of patriotism of every citizen of the Republic of Kosovo, of every public servant, of every senior public official, and especially – of the judges of the Constitutional Court of the Republic of Kosovo." President Caka-Nimani thanked her fellow judges, the Court staff and all partners who have supported the Court in its advancement over the years.

In his speech, the President-elect of the Constitutional Court, Mr. Nexhmi Rexhepi, after thanking President Gresa Caka-Nimani and Judge Selvete Gërxhaliu-Krasniqi for their devoted service in protecting the constitutionality of the country on the occasion of the conclusion of their mandates, among other things, said that "the independence of the judicial power is a cornerstone of democracy and is essential for the implementation of the principle of separation of powers, for the materialization of the rule of law and for the protection of human rights." He further said that, "we all share the unwavering belief that, in a constitutional democracy, no power is supreme – only the Constitution is supreme. Therefore, the role and duty of the Constitutional Court is to protect and preserve the supremacy of the Constitution". Finally, he thanked all the judges of the Constitutional Court "for the trust given to be the first among equals".

Judgment
KO157/23
Applicant
Vlora Dumoshi and 11 other deputies

Request for constitutional review Decision [no.08-V-583] of the Assembly of the Republic of Kosovo, of 13 July 2023, on the dismissal of the member of the Board of the Procurement Review Body

The circumstances of the present case are related to the dismissal of a PRB Board member by the contested Decision of the Assembly of the Republic of Kosovo, of 13 July 2023. As clarified in the Judgment, the dismissal of the PRB Board member was preceded by the Decision [PSH. 397/409/22] of the PRB Board of 11 October 2022, which annulled the Notice of the Contracting Authority, namely the Ministry of Health, for the cancellation of the procurement activity entitled "Supply of Insulin Analogues from the Essential List Lot 1 and Lot 3". The aforementioned decision of PRB's Review Panel was rendered unanimously, following the complaints by two (2) economic operators and after having examined the expertise of the relevant procurement expert, specifying that the Ministry of Health Notice on the cancellation of the procurement activity is annulled, and that the case is remanded for re-evaluation. The aforementioned decision of PRB's Review Panel, at the request of the Ministry of Health, has been subject to assessment by the regular courts, the Basic Court in Prishtina and the Court of Appeals, respectively, which rejected the lawsuit, respectively the complaint, of the Ministry of Health, as inadmissible. In what followed, the Government of the Republic of Kosovo proposed the dismissal of the chair of PRB's Review Panel, which had issued the aforementioned decision, on grounds of "violation of professional ethics". This proposal of the Government was reviewed by the Committee on Budget, Labor and Transfers of the Assembly of the Republic of Kosovo, which decided to recommend to the Assembly not to approve, namely to reject the proposal of the Government of the Republic of Kosovo for the dismissal of the PRB Board member. Nevertheless, the Assembly of the Republic of Kosovo, in the plenary session of 13 July 2023, based on the proposal of the Government, through the contested Decision, dismissed the PRB Board member.

The applicants before the Court challenged the constitutionality of this Decision of the Assembly, claiming, among others, that it was rendered in violation of the oversight competence of the Assembly, according to the provisions of paragraph 9 of article 65 [Competencies of the Assembly] and article 142 [Independent Agencies] of the Constitution, in essence, underlining (i) the lack of legal basis for the respective dismissal; (ii) the violation of PRB's functional independence; (iii) interference with the competence of the judicial branch to assess the legality of the PRB's decision-making; and (iv) the violation of the fundamental rights and freedoms of the dismissed member of the PRB. The claims of the applicants were opposed by the Parliamentary Group of the VETËVENDOSJE Movement!.

In the context of the issues above, the Judgment first emphasizes the fact that the aforementioned circumstances and allegations, among others, have raised issues related to (i) the constitutional competence of the Assembly of the Republic of Kosovo to oversee the work of public institutions, which, based on the Constitution and the laws, report to the Assembly and the relevant limitations in the exercise of this oversight function based on the laws adopted by the Assembly; (ii) the independence of the independent agencies established pursuant to Article 142 [Independent Agencies] of the Constitution, including the status and functional and decision-making independence of the PRB based on the applicable laws on public procurement; and (iii) the competence of the Assembly, in exercising its oversight function, to dismiss PRB members, including the respective limitations based on the applicable laws on public procurement. In the context of the principles arising from the analysis of constitutional principles, the Judgment initially clarifies that the Assembly exercises its function based, among others, on article 4 [Form of Government and Separation of Power] and article 65 [Competencies of the Assembly] of the Constitution, including the competence to (i) adopt laws, resolutions, and other general acts; and (ii) to oversee the work of the Government and other public institutions, which,

based on the Constitution and laws, report to the Assembly. According to the clarifications given in the Judgment, both of these competencies constitute the essence of the constitutional function of the Assembly. Having said this and based, among others, on articles 65 [Competencies of the Assembly] and 74 [Exercise of Function] of the Constitution, in the context of the constitutional competence of oversight, the Assembly is conditioned in the exercise of this function in compliance with (i) constitutional provisions, including those stipulated by articles 3 [Equality Before the Law], 4 [Form of Government and Separation of Power] and 7 [Values] of the Constitution, respectively; and (ii) the limits and authorizations established in the laws approved by the Assembly itself in relation to the public institutions that report to/are overseen by the Assembly.

According to the clarifications given in the Judgment, in the context of the exercise of the oversight function of the Assembly pertaining to the Independent Agencies established based on Article 142 [Independent Agencies] of the Constitution, within which also the PRB falls based on its characteristics according to the applicable laws on public procurement, but also according to Law no. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies, specific importance is attached to the oversight limitations of the Assembly based on paragraph 9 of article 65 [Competencies of the Assembly] of the Constitution in conjunction with paragraph 1 of Article 142 [Independent Agencies] of the Constitution and laws related to public procurement in the Republic of Kosovo, as adopted by the Assembly itself.

The Judgment further clarifies that, whereas based on article 142 [Independent Agencies] of the Constitution, Independent Agencies are established by laws of the Assembly and which regulate their establishment, operation and competencies, the same, based on the aforementioned article of the Constitution, exercise their functions independently from any other body or authority in the Republic of Kosovo and, moreover, every organ, institution or other entity exercising legal authority in the Republic of Kosovo is bound to cooperate with and respond to the their requests during the exercise of the legal competencies in a manner provided by law. Furthermore, based on the provisions of Law no. 04/L-042 on Public Procurement of the Republic of Kosovo and the respective amendments and supplementation to this law, among others, (i) PRB is an independent review body that exercises its authority, powers, functions and responsibilities as established in the Law on Public Procurement; and (ii) no person or public official may exercise or attempt to exercise political influence or unlawful influence on PRB or any of its employees concerning their decisions. Further and according to the given clarifications, the aforementioned Law establishes the relationship between PRB and the judicial and legislative branches, respectively. In the context of the former, the applicable law determines that the legality of PRB's decision-making is subject to judicial control. While, in the context of the second, the applicable law establishes the relationship between the Assembly and PRB, related to the appointment of PRB's members, reporting obligations and the dismissal of PRB's members. Pertaining to the latter, according to the clarifications provided for in the Judgment, taking into account the importance of PRB's functional independence, the applicable laws, over the years, have specified that the dismissal of PRB members may be done only after the grounds for dismissal have been confirmed through the decision-making of the courts, whereas with the amendments and supplementations to the Law on Public Procurement of March 2016, exceptionally, the possibility for the Government to propose to the Assembly the dismissal of the chairman or a member of the PRB has been provided for, "if he/she has committed any act which is contrary to professional ethics and professionalism associated with professional duties", a ground on which the dismissal of the PRB member resulted in the circumstances of the present case.

However, based on the clarifications given in the Judgment, neither the Government nor the Assembly have given any justification regarding the alleged violation of the "professional ethics" of the PRB member, the basis on which the proposal and her dismissal was made. The Committee on Budget, Labor and Transfers of the Assembly had recommended to the latter not to approve the Government's proposal for dismissal. In addition, the Basic Court and the Court of Appeals dismissed as inadmissible the lawsuit and the complaint of the Ministry of Health for the annulment of the Decision of the PRB. In fact, based on the circumstances of the case, it results that the PRB member was dismissed for her decision-making regarding the issuance of the PRB Decision on the annulment and re-evaluation of the Ministry of Health's Notice on the cancellation of the relevant procurement activity. According to the clarifications given in the Judgment and relying on constitutional and legal guarantees, as well as the case-law of the Court, including in the context of dismissals of

members of institutions/agencies and/or independent bodies for their decision-making, the Court emphasizes that the individual and collegial independence of PRB members, does not only mean independence from external influences that the PRB members may face, but also from influences from the body that has appointed them to the relevant positions – in this case, the Assembly. This independence embodies the intention that the members of the relevant bodies are free to exercise their functions without fear of any consequences related to the performance of their functions based on the authorizations pursuant to the applicable laws. The latter, as far as it is relevant in the circumstances of the case, accurately determine that (i) the legality of PRB's decision-making is subject to judicial review; whereas (ii) PRB members are suspended and/or removed from office, in the event of an indictment or a final court decision, respectively. The possibility of dismissing a PRB member on the ground of "professional ethics" cannot be invoked formalistically to justify the dismissal of a PRB member, for decision-making in concrete cases, if the violation of the rules of "professional ethics" is not convincingly proven. Such a precedent, based on which PRB members could be dismissed for their decision-making, would deeply undermine PRB's functional independence and the very purpose of its existence, according to the provisions of the applicable laws.

In its Judgment, the Court has finally reiterated that the authorization of the Assembly based on paragraph 9 of article 65 [Competencies of the Assembly] of the Constitution to oversee PRB is indisputable, but that in exercising this authorization, the Assembly is limited to the constitutional provisions, including the independence of the Independent Agencies based on the provisions of the Constitution itself and laws which the Assembly itself has adopted based on paragraph 1 of article 65 [Competencies of the Assembly] of the Constitution. The Judgment also emphasizes the values of the constitutional order of the Republic of Kosovo, including the principles of respect for human rights and freedoms, the rule of law and the separation and interaction of powers, which have been elaborated through the case-law of the Court over the years, including in the context of the importance of the independence in decision-making in the exercise of public functions according to the provisions of the Constitution and the applicable laws. Based on the foregoing considerations, the Court decided: (i) unanimously to declare the referral admissible; and (ii) with eight (8) votes for and one (1) against, that the Decision [no. 08-V-583] of 13 July 2023 of the Assembly of the Republic of Kosovo on the dismissal of the member of the PRB Board, is not in compliance with paragraph 9 of article 65 [Competencies of the Assembly] and paragraph 1 of Article 142 [Independent Agencies] of the Constitution.

Judgment

KO114/23, KO192/23, KO227/23 and KO229/23

Applicant

The Supreme Court of the Republic of Kosovo

Request for constitutional review paragraph 2 of article 4, paragraph 4 of article 432, and paragraph 2 of article 438 of the Criminal Procedure Code of the Republic of Kosovo No.08/L-032

The Constitutional Court of the Republic of Kosovo has decided in the joined cases KO114/23, KO192/23, KO227/23 and KO229/23, submitted by the Supreme Court of the Republic of Kosovo based on paragraph 8 of article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo, regarding the constitutional review of paragraph 2 of article 4 (Ne Bis In Idem), paragraph 4 of article 432 (Grounds for Filing a Request for Protection of Legality) and paragraph 2 of article 438 (Judgment on Request for Protection of Legality) of the Criminal Procedure Code of the Republic of Kosovo No. 08/L-032 (Criminal Procedure Code).

The Court, unanimously, decided to declare the referral admissible and found (i) unanimously, that the phrasing "or terminating" of paragraph 4 of article 432 (Grounds for Filing a Request for Protection of Legality) of the Criminal Procedure Code, is not contrary to article 29 [Right to Liberty and Security] of the Constitution in conjunction with article 5 (Right to liberty and security) of the European Convention on Human Rights; (ii) unanimously, that paragraph 2 of

article 4 (Ne Bis In Idem) of the Criminal Procedure Code, is not contrary to article 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution in conjunction with paragraph 2 of article 4 (Right not to be tried or punished twice) of Protocol no. 7 of the European Convention on Human Rights; and (iii) by five (5) votes in favor and four (4) against, that the phrasing "unless if the final decision is manifestly inappropriate or based on serious error" of paragraph 2 of article 438 (Judgment on Request for Protection of Legality) of the Criminal Procedure Code, is not contrary to article 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution in conjunction with paragraph 2 of article 4 (Right not to be tried or punished twice) of Protocol no. 7 of the European Convention on Human Rights.

The Judgment first clarifies that according to paragraph 2 of article 438 (Judgment on Request for Protection of Legality) of the Criminal Procedure Code, when the Supreme Court considers that the request for the protection of legality, submitted to the detriment of the defendant, is grounded, it only finds a violation of the law, without affecting the final decision. This procedure applies both to the decision of the Court of Appeals regarding the termination of detention, as well as to final decisions by which the criminal procedure was concluded or the indictment was rejected. Having said that, exceptionally, based on the contested provisions of the Criminal Procedure Code, the Supreme Court, through the request for protection of legality, can also decide to the detriment of the defendant, if the contested final decision is "manifestly inappropriate or based on serious error". According to the clarifications given in the Judgment, the referring Court considers that this possibility is in contradiction with the principle ne bis in idem taking into account that it (i) affects the reopening of the final decision to the detriment of the defendant; and moreover, (ii) the Criminal Procedure Code, does not clearly define when a final decision is "inappropriate" or "based on serious error".

In the aforementioned context, the Judgment clarifies the general principles established through the case-law of the European Court of Human Rights regarding the ne bis in idem principle, guaranteed through article 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution in conjunction with article 4 (Right not to be tried or punished twice) of Protocol no. 7 of the European Convention on Human Rights, according to which, in principle, no one can be prosecuted or punished twice for the same criminal offense for which he/she was "finally" convicted or acquitted, unless the case is reopened in accordance with the law and criminal procedure, when there are new or newly discovered facts or there was a fundamental flaw in the previous proceedings. According to the case-law of the European Court of Human Rights, in order for the guarantees related to the ne bis in idem principle to be applicable, the respective cumulative criteria must be met, namely the assessment whether (i) both proceedings are "criminal" in nature; and if this is the case, (ii) both proceedings are related to the same offense for which a person has been "acquitted or convicted" by a "final" decision.

According to the clarifications provided, the case-law of the European Court of Human Rights clarifies the characteristics of the legal remedies that may be filed against a final decision, as well as the nature of a "final" decision. In relation to the characteristics of the legal remedy, the aforementioned case-law, among others, clarifies that in assessing whether a legal remedy is "ordinary" or "extraordinary", the law and domestic procedures are taken as a starting point, but the assessment is based on the characteristics of the respective legal remedy and not only on its formal name, namely if the same is in accordance with the principle of legal certainty, including in the context of (i) limited discretion, including in terms of time limits available to use a particular legal remedy; and (ii) the balance between the parties in the possibility of its use. Whereas, related to the nature of the "final" decision, the aforementioned case-law, among others, clarifies that (i) the "final" decision must include the declaration of "innocence or punishment of the person"; and (ii) a decision is "final" if the latter has become an adjudicated matter or res judicata, namely if the decision is irrevocable, which, among others, means that against that decision, there is no longer any possibility of filing legal remedies, the parties have exhausted these remedies, or the deadlines set by law have elapsed without filing them.

In the application of these principles, the Judgment clarifies that, according to the provisions of the Criminal Procedure Code, the legal remedy of the request for protection of legality (i) can be filed within three (3) months from the when the final decision was served, and, consequently, it is clearly limited within a reasonable period of time; and (ii) it is open to both the defendant and the state prosecution, while (iii) it can be filed in cases of violations of substantive and procedural law, but not for erroneous or incomplete determination of the factual situation. On the other hand, according to the clarifications provided, as far as the legal remedy of the request for protection of

legality is invoked against the final decision of the Appellate Court, the same criminal proceedings continues until the "final" decision of the Supreme Court. More precisely, the decision of the Supreme Court following from the request for protection of legality, is a continuation of the same criminal proceedings and does not necessarily result in a second proceedings, namely new criminal proceedings for the purposes of article 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution in conjunction with article 4 (Right not to be tried or punished twice) of Protocol no. 7 of the European Convention on Human Rights. Consequently, under such circumstances, the guarantees established in article 4 (Right not to be tried or punished twice) of Protocol No. 7 of the European Convention on Human Rights cannot be applied regarding the reopening of a case in which a person was convicted or acquitted by "final decision". According to the clarifications given in the Judgment, for the purposes of the aforementioned provisions, the Criminal Procedure Code has foreseen the extraordinary legal remedy of reopening of the criminal proceedings and which, unlike the legal remedy of the request for protection of legality, clearly falls under the scope of article 4 (Right not to be tried or punished twice) of Protocol No. 7 of the European Convention on Human Rights. Moreover, according to the clarifications provided in the Judgment, it is quite clear that article 4 (Right not to be tried or punished twice) of Protocol No. 7 of the European Convention on Human Rights, is not applicable to cases of detention, because in those proceedings, the final "acquittal or conviction" for a criminal offense is not decided upon, since the latter is only related to ensuring the presence of the defendants throughout the ongoing criminal proceedings.

(ii) the possibility of the Supreme Court, through the request for protection of legality filed by the State Prosecutor, including against the final decision of the Appellate Court on the termination of detention, to decide to the detriment of the defendant in the event that the final decision is "manifestly inappropriate or based on serious error"

Initially and related to the possibility of the State Prosecutor to challenge the decision of the Court of Appeals on the termination of detention before the Supreme Court by way of the request for protection of legality, the Judgment, elaborating and interpreting the principles stemming from article 29 [Right to Liberty and Security] of the Constitution in conjunction with article 5 (Right to liberty and security) of the European Convention on Human Rights, clarifies that the Criminal Procedure Code, among others, has established: (i) detention as a measure to ensure the presence of defendants in the proceedings; (ii) the procedure according to which detention is imposed and extended, also determining the right to appeal against decisions on detention, both for the defendant and for the state prosecutor; (iii) the right to submit a request for protection of legality against the final decision, both in the case of the imposition and extension of detention, as well as in the case of termination of detention; (iv) that the request for protection of legality may be used by the prosecution against the decision to terminate detention, just as it can be used by the defendant against the decision on imposition or extension of detention; and that according to the Criminal Procedure Code, (v) all rights in the procedure that are available to the prosecution, are also available to the defendant, and as such, according to the clarifications in the Judgment, respect the principle of "adversariality" and that of "equality of arms".

Having said that, disputable concerning the contested provisions of the Criminal Procedure Code, is whether, through the request for protection of legality, the Supreme Court can decide to the detriment of the defendant, including in cases of detention. In this context and regarding the effects of the Supreme Court's decision-making on the request for protection of legality to the detriment of the defendants, the Judgment reiterates that based on paragraph 1 of article 438 (Judgment on Request for Protection of Legality) of the Criminal Procedure Code, when the Supreme Court determines that the request for protection of legality is grounded, it renders a judgment by which, taking into account the type of violation, it (i) modifies the final decision; (ii) annuls the decision of the basic court and of the higher court in whole or in part and remands the case for retrial; or (iii) is limited only to finding the violation of the law, while based on paragraph 2 of this article, which has also been contested before the Court, the Supreme Court may also exceptionally decide to the detriment of the defendant, if the final decision is "manifestly inappropriate or based on serious error".

Following from the above, the Judgment clarifies that, in principle, in circumstances in which the Supreme Court assesses that the request for protection of legality filed to the detriment of the defendant is grounded, it is limited only to finding the violation of the law, rendering thus a declaratory decision. Having said this and exceptionally, the latter (i) modifies the

final decision; or (ii) annuls in whole or in part the decision of the basic court and of the higher court, and remands the case for retrial to the detriment of the defendant, when a decision is "manifestly inappropriate" or "based on serious error". According to the clarifications given, the circumstances in which the decision-making of the Supreme Court may result to the detriment of the defendant, encompass very serious legal, procedural or substantive violations, which call into question in their entirety the integrity of the decision-making that resulted into the final decision of the Appellate Court. According to the clarifications provided in the Judgment, any decision-making by the Supreme Court, including based on legal mechanisms to ensure consistency in its case law, to the detriment of the defendant, must be in full compliance with the exceptions provided by the case-law of the European Court of Human Rights, pursuant to the obligations stemming from article 53 [Interpretation of Human Rights Provisions] of the Constitution and may be subject to the assessment of the Constitutional Court under the provisions of paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution.

Finally, based on the case-law of the European Court of Human Rights, the Judgment emphasizes the fact that in the event that the Supreme Court, through the request for protection of legality, exceptionally, finds that the contested decision is "manifestly inappropriate or based on serious error", it is obliged to offer the parties all the procedural safeguards guaranteed by the Constitution and the European Convention on Human Rights. More specifically, in determining whether the latter, (i) modifies the final decision; or (ii) annuls the decision of the basic court and of the higher court in whole or in part, and remands the case for retrial, it must make those legal solutions it considers ensure the rights of the defendants, as guaranteed by the Constitution, the European Convention on Human Rights and the Criminal Procedure Code, with emphasis on the guarantees stemming from article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the European Convention on Human Rights, which establish, among others, (i) the right to be heard; (ii) the principle of "adversariality" and of "equality of arms"; and (iii) the right to legal remedies and judicial protection of rights.

Judgment

KO232/23 and KO233/23

Applicant

Abelard Tahiri and ten (10) other deputies; and
Besian Mustafa and ten (10) other deputies

Request for constitutional review of the Law No. 08/L-180 on amending and supplementing the Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo

The Constitutional Court of the Republic of Kosovo has decided on the joint referrals in cases (i) KO232/23, with applicants: Abelard Tahiri and ten (10) other deputies; and (ii) KO233/23, with applicants: Besian Mustafa and ten (10) other deputies of the Assembly of the Republic of Kosovo, submitted to the Court based on the authorizations established in paragraph 5 of article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo, regarding the constitutional review of Law no. 08/L-180 on Amending and Supplementing Law no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo.

The Court decided to (i) unanimously declare the referral admissible; and to hold (ii) unanimously, that articles 2, 7 and 8 of the contested Law, are not in compliance with paragraph 1 of article 24 [Equality Before the Law] and article 32 [Right to Legal Remedies] in conjunction with paragraph 2 of article 101 [Civil Service] of the Constitution and to declare these articles invalid; (iii) with seven (7) votes in favor and two (2) votes against, that article 6 of the contested Law, is not in compliance with paragraph 2 of article 101 [Civil Service] of the Constitution and to declare this article invalid; (iv) unanimously, that articles 9, 10 and 11 of the contested Law, are not in compliance with paragraph 1 of article 31 [Right to Fair and Impartial Trial] of the Constitution and to declare

these articles invalid; and (v) unanimously, to declare that, based on article 43 (Deadline) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, the Law no. 08/L-180 on Amending and Supplementing Law no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo be sent to the President of the Republic of Kosovo for promulgation according to the modalities defined in the Court's Judgment and without articles 2, 6, 7, 8, 9, 10 and 11 of the contested Law.

The Judgment initially clarifies that the contested Law amends and supplements the Law no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo, in four main aspects. First, it changes the composition of the Independent Oversight Board from seven (7) to fifteen (15) members, also changing and/or supplementing aspects related to the criteria for appointing members of the Independent Oversight Board and the procedure for their appointment. Secondly, it removes the current legal provision that guarantees decision-making immunity for the members of the Independent Oversight Board. Thirdly, it takes away from the Independent Oversight Board the competence to decide on the complaints of civil servants and/or candidates for civil servants in senior management positions against the Government's decisions, namely it makes impossible the submission of complaints to the Independent Oversight Board against the decisions of Government for the abovementioned categories, guaranteeing nevertheless the right of appeal to the competent court in administrative conflict. Fourthly, unlike the law in force on the Independent Oversight Board, the enforceability of the Independent Oversight Board's decisions is conditioned either on the lack of an appeal with the competent court or, in case of an appeal, on the issuance of a final court decision by the competent court.

The applicant deputies of the Assembly contest the aforementioned Law, both in terms of the procedure followed for its adoption, as well as in terms of its content. According to the clarifications given in the Judgment, (i) in the context of the former, the applicants, in essence, claim that the procedure followed for the adoption of the contested Law is contrary to article 77 (Reading of a draft law amending and supplementing a law) of the Rules of Procedure of the Assembly; while (ii) in the context of the second, in essence, they claim that the contested Law is contrary to articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions], 55 [Limitations on Fundamental Rights and Freedoms], 101 [Civil Service] and 142 [Independent Agencies] of the Constitution, among others and essentially, because (i) it violates the fundamental rights and freedoms of civil servants in senior management level by making it impossible for them to complain to the Independent Oversight Board unlike other categories of civil servants, consequently denying them the right to a legal remedy, moreover, taking away at the same time, from the Independent Oversight Board the constitutional competence to ensure the compliance with the rules and principles that regulate the civil service according to the provisions of article 101 [Civil Service] of the Constitution; (ii) violates the decision-making independence of the members of the Independent Oversight Board, by removing the guarantees for immunity in decision-making contrary to article 101 [Civil Service] of the Constitution; as well as (iii) violates the constitutional competencies of the Independent Oversight Board, including the rights of the parties to fair and impartial trial, taking into account that the "enforceable" effect of decisions of the Independent Oversight Board, is eliminated until such time that there is a final decision of the regular courts.

The allegations of the applicants, in principle, are supported by the Ombudsperson and the Independent Oversight Board, while they are counter-argued by the Prime Minister of the Republic of Kosovo and the Parliamentary Group of VETËVENDOSJE! Movement. The latter counter-argue that the contested Law is in accordance with the Constitution, in essence, because (i) the Independent Oversight Board is not an Independent Agency of the Assembly, and that the source of the Board's competencies is the Assembly; (ii) the Independent Oversight Board cannot limit the competencies of the Government of the Republic of Kosovo and that its decision-making cannot be limited under any circumstances by "a quasi-judicial body"; (iii) a distinction must be made between the categories of the civil service based on their weight of responsibility, competences and the general role in ensuring the functioning of the administration, while the Independent Oversight Board cannot supersede the Government's decision-making regarding civil servants and/or candidates for civil servants in senior management positions, and whose right to a legal remedy is not violated, because they are guaranteed a legal remedy before the regular courts through the administrative conflict procedure; (iv) it is within the competence of the Assembly whether it considers it necessary to guarantee decision-making immunity for the

Independent Oversight Board members or not; and (v) the decisions of the Independent Oversight Board can become "enforceable" only after the decision-making of the regular courts because the decisions of the Independent Oversight Board cannot supersede those of the Government.

In assessing the constitutionality of the contested Law, the Court initially and among others, elaborates (i) the basic constitutional principles regarding the Independent Oversight Board and its relationship with the executive branch as specified in Chapter VI [Government of the Republic of Kosovo] of the Constitution; (ii) the basic constitutional principles related to equality before the law and the right to an effective legal remedy; and (iii) the principles established by the Court, through its already consolidated case-law related to the functioning and competencies of the Independent Oversight Board that derive from article 101 [Civil Service] of the Constitution, including the decision-making independence of its members, with emphasis but not limited to Court's Judgments in cases (a) KO171/18 regarding the constitutional review of Law no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo; (b) KO127/21 regarding the constitutional review of the Decision [no. 08-V-29] of the Assembly of the Republic of Kosovo of 30 June 2021 for the dismissal of five (5) members of the Independent Board; and (c) KO216/22 and KO220/22 regarding the constitutional review of Law no. 08/L-197 on Public Officials.

In applying the aforementioned principles in assessing the constitutionality of the contested Law, the Judgment initially emphasizes that (i) article 101 [Civil Service] of the Constitution establishes an Independent Oversight Board for the civil service with the constitutional competence to ensure compliance with the rules and principles that regulate the civil service in the Republic of Kosovo; (ii) the case-law of the Court, over the years, has clarified the difference between the Independent Oversight Board and Independent Agencies established based on article 142 [Independent Agencies] of the Constitution, emphasizing, in principle, that while the establishment, including the functioning and the competences of the Independent Agencies, is within the competence of the Assembly, the Independent Oversight Board is a body established by the Constitution and the constitutional powers of the latter cannot be violated through the laws of the Assembly; and (iii) while the Assembly has the full competence to specify through laws the role of the Independent Board in the exercise of its function to ensure compliance with the rules and principles that regulate the civil service, the Assembly must respect the independence and competence of the Board according to the constitutional provisions.

In the Court's Judgment, the principles explained above were applied in the review of each assessed article of the contested Law separately. Having said that, and for the purposes of this summary, the main findings and conclusions regarding the most contested issues of the contested Law will be clarified below, namely pertaining to (i) the exclusion of the competence of the Independent Oversight Board to review the Government's decisions regarding candidates for and civil servants in senior management positions, as well as the inability of the abovementioned categories to address their complaints to the Independent Oversight Board; (ii) removing the immunity for decision-making of the members of the Independent Oversight Board; and (iii) taking away the "enforceable" nature from decisions of the Independent Oversight Board until a final decision of the regular courts is rendered.

(i) the exclusion of the decision-making competence of the Independent Oversight Board related to the Government's decisions regarding candidates for admission to and civil servants in senior management positions

The Judgment initially clarifies that articles 2, 7 and 8 of the contested Law, amend and supplement articles 6 (Functions of the Board), 16 (Review of the Complaints) and 19 (Oversight procedure for the selection of senior management and management level Civil Servants) of the basic Law, repealing the competence of the Independent Oversight Board for (i) reviewing complaints against the Government's decisions for the selection of civil servants in senior management positions; as well as (ii) the supervision of the selection procedure of civil servants in senior management positions. According to the clarifications given in the Judgment, the aforementioned articles raise two constitutional issues, namely (i) the constitutional competence of the Independent Oversight Board to ensure compliance with the rules and principles that regulate the civil service in the Republic of Kosovo; and (ii) equality before the law regarding the right to a legal remedy in the context of candidates for admission to and civil servants in senior management positions compared to other categories of civil service. In the context of the first issue, the Judgment places emphasis on its consolidated case-law, including in (i) its Judgment in case

KO171/18, whereby it elaborated the competence of the Independent Oversight Board for ensuring compliance with civil service rules regarding all categories of civil servants, without exception; and (ii) its Judgment in case KO216/22 and KO220/22, in which the constitutionality of the Law on Public Officials was reviewed, and which, in defining the civil service, also includes the officials, namely the civil servants of senior management level and moreover, in elaborating the right to appeal to the Independent Oversight Board, does not distinguish between the categories of civil servants, specifying/granting to all the categories of civil service the right to a legal remedy to the Independent Oversight Board for any action or failure to act of the authorities, which violates the rights or legal interests stemming from the employment relationship in the civil service. According to the clarifications given in the Judgment, the Constitution determines the competence of the Oversight Board to ensure compliance with the rules and principles that regulate the civil service, and such competence applies to all categories which, based on the applicable laws, fall within the scope of the civil service. Moreover, the Independent Oversight Board is an institution established in the constitutional chapter of the Government of the Republic of Kosovo, and the contested Law excludes the decision-making competence of the Independent Board only in relation to the Government's decisions.

Furthermore and, in the context of the second issue, the Judgment, applying the principles originating from the case-law of the Court, including the one of the European Court of Human Rights, regarding equality before the law and the right to legal remedy, among others, clarifies that based on the applicable laws, candidates for and the civil servants of senior management category, fall under the definition of civil service and as such, are in "relatively similar and/or analogous" positions with other categories of civil service. Consequently, the differences established in the contested Law in the context of equality of access to legal remedies, namely access to the assessment and decision-making of the Independent Oversight Board, results into a "difference in treatment", and which, while it is "prescribed by law " and may pursue a "legitimate aim", is not proportionate to the aim pursued, among others, because despite the constitutional competence of the Independent Oversight Board to ensure compliance with civil service rules, and unlike all other applicable laws, including the Law on Public Officials, excludes from the supervision of the Independent Oversight Board, only the aforementioned category and that only in relation to the decision-making of the Government of the Republic of Kosovo.

As a result and according to the details given in the Judgment, the Court held that articles 2, 7 and 8 of the contested Law are not in compliance with paragraph 1 of article 24 [Equality Before the Law] and article 32 [Right to Legal Remedies] in conjunction with paragraph 2 of article 101 [Civil Service] of the Constitution.

(ii) removing the immunity for decision-making of the members of the Independent Oversight Board

The Judgment initially clarifies that article 6 of the contested Law removes in its entirety paragraph 3 of article 11 (Term of office for members of Board) of the basic Law, which determines that the President and members of the Independent Oversight Board enjoy immunity from criminal prosecution, civil lawsuits or dismissal regarding the decision-making within the framework of constitutional and legal functions of the Board. In the aforementioned context, the Judgment emphasizes the fact that the decision-making independence of the members of the Independent Oversight Board has been specifically examined through two Court's Judgments, in cases KO171/18 and KO127/21, respectively. Through (i) the first Judgment, the Court has assessed precisely the constitutionality of paragraph 3 of article 11 (Term of office for members of Board) of the basic Law, which is being repealed by the contested Law, qualifying it as in compliance with article 101 [Civil Service] of the Constitution; while through (ii) the second Judgment, the Court declared contrary to the Constitution the dismissal of the members of the Independent Oversight Board due to their decision-making in concrete cases. Through these two Judgments, the Court, among others, has emphasized that (i) the constitutional independence of the Independent Oversight Board is conditioned by the decision-making independence of its members; (ii) the constitutional independence of the Independent Oversight Board in the exercise of the functions established by the Constitution and the law, attributes decision-making immunity to the members of the Board within its constitutional and legal functions, from criminal prosecution, civil lawsuits or dismissal, which enables them to be free to exercise their functions independently and without fear of consequences for the performance of their functions in relation to "the views expressed, the way of voting or the decisions taken during their work"; (iii) despite the fact that the Assembly has the constitutional

competence to supervise the Independent Oversight Board according to the provisions set forth in the law approved by the Assembly itself, including the possibility of dismissing its members in the circumstances specified in the applicable law on the Independent Oversight Board, the members of the Board cannot be dismissed for decision-making. According to the clarifications given in the Judgment, such a possibility, based on which the members of the Independent Oversight Board could be dismissed for their decision-making, would deeply infringe upon the functional independence of the Independent Oversight Board and the very purpose of its existence, according to the provisions of article 101 [Civil Service] of the Constitution and applicable laws. Furthermore, the Judgment reiterates the fact that the legality of the decisions of the Independent Oversight Board is subject to the control of the judicial branch and not the legislative and/or executive branches of government.

As a result and according to the details given in the Judgment, the Court held that article 6 of the contested Law is not in compliance with paragraph 2 of article 101 [Civil Service] of the Constitution.

(iii) taking away "enforceability" from decisions of the Independent Board until the final decision of the regular courts

The Judgment first clarifies that articles 9, 10 and 11 of the contested Law, amend and supplement articles 21 (Board's decision), 22 (Initiation of the administration conflict) and 23 (Procedure in case of non-implementation of the Board decision) of the basic Law, determining that the decisions of the Independent Oversight Board are not "enforceable", consequently determining that they become "enforceable" (i) only after the expiry of the deadlines for appeal before the regular courts; or (ii) in case of an appeal, only after the decision of the regular courts has become final.

In the aforementioned context, the Judgment elaborates the Court's consolidated case-law, including in the context of individual referrals and which have raised, in essence, the importance of the "enforceability" of the decisions of the Independent Oversight Board, including in the context of the constitutional guarantees for fair and impartial trial and the effectiveness of the legal remedy. Based on this case-law, the Court in a continuous and consistent manner, has clarified that the decisions of the Independent Oversight Board, which has the characteristics of a "quasi-tribunal" in the context of the obligations stemming from article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the European Convention on Human Rights, are "final, binding and enforceable" decisions in administrative proceedings. The Judgment further reiterates that the Independent Oversight Board has full jurisdiction to decide on matters related to ensuring compliance with civil service rules, while the review/assessment of the legality of these decisions, is subject to the regular courts and which, based on the applicable law for administrative conflicts, have full competence to suspend the enforcement of the Board's decisions through the imposition of interim measures, when, based on their assessment, the criteria defined by law have been met. According to the clarifications provided, taking away the "enforceability", from all decisions of the Independent Oversight Board, insofar as the courts have not suspended their execution according to the provisions of the applicable laws, undermines the effectiveness of the constitutional competence of the Independent Oversight Board to ensure the compliance with the rules and principles that regulate the civil service of the Republic of Kosovo in accordance with the provisions of article 101 [Civil Service] of the Constitution.

As a result and according to the details given in the Judgment, the Court held that articles 9, 10 and 11 of the contested Law are not in compliance with paragraph 1 of article 31 [Right to Fair and Impartial Trial] of the Constitution.

In the end, the Judgment clarifies that based on the applicants' allegations, it results that (i) the procedure followed for the adoption of the contested Law, has not been argued to be in contradiction with the Constitution; and (ii) articles 3, 4 and 5 of the contested Law and which amend and supplement articles 8 (Composition of the Board), 9 (Criteria for the Appointment of the Board's members) and 10 (Appointment procedures of the members of the Board) of the basic Law, have not been argued to be in contradiction with the Constitution.

The Judgment also clarifies that the referrals of the applicants have been submitted to the Court based on paragraph 5 of article 113 [Jurisdiction and Authorized Parties] of the Constitution and that this category of referrals has a suspensive character, namely such a law can be sent to the President of the Republic of Kosovo for promulgation only after the decision of the Court and in accordance with the modalities defined in the final decision of the Court. In the context of its

case-law, as elaborated in the Judgment, taking into account that the remaining provisions of the contested Law can be implemented without the provisions that have been declared in contradiction with the Constitution, the Court decided that the Law no. 08/L-180 on Amending and Supplementing Law no. 06/L-048 on Independent Oversight Board for the Civil Service of Kosovo, be sent to the President of the Republic of Kosovo for promulgation, without articles 2, 6, 7, 8, 9, 10 and 11, which have been assessed to be in contradiction with the Constitution and as such, have been declared invalid.

Judgment

KO46/23

Applicant

Abelard Tahiri and nine (9) other deputies the Assembly of the Republic of Kosovo

Request for constitutional review of the Law no.08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets

The Constitutional Court of the Republic of Kosovo has decided in the case KO46/23, with applicants Abelard Tahiri and nine (9) other deputies of the Assembly of the Republic of Kosovo, submitted to the Constitutional Court based on the authorizations under paragraph 5 of article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo, regarding the constitutional review of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets.

The Court (i) unanimously decided to declare the referral admissible; and (ii) to hold, by eight (8) votes for and one (1) vote against, that item 2.1 of paragraph 2 of article 2 (Scope) in relation to paragraph 2 of article 34 (Hearing in the first instance) of the contested Law is not in compliance with paragraph 1 of article 7 [Values] of the Constitution and paragraphs 1 and 2 of article 46 [Protection of Property] of the Constitution in conjunction with article 1 (Protection of Property) of Protocol no. 1 of the European Convention on Human Rights; (iii) to hold, by eight (8) votes for and one (1) vote against, that point 2.2 of paragraph 2 of article 2 (Scope) in conjunction with paragraph 3 of article 22 (Period of asset verification) of the contested Law, is not in compliance with paragraph 1 of article 7 [Values] of the Constitution; (iv) to hold, by six (6) votes for and three (3) votes against, that point 1.1 of paragraph 1 of article 10 (Composition of the Oversight Committee and Compensation) of the contested Law, is not in compliance with article 106 [Incompatibility] of the Constitution; (v) to hold, by eight (8) votes for and one (1) vote against, that point 1.2 of paragraph 1 of article 10 (Composition of the Oversight Committee and Compensation) of the contested Law, is not in compliance with paragraph 1 of article 136 [Auditor-General of Kosovo] and paragraphs 1 and 2 of article 137 [Competencies of the Auditor-General of Kosovo] of the Constitution; (vi) to hold, by six (6) votes for and three (3) votes against, that point 1.4 of paragraph 1 of article 10 (Composition of the Oversight Committee and Compensation) of the contested Law, is not in compliance with paragraph 1 of article 132 [Role and Competencies of the Ombudsperson] and paragraph 3 of article 134 [Qualification, Election and Dismissal of the Ombudsperson] of the Constitution; and (vii) to declare null and void, by five (5) votes for and four (4) votes against, in its entirety, the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets.

The Judgment initially clarifies that the contested Law establishes the State Bureau for the Verification and Confiscation of Unjustifiable Assets (the State Bureau), introducing into the legal order of the Republic of Kosovo, the concept of civil confiscation of unjustifiable assets, respectively and in essence, the confiscation of assets without the need to prove in criminal procedure that the relevant property was acquired through the commission of a criminal offense. For this purpose, the contested Law establishes the procedure for the verification and confiscation of the assets acquired unjustifiably by official persons and third parties, namely by any natural or legal person to whom the property of the official person has been transferred or who has or may have had a legal interest in the property of the parties in the proceedings. According to the provisions of the contested Law, assets acquired in an unjustified manner

are subject to verification starting from 17 February 2008, in principle, within ten (10) years from the moment when the relevant officials cease exercising their functions, with the specification that, exceptionally, assets acquired after the end of exercising the official function may as well be subject to the verification of the assets. The above-mentioned Bureau has the competence to assess the amount of assets of each official compared to the lawful income and in case the assessment results into a discrepancy between the income and the assets exceeding the value of twenty-five thousand (25,000) Euros, may propose the securing of property through an interim measure and afterwards the confiscation of the same following the respective court decision. Considering that the procedure of verification and confiscation of unjustifiable assets is independent from the criminal procedure, the standard of proof is not the criminal standard of "reasonable doubt", but the civil standard of "balance of probabilities" and according to which, the asset is qualified as un/justifiable, if based on the evidence, the court "believes that something is more likely to be or have happened than not". Furthermore, and while the State Bureau has the initial burden of proving that the assets whose confiscation is proposed are unjustified, the burden of proving that the assets are in fact justifiable falls on the individual. It should also be noted that, while the State Bureau has full competence to verify and propose the confiscation of assets, it is in the courts' competence to decide whether the disputed assets are to be subject to confiscation. The Judgment also clarifies that for the purpose of verifying and proposing the confiscation of unjustifiable assets, the contested Law establishes the State Bureau, led by the Director General, with a seven (7) year mandate, and is overseen by an Oversight Committee composed of (i) a judge of the Supreme Court appointed by the President of the Supreme Court, in the capacity of the chair of the Committee; (ii) the Auditor General; (iii) the Director of the Agency for the Prevention of Corruption; (iv) deputy Ombudsperson; and (v) the Director of the Financial Intelligence Unit. This Oversight Committee, which makes decisions with the majority of its members within the decision-making quorum of four (4) of them, has full oversight competence over all functions of the State Bureau, including the adoption of all by-laws. The essence of the applicants' allegations, is related to the violation (i) of the principles of the rule of law and of legal certainty, as essential values of the constitutional order; and (ii) of the fundamental rights and freedoms guaranteed by the Constitution, including the applicable international instruments. In essence, the applicants raise three categories of issues before the Court. Firstly, they allege that the mechanisms established through the contested Law for the verification and confiscation of assets do not entail sufficient guarantees for the protection of fundamental rights and freedoms, especially in the context of (i) equality before the law, in view of the fact that the contested Law distinguishes between official persons and other citizens of the Republic of Kosovo and between official persons themselves who exercised functions before and after 17 February 2008; (ii) procedural guarantees related to the verification and confiscation of assets, including the right to a fair and impartial trial, namely equality of arms, presumption of innocence, burden of proof, right not to incriminate oneself and the legal remedies; and (iii) the property rights of the verification subjects. Secondly, they allege that the retroactive application of the law, in addition to the violation of fundamental rights and freedoms, also violates the principle of legal certainty and the values of the Constitution. Thirdly, the applicants allege the violation of the oversight competences of the Assembly in relation to Independent Agencies, because in the circumstances of the concrete case, the oversight competence of the Assembly has been transferred to an Oversight Committee, which is also characterized by constitutional incompatibility of functions, with emphasis on the deputy Ombudsperson, and lack of independence of the State Bureau, including in the context of the manner of electing its Director General.

The applicants' allegations are opposed by the Ministry of Justice and the Parliamentary Group of the VETËVENDOSJE! Movement, in essence, emphasizing that (i) the contested Law contains sufficient procedural guarantees for the protection of fundamental rights and freedoms and that the content of the same has also been positively evaluated by the Opinions of the Venice Commission; (ii) the difference between official persons and other citizens of the Republic of Kosovo pursues a legitimate aim of fighting corruption in the public sector, furthermore that the retroactive application of the law is not in contradiction with the principle of legal certainty; while (iii) they clarify that the date 17 February 2008 is also related to the "legal circulation of property through bank transactions", which for the purposes of this law, constitutes decisive evidence in terms of assets' verification; (iv) the establishment of the Oversight Committee does not affect the oversight competence of the Assembly, moreover, the transfer of the

competence for the election of the Director General from the Assembly to the Oversight Committee, as an anti-deadlock mechanism in case the election procedure for the Director fails at the Assembly, is a solution in accordance with the recommendations of the Venice Commission.

The Court, in its Judgment, namely in the light of elaborating the concept of civil confiscation of unjustified assets based on the international standard and the respective practice of countries that apply civil confiscation, initially emphasizes the importance of the legitimate aim of the contested Law for the public interest and the fight against corruption in the public sector. Having said this, in terms of assessing and examining the applicants' allegations, as well as the counter-arguments of the interested parties, the Judgment, among others, also elaborates (i) the general principles pertaining to the concept of civil confiscation of unjustified assets according to international practice; (ii) the case-law of the European Court of Human Rights (ECtHR) pertaining to the confiscation of assets and the burden of proof, including in the context of "interference" with the property rights of individuals as a result of confiscation of assets in civil proceedings; (iii) the relevant documents approved at the level of the United Nations, the European Union and the Council of Europe, including all the Opinions of the Venice Commission regarding the civil confiscation of assets, with an emphasis on aspects related to institutional design and corresponding guarantees for committees/ agencies responsible for civil confiscation of unjustifiable assets and issues related to the burden of proof and retroactive applicability of the law; and (iv) two (2) Opinions of the Venice Commission on Kosovo regarding the contested Law adopted on 17-18 June 2022 and on 16-17 December 2022, respectively.

In the light of the aforementioned principles, including the arguments and counter-arguments of the parties, for the purposes of this summary, the most essential findings of the Judgment pertaining to three comprehensive categories of issues will be presented hereinafter, namely (i) the scope of the contested Law in terms of the equality before the law, legal certainty and proportionality of the retroactive application of the law in relation to the individual's burden of proof; (ii) the procedural guarantees in the context of verification and/or confiscation of unjustifiable assets; and (iii) the institutional design issues, namely the mechanisms of oversight of the State Bureau, including the in/compatibility of the constitutional functions of the members of the Oversight Committee.

(i) Scope of the Law – equality before the law, legal certainty and proportionality of the retroactive application of the law in relation to the individual's burden of proof

The Judgment initially clarifies that in the context of its scope, the contested Law, in principle, applies to the assets acquired in an unjustified manner, throughout the period of exercising the function of public officials from 17 February 2008 and within ten (10) years from the moment when the relevant subjects cease exercising their functions and exceptionally, to the assets acquired after the period of exercising the public function, but not longer than five (5) years after the end of the official person's public function. According to the clarifications provided, these regulations, in essence, raise three issues at constitutional level, namely (a) the principle of equality before the law among citizens of the Republic of Kosovo in light of the fact that only public officials and third parties related to them are subject to assets verification, including the equality before the law of public officials themselves, considering that subject to verification are only the assets acquired by public officials after 17 February 2008; (b) the principle of legal certainty in the context of the retroactive applicability of the contested Law starting from 17 February 2008, including in relation to the burden of proof which, after the proposal of confiscation of assets by the State Bureau, retroactively, falls upon the individual; and (c) the principle of legal certainty in the context of "clarity" and "foreseeability" of the provisions of the contested Law which regulate the period of verification of unjustifiable assets during the exercise and after the end of office of the relevant officials. The assessments and the findings of the Court pertaining to the above issues will be succinctly presented as follows.

(a) equality before the law between public officials and third parties in relation to other citizens of the Republic regarding the verification of unjustifiable assets, including before and after 17 February 2008

In the context of the (un)equal treatment between public officials and third parties, in relation to other citizens of the Republic with regard to the verification of unjustifiable assets, including before and after 17 February 2008, the Judgment, based on the Court's case-law and that of the ECtHR, initially clarifies that the aforementioned categories are in "relatively similar and/or analogous situations" and that the contested law treats these categories differently, resulting in "difference in treatment". Having said that, according

to the clarifications provided in the Judgment, this "difference in treatment" does not result in violation of equality before the law because it pursues a "legitimate aim" of public interest and is "proportional" to the aim pursued, among others, because based on the public interest of fighting corruption in the public sector, the contested Law focuses on the category of citizens who were paid from the state budget, namely from the taxpayers of the Republic of Kosovo.

(b) the retroactive application of the law in relation to the burden of proof related to the un/justifiability of the assets

In the context of the retroactive applicability of the contested Law in relation to the principle of legal certainty, the Judgment, based on the ECtHR's case-law, the Opinions of the Venice Commission related to the civil system of confiscation of unjustified assets and the case-law of the other constitutional courts, clarifies that, in principle, the retroactive application of the law in the field of civil and administrative law is exceptionally possible, as long as it is in the public interest and is proportional to the aim pursued. According to the clarifications given, the retroactive applicability of the contested Law in the context of the verification of unjustifiable assets, is in the public interest of the fight against corruption. The latter makes it necessary to act not only in the future, but also to address the illegal acquisition of assets in the past, especially since, in such circumstances, there is no intervention exclusively in past events, but in the facts in continuation as well because ownership of illegal assets began in the past, but continues further, while the individual's expectation of being able to keep the assets acquired illegally does not weigh against the public interest in combating corruption.

Having said this and according to the clarifications provided, it remains contested whether the retroactive application of the law for a period longer than fifteen (15) years, namely from 17 February 2008, is proportional to the fundamental rights and freedoms of the subjects of verification in the context of the burden of proof and which, according to the ECtHR' case-law but also to the Opinions of the Venice Commission, is necessary in the context of the reasonableness and/or "objective possibility" of the individual to obtain and present the necessary evidence in support of the argument that the assets subject to verification and/or confiscation, are justifiable. According to the clarifications given in the Judgment, while in its proposal for the confiscation of assets, the State Bureau is supported by the obligation of cooperation of all public authorities in the Republic of Kosovo, the individual bears the burden of proving the contrary, namely proving the justifiability of the assets, under circumstances which, the contested Law, unlike similar laws in states that have adopted the system of civil confiscation of property, does not contain any guarantee for the individual to prove the "objective impossibility" of possessing a piece of evidence over a period of time which, in principle, exceeds the deadlines prescribed in the applicable laws for keeping/saving data/records and/or access to necessary documentation/evidence. According to the clarifications provided, in order to assess the proportionality in the context of the period of retroactive applicability of the contested Law and the individual's burden of proof which is based on the "balance of probabilities", respectively according to the definition of the law, in the belief that "something is more likely to be, or to have happened than not", the Judgment, among others, emphasizes the context of the state building of the Republic of Kosovo, including the adoption and characteristics of the applicable laws that are relevant to prove the relationship between the legal income and the acquired assets in the context of (i) the personal income tax system; (ii) pension system; (iii) the legal obligation to circulate money through bank transactions; (iv) declaration of assets; and (v) confiscation of assets acquired through criminal offences. According to the clarifications given, in principle, it results that the applicable laws do not provide for obligations to store/maintain data for the period longer than ten (10) years and which, therefore, exceeds the period of retroactive application of the contested Law. Therefore, and according to the clarifications provided, despite the fact that the contested Law pursues the legitimate aim of public interest, the same, in the Court's assessment, does not reflect a reasonable balance between the state and the individual, among others, because (i) the period of retroactive applicability of the law , in principle, exceeds the time limits defined in the relevant applicable laws in the context of keeping records and/or data, (ii) in circumstances in which the entire state administration is obliged to cooperate with the State Bureau, while the burden of proof about the justifiability of the contested assets falls on the individual, and (iii) who does not benefit from a reasonable procedural guarantee, based on which, he/she could argue before the competent court the "objective impossibility" to obtain and/or present a piece of evidence in favor of the justifiability of the assets which are subject to verification and/or confiscation. As a result, the Court held that point 2.1

of paragraph 2 of article 2 (Scope) in conjunction with paragraph 2 of article 34 (Hearing in the first instance) of the contested Law, is not compatible with paragraph 1 of article 7 [Values] of the Constitution and paragraphs 1 and 2 of article 46 [Protection of Property] of the Constitution in conjunction with article 1 (Protection of Property) of Protocol no. 1 of the European Convention on Human Rights. According to the clarifications given in this Judgment, in addressing the violations noted above, through amendments and/or supplementation of the aforementioned provisions, the Assembly must ensure that the retroactive application of the law is balanced and/or proportional to the burden of proof, either (i) by determining reasonable retroactive periods based on the analysis and evaluation of the applicable laws in the Republic of Kosovo, including in the context of access to data that are relevant for proving the un/justifiability of assets; and/or (ii) by providing procedural guarantees in the context of the individual's burden of proof, which would enable the latter to argue before the respective courts in relation to the "objective impossibility" of obtaining the relevant evidence.

(c) the principle of legal certainty in the context of "clarity" and "foreseeability" of the provisions of the contested Law, which regulate the period of verification of immovable property during the exercise and after the end of office of the respective officials

The Judgment emphasizes that, based on the ECtHR's case-law, the process of verification and/or confiscation of assets constitutes an "interference" with the property rights of the individual and as such, must be prescribed by law and proportional to the aim pursued. In this context, the Judgment also underlines the necessity of "clarity" and "foreseeability" of the legal provisions that may affect the property rights of an individual, including retroactively, as in the circumstances of the concrete case. According to the clarifications provided, the contested Law establishes the possibility of verification and/or confiscation of the assets acquired during the exercise of the function, and exceptionally after the end of office, which in the assessment of the Court, is in the general interest of fighting corruption in the public sector. Having said this, according to the clarifications given, in the context of the period during which the assets can be subject to verification and/or confiscation, the respective provisions of the contested Law, among others, do not clarify in a precise and predictable manner the time periods during which the acquired assets can be subject to verification, including the time periods during which the property verification procedure can be initiated, both in terms of the assets acquired during the exercise of the function and the assets acquired after the end of the relevant office. According to the clarifications provided, the lack of such clarity allows the public authorities, including the State Bureau, to interpret the time limits stipulated in the contested Law, at their full discretion, in violation of the principle of legal certainty and in violation of fundamental rights and freedoms of the individual, including, by making it impossible for them to adequately regulate their respective behavior and expectations. As a result, the Court held that point 2.2 of paragraph 2 of article 2 (Scope) in conjunction with paragraph 3 of article 22 (Period of asset verification) of the contested Law, are not in compliance with paragraph 1 of article 7 [Values] of the Constitution. According to the clarifications provided in this Judgment, in addressing this violation, the Assembly, through amendments and/or supplementation of the aforementioned provisions, must ensure that the norms that determine the time periods within which the State Bureau can verify the assets acquired during and after the exercise of the function, including those within which investigations and respective proceedings can be initiated, must be completely "clear" and "foreseeable".

(ii) Procedural guarantees in the context of verification and/or confiscation of unjustifiable assets

The Judgment clarifies that the contested Law, among others, regulates the procedure of verification and confiscation of unjustifiable assets, including the rights and obligations of the parties to the proceedings and the authorizations of the State Bureau, including in the context of (i) initiation of the proceedings; (ii) collecting information for the purpose of verification; (iii) obligation to cooperate; (iv) proceedings before the regular courts; and (v) legal remedies and judicial protection of rights. The Judgment analyzes and clarifies all the above issues in the context of the guarantees deriving from articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 36 [Right to Privacy] and 54 [Judicial Protection of Rights] of the Constitution, but also those that derive from the ECtHR's case-law and the opinions of the Venice Commission, and in principle, finds that the contested Law in conjunction with other applicable laws, contain sufficient procedural guarantees for the parties to the proceedings. Having said that, taking into account the wording of the

provisions of the contested Law, the Judgment emphasizes three primary issues, namely (i) the right to not incriminate oneself; (ii) the right of the party to be notified of all the proceedings conducted in the context of the verification of the assets, including in relation to the imposition of security measures on the disputed assets; and (ii) the principle of legal certainty.

In the context of the first issue, namely the obligation to cooperate in relation to the right to not incriminate oneself, the Judgment, among others, clarifies that the State Bureau is established as an Independent Agency according to the provisions of article 142 [Independent Agencies] of Constitution, based on which, every organ, institution or other entity exercising legal authority in the Republic of Kosovo is bound to cooperate with and respond to their requests during the exercise of their legal competencies, in a manner prescribed by law. Therefore, according to the clarifications given, the obligation in the context of the cooperation of public authorities with the State Bureau as defined by the contested Law, is not disputable. On the other hand, and in the context of the obligation of individuals to cooperate, including the parties to the proceedings, the Judgment, among others, clarifies that the contested Law (i) contains the guarantee based on which, for natural persons, including the subject of verification, the obligation to cooperate extends to the extent that "the right to privacy and the right to not incriminate oneself are not violated" and that the assessment of such a proportion is within the competence of the competent court; moreover, that (ii) the consequence of refusal to cooperate, namely the possibility of criminal report for the criminal offense "failure to execute court decisions", according to the provisions of the Criminal Code, does not extend to the natural person, but only to public authorities and/or natural and legal persons with public authorizations.

In the context of the second and third issues, namely the obligation to notify the party, including with regard to the imposition of security/interim measures and the principle of legal certainty, the Judgment, among others, emphasizes that (i) the contested Law, in principle, provides sufficient guarantee within the principle of equality of arms and that of adversariality, as it enables the subject of verification, access to the information received and processed, while the limitation to their access can only be determined by the competent court, a decision which can be appealed by the respective subject; (ii) based on the principles stemming from the case-law of the ECtHR, the party must be informed throughout the process, including in the context of the conducted procedures regarding the imposition of security measures on the disputed assets, and that the imposition of a security/interim measure without the prior notification of the party, is possible only exceptionally under the strict guarantees stemming from the case-law of the ECtHR; and (iii) taking into consideration the principle of legal certainty, including the obligation that the applicable norms are "clear" and "foreseeable", the rights and obligations of the parties to the proceedings must to be prescribed by law and not through sub-legal acts.

The Judgment finally notes that the Court's assessment that the contested Law, in principle, provides sufficient procedural guarantees for the parties to the proceedings, does not imply the legality and/or constitutionality of the decisions of the State Bureau and/or regular courts. The Judgment refers to article 53 [Interpretation of Human Rights Provisions] of the Constitution, recalling that all public authorities are obliged to interpret fundamental rights and freedoms consistent with the case-law of the ECtHR.

(iii) Oversight of the State Bureau – transfer of oversight from the Assembly to the Oversight Committee and in/compatibility of the constitutional functions of the Committee members

In the context of the institutional design of the State Bureau, the Judgment, among others, focuses on its three main characteristics, namely (a) the status of the State Bureau in the context of the legal order of the Republic of Kosovo, including the fact that the same is established based on article 142 [Independent Agencies] of the Constitution, but that the oversight of exercising its functions has not been left within the power of the Assembly of the Republic of Kosovo, but rather to an Oversight Committee comprised of representatives of institutions and/or independent agencies; (b) the composition of the Oversight Committee, including the compatibility of the constitutional functions of its members in relation to the nature of responsibilities of this Committee and the powers of the State Bureau; and (c) the manner of election of the Director General of the State Bureau.

(a) the oversight competence of the Assembly in relation to the status of State Bureau

In the context of the establishment of the State Bureau as an independent agency, the Judgment emphasizes the constitutional principles which relate to the form of governance and separation of powers, elaborated through the Court's case-law over the years, highlighting that in the circumstances of the case at

hand, the question is related pertaining to the competent authority to exercise oversight over the State Bureau, namely whether providing an Oversight Committee with the oversight competence over the State Bureau, infringes upon the Assembly's oversight competence with respect to Independent Agencies established based on article 142 [Independent Agencies] of the Constitution. The Judgment notes that the drafts of contested Law were twice subject of review by the Venice Commission, which, among others, noted that the election and dismissal of the Director General of the State Bureau, could benefit from an external expert committee in order to avoid the politicization of his/her election in a committee of the Assembly, also putting forward the alternative of establishing a pluralistic governing body of the State Bureau composed of representatives of independent institutions, whereas in their second opinion, assigning the oversight competence over the State Bureau to an Independent Committee, was considered an "appropriate" solution. That said, as per the explanations provided in the Judgment, the Assembly oversight competence in relation to public institutions is regulated by the Constitution, and in the context of the oversight of the State Bureau, relevant is the interaction between articles 65 [Competencies of the Assembly] and 142 [Independent Agencies] of the Constitution.

In the aforementioned context, the Judgment explains that (i) based on article 142 [Independent Agencies] of the Constitution, Independent Agencies are institutions established by the Assembly based on the respective laws that regulate their establishment, functioning and powers, whereas such provision, not necessarily prescribe the oversight competence of the Assembly in relation to such agencies; whereas (ii) based on article 65 [Competencies of the Assembly] of the Constitution, the Assembly oversees the work of the public institutions that report to the Assembly in accordance with the Constitution and the law. Based on the provided explanations, whilst, in the principle, it is the Assembly that exercises the oversight function over the Independent Agencies, the Assembly, based on the stipulations of paragraph 9 of the aforementioned constitutional article, including based on the Law No.06/L–113 On Organization and Functioning of State Administration and Independent Agencies, is also authorized through respective laws on establishment of Independent Agencies, to delegate/ determine such oversight competence to another structure or to an Independent Committee, as is the case in the context of the contested Law. Having said that, as far as the Assembly decides to delegate/ determine the oversight competence to another authority, the latter must be in compliance with the constitutional provisions, including those pertaining to the separation and balance of powers. As per explanations provided in the Judgment, which will be summarized hereinafter, the composition of the Oversight Committee of the State Bureau in the context of its competencies, raises constitutional issues that are related to, among others, incompatibility of the constitutional functions of its members.

(b) the composition of the Oversight Committee in the context of the constitutional functions' incompatibility of its members in relation to the nature of the competencies of the State Bureau

The Judgment recalls that the aforementioned Oversight Committee is comprised of (i) a judge of the Kosovo Supreme Court, nominated by the President of the Supreme Court, who is also the Committee Chair; (ii) the General Auditor of the Republic of Kosovo; (iiii) the Director of the Agency for Prevention of Corruption; (iv) a deputy Ombudsperson assigned by the Ombudsperson; and (v) the Director of the Financial Intelligence Unit. The powers of the Oversight Committee, pursuant to the contested Law, are comprehensive, including but not limited to (i) overseeing the work and all activities of the State Bureau; (ii) proposing the election and dismissal of the Director General, including the competence for his/ her election; (iii) the review of reports and evaluation of the Director General's performance as well as overseeing the implementation of his/her competencies; and (iv) approval of all bylaws.

The Judgment further explains that the Deputy Ombudsperson, the General Auditor and the Judge are constitutional categories, hence, their functions, competencies, including the incompatibility of their functions, are established by the Constitution and applicable laws for each category referred to above. According to the clarifications given in the Judgment, and in the analysis of the constitutional competencies of the Ombudsperson, the General Auditor and the Judge, in relation to the nature of the competences that are assigned to them in the exercise of their functions as members of the Oversight Committee of the State Bureau, including in the context of the principles stemming from the relevant opinions of the Venice Commission and the Consultative Council of the European Judges of the Council of Europe, the Court has assessed that the exercise of competences as members of the State Bureau Oversight Committee,

for the Deputy Ombudsperson, the General Auditor and the Supreme Court Judge, is incompatible with their functions and competences as provided for in the respective provisions of the Constitution.

More precisely and pertaining to the Ombudsperson, namely his/her deputy, the Judgment elaborates on the constitutional and legal functions of the Ombudsperson, with an emphasis on the oversight competence this institution has pertaining to the protection of the rights and freedoms of individuals from unlawful or improper actions or failures to act of public authorities, including the State Bureau itself, pursuant to the provisions of article 132 [Role and Competencies of the Ombudsperson] of the Constitution. The Judgment also clarifies the role of the Deputy Ombudsperson within the Ombudsperson Institution, including the fact that based on Law No. 05/L-109 on Ombudsperson, the same may be assigned additional functions. Having said that, the Judgment also emphasizes that the Constitution of the Republic of Kosovo, namely paragraph 3 of article 134 [Qualification, Election and Dismissal of the Ombudsperson], deals specifically and identically with the incompatibility of the functions of the Ombudsperson and his/her deputies, providing, among others, that they cannot exercise any political, state or private professional activity.

According to the clarifications given, the involvement of the Deputy Ombudsperson in the capacity of a member of the State Bureau Oversight Committee, namely his/her decision-making and oversight authority in a state institution that, among others, will be responsible for the verification of unjustified assets and the proposal for their confiscation in civil proceedings, which, including as per the case-law of the ECtHR, raises fundamental constitutional issues in terms of the necessary balance between the public interest and fundamental rights and freedoms, raises serious issues of compatibility with the Ombudsperson's constitutional mandate to oversee and protect the rights and freedoms of individuals from unlawful and improper actions or failures to act of public authorities, including the State Bureau itself. In fact, the exercise of the oversight competence by the Ombudsperson according to the provisions of article 132 [Role and Competencies of the Ombudsperson] of the Constitution, would involve a public authority, in the decision-making of which, the Ombudsperson, namely his/her deputy has participated him/herself.

Consequently and taking into account (i) the oversight competence of the Ombudsperson in relation to all public authorities in the context of fundamental rights and freedoms; and (ii) the nature of the competences of the State Bureau Oversight Committee members, in the assessment of the Court, the participation of the Deputy Ombudsperson in the Oversight Committee, with comprehensive decision-making competences in relation to the State Bureau, would infringe the constitutional independence of the Ombudsperson in overseeing the State Bureau in the context of its specific constitutional competence pertaining to the protection of the rights and freedoms of individuals from unlawful and improper actions or failures to act of public authorities.

Furthermore, in the context of the General Auditor of the Republic of Kosovo, the Judgment elaborates the constitutional and legal functions of the Auditor-General, as the highest institution of economic and financial control, based on article 136 [Auditor-General of Kosovo] of the Constitution, as well as the competence to audit the economic activity of public institutions and the use and safeguarding of public funds by central and local authorities, as stipulated by article 137 [Competencies of the Auditor-General of Kosovo] of the Constitution. As explained, the competence of the Auditor-General to audit the activity of public authorities and the use of public funds by them, does not depend on a legal provision nor the composition of the decision-making bodies, since it is a matter that is regulated at the level of the Constitution and which, applies to all public authorities in the Republic of Kosovo, without exception, consequently including the State Bureau itself.

In this context, the Judgment emphasizes that the decision-making of the Auditor-General in the capacity of the member of the Oversight Committee with respect to the budget related issues of the State Bureau, would infringe the constitutional competence of the Auditor-General to audit the economic activity of the State Bureau, as stipulated by article 137 [Competencies of the Auditor-General of Kosovo] of the Constitution. The Judgment recalls that it is precisely the role of the Auditor-General as the highest institution of economic and financial control in the Republic of Kosovo, which has also resulted in the specified provisions of the applicable law on the Auditor-General, and according to which, the Auditor-General and its employees, cannot exercise any other function at any level of the public sector.

Consequently and taking into account (i) the oversight competence of the Auditor-General in relation to all public authorities in the context of economic and financial control; and (ii) the nature of the

competences of the members of the State Bureau Oversight Committee, including the fact that they also evaluate the performance of the Director General, review of his/her work reports, including in the context of the management of the Bureau's budget, in the Court's assessment, the participation of the Auditor-General in the Oversight Committee, with comprehensive decision-making competences, including in the context of financial management, would infringe the constitutional independence of the Auditor-General in overseeing the State Bureau in the context of the management and use of public funds as provided for by articles 136 [Auditor-General of Kosovo] and 137 [Competencies of the Auditor-General of Kosovo] of the Constitution.

In the end and pertaining to the Supreme Court Judge, in the capacity of the Oversight Committee Chair of the State Bureau, the Judgment recalls the principles stemming from the Constitution in the context of the separation and balance of powers, as elaborated through its case-law over the years, including the incompatibility of the functions of judges with other state functions. For the purposes of this analysis, the Judgment elaborates, among others, (i) the international principles and standards related to the independence and impartiality of the function of the judge and the incompatibility of the exercise of other functions outside the judicial system, including the Bangalore Principles adopted at the level of the United Nations, the Recommendations of the Committee of Ministers of the Council of Europe, the opinions of the Consultative Council of European Judges and the relevant Opinions of the Venice Commission; (ii) the comparative analysis of the Constitutions in the context of regulating the incompatibility of the function of a judge with other state functions; and (iii) the case-law of other Constitutional Courts related to the interpretation of the incompatibility of a judge's function.

The Judgment, among others, emphasizes that the Constitution of the Republic stipulates the exercise of additional state functions for the judges of the Republic of Kosovo, in two cases, namely the functions (i) in the Kosovo Judicial Council; and (ii) the Central Election Commission. In all other cases, in its article 106 [Incompatibility], the Constitution specifies that (i) a judge may not perform any function in any state institution outside of the judiciary, be involved in any political activity, or be involved in any other activity prohibited by law; and (ii) judges are not permitted to assume any responsibilities or take on any functions that would in any way be inconsistent with the principles of independence and impartiality of the role of a judge. According to the clarifications provided, while the aforementioned provisions provide for the possibility of additional functions for the judges of the Republic of Kosovo as regulated by specific laws and/or procedures defined by the Kosovo Judicial Council, the Constitution clearly entails a prohibition for the judges to exercise any function in state institutions "outside the judiciary". According to the clarifications given in the Judgment, such a wording in the Constitution includes the obligation to assess the compatibility of the function of the judge with the function of chairing the Oversight Committee of an independent agency, namely the State Bureau, including in the context of the competences of this Committee and the fact, namely the determination on whether the State Bureau can be considered a state institution within the judiciary for purposes of compatibility of functions.

According to the provided clarifications, and taking into account, (i) the institutional nature of the State Bureau and the Bureau's relationship with the courts, namely the judicial branch; and (ii) the nature of comprehensive powers exercised by the chairperson of the Bureau's Oversight Committee, namely the judge of the Supreme Court; (iii) the fact that the State Bureau cannot qualify as a state institution within the judiciary for the purposes of the formulation of article 106 [Incompatibility] of the Constitution, because the relationship between the State Bureau and the judicial branch, according to the contested Law, is of an oversight nature, namely, the decision-making of the Bureau in the context of verification and the proposal for the confiscation of assets is always subject to the control and decision-making of the courts, in the assessment of the Court, the function of the judge of the Republic of Kosovo is not compatible with the competence of chairing the Oversight Committee of the State Bureau based on the provisions of article 106 [Incompatibility] of the Constitution. According to the clarifications given in this Judgment, in addressing the above aspects, the Assembly, through amendments and/or supplementations of the aforementioned provisions, to the extent that it chooses not to exercise its own oversight function over the State Bureau, it must establish the composition of the Oversight Committee of the State Bureau, in such a way so that all the necessary guarantees for the independence of this institution are respected, while at the same time the constitutional provisions pertaining to the incompatibility of the functions and/or oversight competences of the constitutionally independent institutions, are equally respected.

(c) the manner of election of the Director General of the State Bureau

The Judgment also elaborates the manner of election of the General Director of the State Bureau, and who, according to the provisions of the contested Law, is elected by the Assembly, with the majority of votes of all deputies present and voting, however, if the Assembly fails to elect the Director in two rounds of voting, after two competitions/public announcements, the competence to elect the General Director passes to the Oversight Committee. Such a regulation, according to the provided explanations, in principle, raises two contentious issues, namely (i) the election of the Director General by the Assembly only with a simple majority; and (ii) the anti-deadlock mechanism for the transfer of this competence to the Oversight Committee, in case of failure of election in the Assembly.

According to the clarifications provided in the Judgment, the election of the Director General with the majority of votes of all the deputies present and voting in the Assembly, is not contrary to the provisions of articles 65 [Competencies of the Assembly] and 80 [Approval of Laws] of Constitution. Having said this and taking into account the importance of the function of the Director General of the State Bureau, including his/her seven (7) year term of office, the Judgment also recalls the continuous recommendation of the Venice Commission in its opinions on Kosovo, but also in other relevant opinions in the context of the election of the leading structures of the responsible agencies/committees for the civil confiscation of assets, that the election of the Director General should be by a majority of two thirds (2/3) of the deputies. On the other hand, and with regard to the adopted anti-deadlock mechanism, namely the transfer of the competence of election of the Director General to the Oversight Committee, the Judgment clarifies that the manner of election of the holders/members of the Independent Agencies is not specified by constitutional provisions and as a result, the establishment of the manner of election of the Director General of the State Bureau, based on paragraph 1 of article 142 [Independent Agencies] of the Constitution, is a competence of the Assembly, also recalling that insofar as the constitutional norms have not been infringed, the evaluation of the selected public policy that has led to the adoption of a certain law/provision, is not within the competence of the Court. In the end, the Judgment clarifies that the applicants' referral was submitted to the Court pursuant to paragraph 5 of article 113 [Jurisdiction and Authorized Parties] of the Constitution and that this category of referrals has a suspensive character, respectively such law can be sent to the President of the Republic of Kosovo for promulgation only after the decision-making of the Court and in accordance with the modalities established in the final decision of the Court. Having said this, and despite the fact that in reviewing the constitutionality of the contested Law, the Court has found as contrary to the Constitution only specific parts of four (4) articles of the contested Law, namely its articles 2 (Scope), 10 (Composition of Oversight Committee and Compensation), 22 (Period of asset verification) and 34 (Procedure in the first instance), taking into account their nature and importance and the fact that without amending and supplementing the same by the Assembly, the contested Law is unenforceable, based on the case-law of the Court, the contested Law, in the service of the principle of legal certainty, has been declared null and void, in its entirety.

Judgment

KO158/23

Applicant

Besnik Tahiri and nine (9) other deputies

Request for constitutional review of the Law No. 08/L-142 on Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income

The Constitutional Court of the Republic of Kosovo has decided regarding the referral in case KO158/23, submitted by Besnik Tahiri and nine (9) other deputies of the Assembly of the Republic of Kosovo, based on the provisions of paragraph 5 of article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo pertaining to the constitutional review of the Law No. 08/L-142 on

Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income.

The Court, has decided (i) unanimously, to declare the referral admissible; and (ii) unanimously, to find that article 2 (Amending and supplementing Law No. 04/ L-261 on War Veterans of the Kosovo Liberation Army, amended and supplemented by Law No. 05/ L-141) of the contested Law, is not in contradiction with article 24 [Equality Before the Law] and article 46 [Protection of Property] of the Constitution of the Republic of Kosovo in conjunction with article 1 of Protocol no. 1 of the European Convention on Human Rights; (iii) with eight (8) votes in favor and one (1) against, that article 3 (Amending and Supplementing of Law No. 04/L-092 on Blind Persons) of the contested Law, is not in contradiction with article 24 [Equality Before the Law] and article 46 [Protection of Property] of the Constitution of the Republic of Kosovo in conjunction with article 1 of Protocol no. 1 of the European Convention on Human Rights; (iv) unanimously, that article 4 (Amendment and Supplementation of Law No. 05/L-067 on the Status and Rights of Paraplegic and Tetraplegic Persons) of the contested Law, is not in contradiction with article 24 [Equality Before the Law] and article 46 [Protection of Property] of the Constitution of the Republic of Kosovo in conjunction with article 1 of Protocol no. 1 of the European Convention on Human Rights; and (v) with eight (8) votes in favor and one (1) against, to find that article 6 (Amendment and supplement of Law No. 03/L-212 on Labor) of the contested Law, is not in contradiction with article 51 [Health and Social Protection] of the Constitution of the Republic of Kosovo; and (v) unanimously, to declare that, based on article 43 (Deadlines) of the Law nr.03/L-121 for the Constitutional Court of the Republic of Kosovo, the Law No. 08/L-142 on Amending and Supplementing the Laws that Determine the Amount of the Benefit in the Amount of the Minimum Wage, Procedures on Setting of Minimum Wage and Tax Rates on Annual Personal Income, is sent to the President of the Republic of Kosovo for promulgation. The Judgment initially clarifies that the contested Law amends and supplements (i) Law no. 04/L-261 on War Veterans of the Kosovo Liberation Army, amended and supplemented by Law No. 05/L-141; (ii) Law no. 04/L-092 on Blind Persons; (iii) Law no. 05/L-067 on the Status and Rights of Paraplegic and Tetraplegic Persons; (iv) Law no. 05/L-028 on Personal Income Tax; and (v) Law no.03/L-212 on Labor. In essence, the contested Law amends and supplements the aforementioned laws, in two relevant aspects. First, it changes the manner of determining the amount of pensions and compensations, including the relation of this amount with the minimum wage for the KLA veterans, blind persons, and paraplegic and tetraplegic persons, specifying that, different from the current regulations, according to which the amount of pensions and/or corresponding compensations is related to the amount or a level of the amount of the minimum wage in the Republic of Kosovo, the amount of these pensions and/or compensations is now set by the Government, with the proposal of the responsible Ministry of Finance, depending on the budget possibilities, the cost of living and eventual inflation. Secondly, it changes the manner of determining the amount of the minimum wage in the Republic of Kosovo, specifying that, different from the current regulations, according to which at the end of each calendar year, the Government determines the minimum wage according to the proposal of the Economic-Social Council, in the absence of a proposal from the latter, it is the Government itself that determines the amount of the minimum wage. The Judgment further clarifies that the contested Law does not affect the right of the aforementioned categories to pensions and compensations, nor does it determine as such their amount.

The applicant deputies of the Assembly contest the above-mentioned Law, claiming that it is contrary to articles 24 [Equality Before the Law], 46 [Protection of Property] and 51 [Health and Social Protection] of the Constitution, in essence, because (i) changing the manner of determining the amount of pensions and/or compensations by eliminating the reference to the minimum wage level, results in the violation of the principle of equality before the law among the categories of KLA veterans, blind persons, and paraplegic and tetraplegic, because by leaving the determination of the corresponding level of compensation to the discretion of the Government, these categories have no guarantee that they will be compensated in an equal manner; (ii) the elimination of the reference to the minimum wage for the determination of the amount of pensions and/or compensations for these categories, violates their legitimate expectations, and consequently the rights to property for KLA veterans, blind persons, and paraplegic and tetraplegic persons; and (iii) the possibility of the Government, in the absence of the

proposal of the Economic-Social Council, to determine the minimum wage itself, is not in accordance with the constitutional values of social justice, and which must be interpreted according to the principles specified by the International Labor Organization (ILO) and the Minimum Wage Fixing Convention. The claims of the applicants are, in principle, also supported by the Ombudsperson, while they are counter-argued by the Ministry of Finance and the Parliamentary Group of the VETËVENDOSJE! Movement. The latter emphasize that the contested Law is in accordance with the Constitution, in essence, because: (i) the principle of equality before the law has not been violated, considering that the affected categories are not in "analogous or relatively similar situations" with each other, nor with the employees of the Republic of Kosovo, given that (a) KLA veterans, receive the pension and other benefits due to their service in the war and as a sign of the state's gratitude to them; (b) blind persons, and paraplegic and tetraplegic persons benefit from rights and benefits due to their personal characteristics; while (c) employees are paid for their work and service by the public or private sector and, consequently, the concept of minimum wage applies only to this category; (ii) the legitimate expectations and, consequently, the property rights of the aforementioned categories have not been violated, taking into account that the level of the pension and/or corresponding compensations has not been reduced, while the detachment from the reference to the minimum wage level is related to the need to maintain the financial stability and necessary flexibility to change the level of the minimum wage, also maintaining that Governments enjoy wide discretion in determining social policies and pension levels; and (iii) the method of setting the minimum wage is not a constitutional matter, while the ILO standards are not applicable because the Republic of Kosovo is not a member of it, but even if the ILO standards were applied, they stipulate the obligation of consultation, which has not been affected by the contested Law. In assessing the constitutionality of the contested Law, the Judgment first and among others elaborates: (i) the basic constitutional principles related to social justice, as specified in articles 7 [Values] and 51 [Health and Social Protection] of the Constitution, including the status of ILO's Minimum Wage Fixing Convention, the European Social Charter and the United Nations Convention on the Rights of Persons with Disabilities; (ii) the basic principles arising from the case-law of the Court and that of the European Court of Human Rights regarding equality before the law and property rights, including in the context of the amount of benefits and/or compensations related to social security; and (iii) the history of applicable laws relating to pensions, compensation and benefits of KLA veterans, blind persons, and paraplegic and tetraplegic persons.

In applying the aforementioned principles, the Judgment initially emphasizes that (i) based on article 7 [Values] of the Constitution, the constitutional order of the Republic of Kosovo is based, among others, on the principles of democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, property rights and social justice; (ii) based on article 24 [Equality Before the Law] of the Constitution, no one can be discriminated against on grounds of, among others, social status; while (iii) based on article 51 [Health and Social Protection] of the Constitution, basic social insurance, concerning unemployment, illness, disabilities and old age, is regulated by law. The Judgment, referring to the case-law of the European Court of Human Rights, also emphasizes the fact that states, in principle, have discretion in determining social policies, including the nature and level of benefits and/or compensation for different social categories, always under the obligation of equal and proportional treatment of these categories, including in the context of the corresponding legitimate expectations for compensation and/or support from the state.

In the Court's Judgment, the principles explained above have been applied in the examination of each assessed article of the contested Law. Having said that and for the purposes of this summary, the Court will clarify the main findings and conclusions regarding the most contested issues of the contested Law, namely whether as a result of eliminating the correlation of the amount of pensions and/or compensations to the level of the minimum wage or a level of the amount of minimum wage in the Republic of Kosovo, (i) the principle of equality before the law, among KLA veterans, blind persons, and paraplegic and tetraplegic persons, has been violated; (ii) whether the property rights of KLA veterans, blind persons, and paraplegic and tetraplegic persons has been violated; and (iii) whether the principles of social justice have been violated as a result of the change in the manner of determining the minimum wage level in the Republic of Kosovo. In what follows, the most essential findings of the Judgment related to the three aforementioned issues will be reflected.

- *equality before the law in the context of the amount of pensions and/or compensations related to KLA veterans, blind persons and paraplegic and tetraplegic persons*

In assessing whether the contested Law violates the principle of equality before the law, the Judgment, in the context of the Court's case-law and that of the European Court of Human Rights, reiterates that, in principle, to find a violation of the principle of equality before the law according to the provisions of article 24 [Equality Before the Law] of the Constitution, it must first be assessed if the categories claimed to have been discriminated against, are in "analogous or relatively similar situations" and if this is the case, whether there is a "difference in treatment" among them.

In the context of the aforementioned analysis, the Judgment, among others, emphasizes the specifics of the laws applicable to KLA veterans, blind persons, and paraplegic and tetraplegic persons and employees in the public and private sector, underlining the respective goals, obligations, but also the rights and benefits, including the differences between them, with respect to the aforementioned categories.

The Judgment, among others, also clarifies (i) the difference between the scope of the Law on Labor, including in the context of rights and obligations for employees in the public and private sectors, with the scopes of the respective laws related to KLA veterans, blind persons and paraplegic and tetraplegic persons, and which define rights, benefits and facilities for the three aforementioned categories; and (ii) the differences between the scope of laws pertaining to the KLA veterans, blind persons, and paraplegic and tetraplegic persons, which, in principle, include rights and benefits for: (a) the KLA veterans due to their sacrifice, commitment and precious contribution, who throughout the Liberation War of Kosovo, were decisive factors for bringing freedom and independence to the people of Kosovo; and (b) blind persons, and paraplegic and tetraplegic persons, due to their personal characteristics and the rights arising from article 51 [Health and Social Protection] of the Constitution. Based on the clarifications given in the Judgment, and taking into account the difference between the scope of the Law on Labor, on the one hand, and the scopes of the laws applicable to KLA veterans, blind persons, and paraplegic and tetraplegic persons, on the other hand, including the purpose of each aforementioned law and the difference in the context of obligations, but also the rights, benefits and facilities for each abovementioned category included, the Court assessed that the abovementioned categories cannot be considered to be in "analogous or relatively similar positions" with each other and consequently, there cannot be a "difference in treatment" and thus a violation of the quality before the law principle, in principle, because the category of KLA veterans is supported by the state, due to their contribution to the freedom and independence of the people of Kosovo, whereas the categories of blind persons and paraplegic and tetraplegic persons are supported by the state, due to their personal characteristics, based on the specifics and determinations of two applicable laws, namely the Law on Blind Persons and Law on Paraplegic and Tetraplegic Persons, respectively. According to the clarifications given in the Judgment, the abovementioned findings are supported by the case-law of the European Court for Human Rights, which specifically addresses the difference in treatment in the context of compensations and/or social benefits among employees in the public and private sectors, including among war veterans and other categories of society that qualify to benefit from various social benefits. Consequently and according to the clarifications given in the Judgment, the Court found that articles 2, 3 and 4 of the contested Law are not in contradiction with article 24 [Equality Before the Law] of the Constitution.

- *property rights related to legitimate expectations for a certain amount of pensions and/or benefits that are related to the amount or a level of the minimum wage in the Republic of Kosovo*

In assessing whether the contested Law infringes upon the property rights of the category of KLA veterans, blind persons, and paraplegic and tetraplegic persons, the Judgment, in the context of the Court's case-law and that of the European Court of Human Rights, reiterates that, based on article 46 [Protection of Property] of the Constitution in conjunction with article 1 of Protocol no. 1 of the European Convention on Human Rights, the concept of "property", in principle, includes both "existing property" and claimed property, including in the context of "future income", in relation to which an individual may argue that he/she has at least a "legitimate expectation". The aforementioned case-law emphasizes the fact that "pensions and social benefits", including non-contribution schemes, also enjoy the protection of article 1 of Protocol no. 1 of the European Convention on Human Rights, under the conditions and principles determined by the case-law of the European Court of Human Rights. In addition, these rights that can be

limited/restricted in the circumstances in which the "interference/restriction" of the relevant rights is (i) "prescribed by law"; (ii) pursues a "legitimate aim"; and (iii) is "proportionate" to the legitimate aim pursued. The Judgment also clarifies that, in principle, based on the case-law of the European Court of Human Rights, (i) states enjoy the freedom to decide whether to have any form of social security scheme or to choose the type or amount of benefits which may be provided under any such scheme, however, (ii) if a state provides for a pension as a right of a welfare benefit, whether or not conditional on the prior payment of contributions, that legislation must be regarded as giving rise to a property interest, which falls within the scope of article 1 of Protocol no. 1 of the European Convention on Human Rights; while (iii) the rights related to pension schemes can be limited for legitimate purposes, and which, in principle, also include the risk of damaging the financial balance of the social security system, provided that such limitations/restrictions are proportionate.

According to the clarifications given, disputed in the circumstances of the contested Law is whether by eliminating the reference to the level of the minimum wage or a degree thereof of the minimum wage, the contested Law has resulted into the violation of property rights for (a) KLA veterans; (b) blind persons; and (c) paraplegic and tetraplegic persons. The Court's findings regarding these matters will be summarized below.

(a) concerning the KLA veterans

In the context of the category of KLA veterans, analyzing the amendments and supplements of the applicable laws over the years, the Judgment clarifies that the correlation of the amount of pensions of KLA veterans to the amount of the minimum wage in the Republic of Kosovo, was not changed/amended through the contested Law, but rather this was done back in 2017, through the amendment and supplementation of the Law on Veterans, namely Law no. 05/L-141 on Amending and Supplementing Law no. 04/L-261 on War Veterans of the Kosovo Liberation Army. The latter, as far as it is relevant for the circumstances of the present case, since 2017 (i) has deleted article 18 (Pension Level) of the basic Law, namely the provision that specified that depending on budget possibilities, the cost of living and eventual inflation at the end of each year, for the coming year, the Government, with the proposal of the Ministry of Finance, can decide on the amount of the pension for KLA war veterans, an amount which "cannot be lower than the minimum wage in Kosovo"; while (ii) it added to the basic Law article 16A (no title) which, among others, determined the categorization of KLA veterans in accordance with the time of mobilization and service in the KLA, specifying the amount of the monthly pension for each category, and limiting the general amount of payments for the pensions of KLA veterans at the limit of 0.7% (zero point seven percent) of the annual Gross Domestic Product.

The Judgment recalls that the amendments and supplements to the Law on Veterans of 2017, have been contested before the Constitutional Court, and the latter, by the Judgment in case KO01/17, has specifically addressed the issue of the correlation of the amount of pensions of KLA veterans to the minimum wage level in the Republic of Kosovo. According to the clarifications provided in the relevant Judgment of 2017, the Court maintained that while the elimination of the guarantees related to the minimum wage for the categories of KLA veterans constitutes an "interference" with the relevant property rights, this interference" was followed by a legitimate aim and was proportionate to the aim pursued, thus finding that it is not in contradiction with the Constitution. As a result, and according to the clarifications given in the Judgment, the claims related to the violation of the property rights of KLA veterans as a result of eliminating the correlation between the amount of pensions with the amount of the minimum wage in the Republic of Kosovo, have been concluded by the Judgment of the Court in case KO01/17.

Having said that, the Judgment clarifies that the contested Law contains an additional amendment and/or supplement that is related to the transitional period, namely the level of pensions of the KLA veterans until their final categorization. More precisely, and according to the clarifications given, (i) while the Law on KLA Veterans of 2017, had eliminated the guarantee of the correlation of the amount of the pension to the minimum wage, it had kept in force the provisions of the basic law, namely the Law on Veterans of 2014, enabling the KLA veterans to receive pensions at least at the level of the minimum wage until their final categorization; and (ii) this determination is changed by the contested Law, which places the determination of the amount of the respective pensions during this transitional period, namely until the final categorization of the KLA veterans, at the discretion of the Government, depending on budget possibilities, the cost of living and eventual inflation.

Consequently, in the circumstances of the contested Law, the correlation between the amount of pensions and the minimum wage is not at question, because this issue has been resolved by the Law on KLA Veterans of 2017, but questionable is whether the delays in the implementation of the abovementioned law, respectively the obligation of the state to make the final categorization of veterans, may result in "legitimate expectations" for the category of KLA veterans that until their final categorization, they will benefit from pensions at the level of the minimum wage in the Republic of Kosovo.

In the aforementioned context, the Judgment, among others, emphasizes that based on the case-law of the European Court of Human Rights, "legitimate expectations" for "future income", including in the context of "pension and social benefits", cannot merely originate from delays pertaining to the implementation of laws, including the Law on KLA Veterans of 2017 in the context of the categorization of KLA veterans, also emphasizing the fact that based on the principles of the rule of law and legal certainty, which, among others, derive from article 7 [Values] of the Constitution, public authorities in the Republic of Kosovo are obliged to implement the laws adopted by the Assembly. Furthermore, the Judgment clarifies that (i) the state's obligation to provide financial support through pensions and special benefits for the categories resulting from the KLA war, which with their sacrifice and contribution were decisive factors for the freedom and liberation of the Republic of Kosovo, is not questionable through the contested Law; (ii) the contested Law does not affect the KLA veterans' right to pension as a result of their aforementioned contribution; while (iii) the contested Law does neither determine nor reduce the amount of pensions of the category of the KLA veterans. Having said that, the Judgment also states that based on the guarantees stemming from article 46 [Protection of Property] of the Constitution in conjunction with article 1 of Protocol no. 1 of the European Convention on Human Rights, the eventual reduction of the level of the amount of "future income", including in the context of "pension and social benefits", may result in an "interference" with the right to property, and may be contested and subject to the assessment of legality and/or constitutionality, in the context of interference with these rights and the proportionality of this interference in relation to the legitimate aim pursued. As a result and according to the clarifications given in the Judgment, the Court found that article 2 of the contested Law is not in contradiction with article 46 [Protection of Property] of the Constitution in conjunction with article 1 of Protocol no. 1 of the European Convention on Human Rights.

b) concerning blind persons, and paraplegic and tetraplegic persons

In the context of the category of blind persons and paraplegic and tetraplegic persons, analyzing the amendments and supplements of the applicable laws over the years, the Judgment clarifies that unlike the Law on the KLA Veterans of 2017, the Law on Blind Persons and the Law on Paraplegic and Tetraplegic Persons, do not guarantee the amount of compensation to be at least at the level of the minimum wage in the Republic of Kosovo, but rather "at a certain level, based on the minimum wage" determined by the Government. In addition, the aforementioned laws also differ between one another in the context of guarantees regarding the level of compensation because the Law on Blind Persons, includes an additional guarantee and according to which, blind persons receive compensation from the state budget at a determined rate based on the minimum wage, but not less than one hundred (100) euro per month. While the Law on Paraplegic and Tetraplegic Persons, also emphasizes the discretion of the state to change the amount of compensation, including its discretion to reduce and eliminate altogether the latter, depending on the availability of funds and circumstances that create unforeseen fiscal strains in the public budget. The contested Law amends and supplements the aforementioned laws, determining the same mechanism for both categories, respectively that the Government, with the proposal of the Ministry of Finance, decides on the amount of compensation for blind persons and paraplegic and tetraplegic persons, depending on budgetary possibilities, the cost of living and eventual inflation.

According to the clarifications given in the Judgment, in the context of the laws applicable for the blind persons and paraplegic and tetraplegic persons, (i) the right of blind persons and paraplegic and tetraplegic persons to financial support and/or compensation is not questionable, because this right derives from article 51 [Health and Social Protection] of the Constitution and the applicable laws and is not affected through the contested Law, but (ii) it is questionable whether the amount of compensation, which is not specified in the applicable laws nor in the contested Law, may give rise to "legitimate expectations" in relation to the "future income" of blind persons, and paraplegic and tetraplegic persons, for the purposes of

the guarantees contained in article 46 [Protection of Property] of the Constitution in conjunction with article 1 of Protocol no. 1 of the European Convention on Human Rights. In such circumstances and taking into account that the right to monthly compensation is not affected, but the dispute concerns the amount of this compensation which is not necessarily reduced by the contested Law, it cannot be established that the property rights of these categories have been violated. As a result and according to the clarifications given in the Judgment, the Court held that articles 3 and 4 of the contested Law are not in contradiction with article 46 [Protection of Property] of the Constitution in conjunction with article 1 of Protocol no. 1 to the European Convention on Human Rights.

Having said this and emphasizing the competence of the Assembly to determine the social policies of the Republic of Kosovo, always in accordance with the values of the Constitution related to social justice and fundamental rights and freedoms, the Judgment emphasizes (i) article 51 [Health and Social Protection] of the Constitution and which, among others, guarantees basic social insurance related to unemployment, illness, disabilities and old age in a manner regulated by law; (ii) article 28 (Adequate standards of living and social protection) of the United Nations Convention on the Rights of People with Disabilities, according to which states are obliged to recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, as well as the right to the continuous improvement of living conditions, and commit to taking appropriate steps to protect and improve the realization of this right without discrimination on the basis of disability; and (iii) the case-law of the European Court of Human Rights, according to which, persons with disabilities are identified as a category which is marginalized, and which has historically been subject to discrimination and prejudice caused by their isolation in society. Considering these principles and the fact that the margin of appreciation of the states in restricting the rights of these categories is substantially more limited, the Judgment emphasizes that the Assembly and/or the Government must have very serious reasons to interfere with these rights, including in the context of the possibility of reducing the amount of corresponding compensations. Having said that and taking into account the fact that the contested Law does not affect the right to compensation of the aforementioned categories, nor does it determine and/or reduce this amount, the Judgment highlights that the eventual reduction of the amount of "future income", including in the context of "pensions and social benefits", must always be proportionate to the legitimate aim pursued and in this context, it can be challenged and subject to the assessment of legality and/or constitutionality, namely compatibility with fundamental rights and freedoms of blind persons and paraplegic and tetraplegic persons.

- *the method of determining the level of the minimum wage*

In the context of the mechanisms that determine the level of the minimum wage in the Republic of Kosovo, the Judgment first clarifies that article 57 (Minimum wage) of the Law on Labor, among others, establishes that the Government of Kosovo, at the end of each calendar year, determines the minimum wage according to the proposal of the Economic-Social Council, while the contested Law amends and supplements the aforementioned article, retaining the Government's obligation to determine the minimum wage according to the proposal of the Economic-Social Council, but adding the possibility for the Government to itself determine the minimum wage, in the absence of such a proposal from the Economic-Social Council.

In assessing the constitutionality of the aforementioned article, the Judgment reiterates that, beyond social justice as a value of the Republic of Kosovo, the issues related to the mechanisms that determine the minimum wage are regulated at the level of the law and sub-legal act, respectively with the Administrative Instruction no. 09/2017 for Setting the Minimum Wage in the Republic of Kosovo. Moreover, according to the clarifications given, while the ILO Minimum Wage Fixing Convention is not directly applicable in the legal order of the Republic of Kosovo, the principles stemming from the latter are reflected, in principle, in the applicable Law on Labor. According to the standards of the abovementioned Convention, setting the minimum wage is one of the mechanisms that states should use to achieve social justice, and the purpose of setting the minimum wage should be to protect workers who have very low wages, to provide them conditions for a dignified life and that the level of this wage should be determined after full agreement or consultation with representatives of employees and employers. The Judgment further clarifies that, while article 6 of the contested Law eliminates the condition based on which the proposal of the Social-Economic Council is necessary for the determination of the minimum wage, it does not necessarily affect the obligation for full consultation with the organizations

that represent the employees and employers within the Economic-Social Council, because the latter always has the primary role in the decision regarding the proposal to set the minimum wage in the Republic of Kosovo and only in case of failure to reach this consensus, the decision-making competence for that calendar year, passes to the Government of Republic of Kosovo. According to the clarifications given, the Court notes that the change in the method of setting the minimum wage in the context of the composition and decision-making of the Economic-Social Council, may affect the manner of consultation and/or decision -making among representatives of employers' organizations, employees and the Government, in determining the level of the minimum wage, nevertheless, it is not within the competence of the Court to assess the selection of public policy by the representatives of the people, but only to assess whether the provisions of the Constitution have been violated. As explained above, the latter does not contain norms concerning the necessary mechanisms for determining the minimum wage in the Republic of Kosovo. In such circumstances and according to the clarifications provided, the Court found that article 6 of the contested Law is not in contradiction with article 51 [Health and Social Protection] of the Constitution.

Judgment

KO15/24

Applicant

The Ombudsperson Institution

Request for 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, has decided in case KO15/24 regarding the constitutional review of article 28 (Gender Quotas) of Law no. 08/L-228 on General Elections in the Republic of Kosovo, submitted by the Ombudsperson, pursuant to the provisions of subparagraph 1 of paragraph 2 of article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo. The Court, (i) by eight (8) votes for and one (1) vote against, has decided to declare the referral admissible; and (ii) unanimously, to hold that article 28 (Gender Quotas) of Law no. 08/L-228 on General Elections in the Republic of Kosovo, is not in contradiction with article 45 [Freedom of Election and Participation] of the Constitution of the Republic of Kosovo.

The Judgment initially clarifies that the essence of the matter referred to the Court concerns article 28 (Gender Quotas) of the Law on General Elections, which stipulates that (i) in the list of candidates of each political entity at least thirty percent (30%) shall be male and at least thirty percent (30%) shall be female, with one candidate of each gender included at least once in each group of three (3) candidates, counting from the first candidate on the list; (ii) this provision does not apply to lists consisting of one or two candidates; and (iii) the Central Election Commission 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 and that the Central Election Commission plans an additional budget for this purpose after each election.

According to the explanations given in the Judgment, the Ombudsperson contests the constitutionality of the aforementioned article of the Law on General Elections, alleging that it is contrary to the principles and values set forth in articles 7 [Values], 24 [Equality Before the Law] and 45 [Freedom of Election and Participation] of the Constitution, raising, among others, the following specific allegations: (i) the introduction by law of a quota of thirty percent (30%) for each gender constitutes an unjustified prejudice and justifies unequal treatment, considering that the gender percentage is almost fifty percent (50%) with fifty percent (50%) between "male and female"; (ii) in the electoral practice "it has not happened that political entities have submitted for certification lists of candidates with fifty percent (50%) of males and females"; and (iii) this provision is also contrary to the spirit of gender equality provided for in article 5 (General measures to prevent gender discrimination and ensure gender equality) of the Law no. 05/L 020 on Gender Equality. The Ombudsperson's allegations are counter-argued by the Parliamentary Group

of VETËVENDOSJE! Movement, which, among others, and referring to the Court's previous case-law, emphasizes that article 28 (Gender Quotas) of the Law on General Elections is in accordance with the Constitution, in essence, because (i) the quota of thirty percent (30%) on the electoral lists is a legal quota, whereas the provisions of the Law on Gender Equality are legal and constitutional ideals; and (ii) the aforementioned article does not constitute indirect discrimination, taking into account that this minimum threshold is an affirmative measure aimed at maintaining gender balance in politics.

In the above context, the Judgment emphasizes that the essence of the matter raised before the Court concerns the compatibility with the Constitution of article 28 (Gender Quotas) of the Law on General Elections, namely the assessment of whether the stipulation of a legal quota of at least thirty percent (30%) of the representation of each gender in the list of political entities competing in the elections, violates the electoral rights provided by the Constitution. In this regard, the Judgment initially emphasizes the fact that gender equality is one of the most essential values of the constitutional order of the Republic of Kosovo and that the public authorities of the Republic, and in particular, the Assembly of the Republic of Kosovo, in the exercise of its legislative competence, has the positive obligation to undertake all necessary measures towards the accomplishment of gender equality in the Republic of Kosovo. As it pertains to the electoral rights and which constitute the essence of this Judgment, the latter recalls that article 45 [Freedom of Election and Participation] of the Constitution, among others, provides that every citizen of the Republic of Kosovo who has reached the age of eighteen (18), even if on election day, enjoys the right to elect and to be elected, unless this right is limited by a court decision. This constitutional right, must also be assessed in light of the constitutional values and principles, according to which, 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. In addition, the Judgment underlines that based on the constitutional provisions, despite the fact that everyone is equal before the law, the 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, and such measures shall be applied only until the purposes for which they were imposed have been fulfilled. According to the explanations given in the Judgment, while the Constitution establishes that the principles of equal legal protection do not prevent the imposition of measures necessary for the protection and advancement of the rights of individuals and groups that are in unequal position, enabling, among others, the introduction of legal quotas for equal participation and representation of genders in political life until the necessary equality has been achieved, the Constitution does not stipulate the level, namely the percentage of this legal quota, delegating this matter to the competence of the Assembly of the Republic, always under the obligation to respect the positive obligations of the state and the standards stemming from applicable international instruments.

In the context of the latter, the Judgment, among others, elaborates (i) the general principles of the Constitution and the European Convention on Human Rights, as it pertains to the right to be elected and to participate; (ii) the instruments and documents adopted at the level of the United Nations and the Council of Europe relating to the affirmative measures for equal representation in politics; (iii) the recommendations of the Council of Europe and the opinions and reports of the Venice Commission on gender quotas on electoral lists as specific measures to address the de facto inequality between the genders in political representation; and (iv) the case-law of the Court, that of the European Court of Human Rights and that of the Constitutional Courts of other countries regarding electoral rights and gender quotas. Based on the documents and principles elaborated in the Judgment, the latter also points out the Resolution 1706(2010) of the Parliamentary Assembly of the Council of Europe, which recommends that in countries with a list system with proportional representation, consideration should be given to introducing a legal quota that provides not only for a high proportion of women candidates and ideally at least forty percent (40%), but also for a strict rule of ranking the positions. From the analysis elaborated in the Judgment, it results that the member states of the Council of Europe, including based on the Recommendation of the Parliamentary Assembly, are encouraged to increase the representation of women by introducing gender quotas, which, in principle, have two features, namely (i) the stipulation of a minimum quota of representation on the electoral lists of political entities; and (ii) a definition of a zipper ranking order of candidates from each gender or of a candidate of each gender including at least once in

each group of three (3) candidates in the case of a quota of thirty percent (30%), with the aim of ensuring that candidates of the less represented gender do not risk being placed too low on the list and have a real opportunity to be elected. According to the explanations given in the Judgment, it results that the Member States of the Council of Europe and which have introduced such mechanisms in the relevant laws regulating the electoral lists of political entities competing in elections, in principle, have determined the quota level and/or percentage from twenty percent (20%) to forty percent (40%).

Further and in the context of assessing the constitutionality of the contested provision, the Judgment, initially and in relation to the percentage of the gender quota in the electoral lists of political entities, emphasizes the fact that while the Constitution provides for the possibility of imposition of necessary measures for the protection and advancement of the rights of individuals and groups that are in unequal position, only until the purpose for which they were imposed has been fulfilled, it does not stipulate the percentage of this quota, leaving the necessary space to the legislative branch, namely the Assembly of the Republic of Kosovo, to determine the percentage of this quota, in accordance with the positive obligations of the state to ensure gender equality and which, once determined, must be strictly enforced. The Judgment also clarifies that, based on the case-law of the European Court of Human Rights, the determination of this quota as a temporary and necessary measure until gender equality is achieved, is a matter of public policy and falls within the purview of the legislative branch. According to the explanations provided, it is not within the competence of the Constitutional Court to determine the percentage of this legal quota, but the Assembly of the Republic of Kosovo has the full competence to advance the percentage of the aforementioned quota as it pertains to the gender representation on the lists of political entities competing in the elections, always in the context of a necessary measure, until the purpose of achieving gender equality in the Republic of Kosovo has been fulfilled and in accordance with the standards established through the mechanisms of the Council of Europe as elaborated in this Judgment.

Secondly, and in relation to the intended goal of fifty percent (50%) representation as established in the Law on Gender Equality, the Judgment refers to its previous case-law through which this provision has been elaborated, including its Judgment in the case KI45/20 and KI46/20, with applicants Tinka Kurti and Drita Millaku and which, among others, emphasizes that the Assembly as a legislator has not formulated the percentage of fifty percent (50%) as a mandatory legal quota but has formulated it in the form of an aspiration towards achieving the purpose and determination of the Constitution for gender quality in the Republic of Kosovo. More precisely and according to the explanations provided, the fifty percent (50%) aimed through the Law on Gender Equality is not a legal quota for mandatory representation such as the thirty percent (30%) provided for in article 28 (Gender Quotas) of the Law on General Elections. Having said that, both are laws adopted by the Assembly of the Republic and it is up to the latter, to gradually achieve the determinations it has itself adopted through the law-making process.

Thirdly, and pertaining to the necessary standard of zipper ranking order of candidates by respective genders, the Judgment emphasizes that article 28 (Gender Quotas) of the Law on General Elections specifies that the list of candidates of each political entity must include one candidate of each gender included at least once in each group of three (3) candidates, which is counted from the first candidate on the list, and that such a determination, is also based on applicable international standards.

Finally, the Judgment emphasizes the fact that the Republic of Kosovo has the constitutional obligation to ensure gender equality as a fundamental value for the democratic development of the society and equal opportunities for the participation of women and men in political, economic, social, cultural and other areas of societal life. As the relevant documents of the Council of Europe establish and which have been elaborated in the Judgment, the lack of equal representation of women and men in political and public decision-making, is a threat to the legitimacy of the respective democracies.

ECtHR – Important decisions (1 July – 31 December 2024)

* Chișinău municipality's refusal to allow anti-discrimination NGO to display poster with cartoons breached its freedom of expression (25/06/2024)

In its Chamber judgment in the case of the **National Youth Council of Moldova v. the Republic of Moldova** (*application no. 15379/13*) the European Court of Human Rights held, unanimously, that there had been: a violation **of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the local authorities' refusal to allow the applicant NGO to display antidiscrimination illustrations on advertising panels, on the grounds that they depicted some social groups in an undignified and humiliating manner. The Court noted that the applicant NGO's poster was part of an anti-discrimination campaign involving several other NGOs, one of the aims of which was to promote the first freephone discrimination helpline in Moldova. The central issue in the present case was the applicant NGO's decision to illustrate its poster with cartoons. On that point, the Court reiterated that satire was a form of artistic expression and social commentary which naturally aimed to provoke and agitate, thereby contributing to public debate. The cartoons on the poster had been accompanied by text encouraging the communities concerned to call a freephone helpline if they experienced discrimination.

It was obvious for the Court that the intended goal had not been to insult, ridicule or stigmatise those vulnerable population groups or insidiously to promote hate speech and intolerance. Taken in their immediate, more general context, the poster and cartoons had clearly been a means of drawing the public's attention precisely to social stereotypes and to the discrimination experienced by vulnerable groups, while encouraging them to assert their rights. The Court further observed that the domestic courts had not conducted an effective review as required by Article 10 of the Convention. In the Court's view, that failure was a key factor in establishing that there had not been relevant and sufficient reasons for the interference with the applicant NGO's right to freedom of expression.

In addition, such interference could have a chilling effect on satirical forms of expression concerning social issues. Accordingly, the interference had not been necessary in a democratic society.

* Criminalisation of the purchase of sexual acts (Law no. 2016-444): no violation of Article 8 of the Convention (25/07/2024)

In its Chamber judgment in the case of **M.A. and Others v. France** (*applications nos. 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights.

The case concerned the creation, under French criminal law, of the offence of purchasing sexual relations, which, in the applicants' allegation, seriously endangered the physical and mental integrity and health of individuals engaged in prostitution, and radically infringed on their right to respect for private life, in so far as this included the right to personal autonomy and sexual freedom. The Court noted that the problems linked to prostitution raised very sensitive moral and ethical questions, giving rise to different, often conflicting, views, and that there was still no general consensus among the member States of the Council of Europe, or even within the various international organisations examining the issue, on how best to approach prostitution. It then noted that recourse to the general and absolute criminalisation of the purchase of sexual acts as a means of combatting human trafficking was currently the subject of heated debate, giving rise to wide differences of opinion at both European and international level, without a clear position emerging. The Court concluded that the French authorities had not overstepped their discretion ("margin of appreciation") in enacting the contested prohibition, in so far as it resulted from a balance struck by means of a democratic process within the society in question and formed part of a comprehensive approach – provided for by Law no. 2016-444 of 13 April 2016 – in which account had been taken of the various concerns raised by the applicants in the present case. Nonetheless, the Court emphasised that the national authorities had a duty to keep the approach adopted by them under constant review, especially when it was based on a general and absolute prohibition of the purchase of sexual acts, so as to be able to amend it as European societies and international standards in this field evolved, and to adapt to the tangible effects of implementation of this legislation.

* Membership of the Soviet Communist Party legitimate grounds to stop MEP standing for Latvian Parliament (25/07/2024)

In its Chamber judgment in the case of **Ždanoka v. Latvia (no. 2)** (*application no. 42221/18*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 3 of Protocol No. 1 (right to free elections)** to the European Convention on Human Rights.

The case concerned the removal of Ms Ždanoka, a former MEP, from the candidate list for the 2018 parliamentary elections, owing to her active membership of the Communist Party of Latvia during the post-independence struggles against the Soviet Union. She had been a candidate for the Latvian Union of Russians. The Court found in particular that restricting from standing for election individuals who had endangered and continued to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law was legitimate and proportionate. The authorities had therefore acted within their discretion ("margin of appreciation") in doing so in Ms Ždanoka's case.

* Insufficient safeguards against judge partiality in cases concerning dismissals from Georgian electricity company Telasi (29/08/2024)

In its Chamber judgment in the case of **Tsulukidze and Rusulashvili v. Georgia** (*application nos. 44681/21 and 17256/22*) the European Court of Human Rights held, unanimously, that there had been: a violation **of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights.

The case concerned the alleged lack of impartiality of a Supreme Court judge who was a member of three-judge panels which rejected claims brought by the applicants and whose judicial assistant was the daughter of the lawyer of the respondent party, the Telasi electricity distribution company, in those proceedings.

The Court found in particular that the fact that the judge's judicial assistant was the daughter of Telasi's legal representative, coupled with the broad mandate given to judicial assistants in the Georgian judicial system, had created a situation which legitimately could raise doubts as to the impartiality of Judge L.M. The applicants had not known to what extent the judicial assistant had actually been involved in their cases, and the Supreme Court had failed to elucidate the circumstances of her involvement, thereby failing to dispel their doubts concerning the impartiality of that judge.

The Court therefore found that their doubts were objectively justified and that they had not been provided with sufficient procedural safeguards in this respect.

* Criminal proceedings against a former MEP following the publication of an article in The Sunday Times were not unfair (08/10/2024)

In its Chamber judgment in the case of **Severin v. Romania** (*application no. 20440/18*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial/right to examine witnesses)** of the European Convention on Human Rights.

The case concerned the fairness of criminal proceedings against Mr Severin for allegedly taking bribes while he was a Member of the European Parliament (MEP). The proceedings, which saw him receive a four-year prison sentence, were initiated following the publication of an article by two British Sunday Times journalists, who had posed as lobbyists and had offered the applicant money in exchange for his support for certain legislative amendments submitted to the European Parliament. Before the European Court, the applicant argued that the two journalists had acted as agents provocateurs. He also complained about the Romanian courts' use of the journalists' recordings and the fact that the journalists had been examined in circumstances he claimed had been unfavourable to his defence. Regarding the allegation that the British journalists had acted as agents provocateurs, the Court noted that there was no evidence of State involvement in the present case and that the two journalists had acted at all times as private individuals. As to the criminal proceedings as a whole, the Court considered that they had afforded the applicant adequate safeguards to exercise his defence rights. While taking into account the possible weight of the evidence obtained or provided by the journalists – particularly the recordings – and the difficulties that their use might have created for the defence, the Court noted that the applicant had been able to raise his arguments before the domestic courts, where they had been examined in a manner compatible with the provisions of Article 6 of the Convention. The Court further considered that the way in which the witnesses had been examined during the proceedings was also compatible with that provision, and had enabled the applicant to exercise his rights effectively.

* Ban on trade-union demonstration at the height of Covid pandemic was Justified (17/10/2024)

In its Chamber judgment in the case of **Central Unitaria de Traballadores/as v. Spain** (*application no. 49363/20*) the European Court of Human Rights held, by 6 votes to 1, that there had been: **no violation of Article 11 (freedom of assembly**

and association) of the European Convention on Human Rights. The case concerned a refusal by the local authorities in Galicia to allow a trade union to organise a convoy-demonstration in Vigo for May Day owing to the Covid restrictions in force at that time. The Court noted the difficult circumstances in which the Spanish authorities had had to make their decisions – early in a pandemic, without full knowledge of the origin and incidence of the disease, and with grave pressure on the healthcare system. It found in particular that the Spanish authorities had balanced the need to protect public health with the rights of the trade union, and that the ban had been justified in that light.

* "Foreign agent" legislation in Russia is arbitrary, and creates a climate of distrust (22/10/2024)

The case **Kobaliya and Others v. Russia** (*application no. 39446/16 and 106 others*) concerned the evolving legislative framework in Russia requiring many NGOs, media organisations and individuals to register as "foreign agents", and its repercussions on their activities and private life. In its Chamber judgment in the case, the European Court of Human Rights held, unanimously, that there had been: a **violation of Articles 10 (freedom of expression) and 11 (freedom of association)** of the European Convention on Human Rights as concerned all the applicants, and a violation of Article 8 (right to respect for private and family life) as concerned the individual applicants. The Court found that the currently applicable legislation was stigmatising, misleading and used in an overly broad and unpredictable way. This led the Court to conclude that the legislation's purpose was to punish and intimidate rather than to address any alleged need for transparency or legitimate concerns over national security. It mentioned in particular the obligation for the designated organisations and individuals to label everything they published with a notice announcing their status as "foreign agents", their exclusion from all electoral processes, restrictions on teaching professions, denial of access to young audiences and deprivation of revenue from private advertisers, as well as the manifestly disproportionate sanctions – including arbitrary fines and even dissolution. Such restrictions had a chilling impact on public discourse and civic engagement. They created a climate of suspicion and distrust towards independent voices and undermined the very foundations of a democratic society. It found that the legislative framework had become considerably more restrictive since 2012, impacting a far greater number of NGOs, media organisations and individuals and moving even further from Convention standards.

* Authorities' treatment of non-consensual publication of intimate images online was inadequate (03/12/2024)

In its Chamber judgment in the case of **M.Ș.D. v. Romania** (*application no. 28935/21*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned events following the breakup of a relationship in 2016, when M.Ș.D. was 18 years of age. Her ex-boyfriend, V.C.A., among other allegations, sent intimate pictures of her to family members and others, and posted the pictures, along with her personal details, on escort websites. The applicant promptly complained to the authorities about V.C.A.'s actions, but the criminal investigation and the related court proceedings remained pending for a long time, until even the statute of limitations for criminal liability expired. Most of the charges against V.C.A. were ultimately dropped. The Court found in particular that the legal framework had been inadequate – failing to protect M.Ș.D. from online violence – and that the investigation into her allegations had been ineffective, owing to excessive delays, the conduct of the authorities who have assigned part of the blame to M.Ș.D. thus contributing to her "revictimisation", as well as the express refusal of the prosecutor's office to comply with the court's orders.

* Conviction of publication director of Le Point and two journalists for defamation in article headed "The Copé Affair" did not infringe their freedom of expression (05/12/2024)

In its Chamber judgment in the case of **Giesbert and Others v. France** (*application no. 835/20*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights. The case concerned the conviction of the applicants – the publication director of Le Point magazine and two journalists working for that weekly – for defamation as a result of the publication, on 27 February 2014, of an article entitled "The Copé Affair" on the Bygmalion company and its links to the UMP political party and to that party's then leader, Mr Jean-François Copé. The applicants submitted that their conviction for public defamation had been in breach of Article 10 of the Convention, which protected freedom of expression. The Court saw

no serious reason to call into question the assessment unanimously made by the domestic courts in the present case. In particular, it considered that it could reasonably have appeared to them that the applicants had failed to perform the requisite due diligence when verifying the accuracy of the facts alleged and that the offending article, which had presented the information and material reported therein as "The Copé Affair", had been the product of a deliberate editorial decision lacking a sufficient basis in fact. Taking the view that the sanction imposed on the applicants – a criminal fine – had not been disproportionate to the legitimate aim pursued, the Court concluded that, without overstepping their margin of appreciation, the domestic courts – the findings of which had been based on relevant and sufficient grounds – had had reason to consider that the interference with the applicants' right to freedom of expression was necessary, in a democratic society, for the protection of the "reputation or rights of others".

* Apparent structural issue in Albania with regard to registering property (10/12/2024)

The case **Ramaj v. Albania** (*application no. 17758/06*) concerned a 6,700 sq. m plot of land in the Uji i Ftohtë area, which had been seized by the communist regime. A 2004 judgment restoring title of the land to Mr Ramaj has never been enforced, while the authorities have repeatedly refused his requests to register his ownership. In its Chamber judgment in the case the European Court of Human Rights held, unanimously, that there had been **no violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights as concerned the part of the plot of land which had been occupied by illegal buildings Those particular parts of the land had in effect been expropriated and Mr Ramaj could have applied for compensation, which he had apparently not done. However, it held, unanimously, that there had been a violation of Article 1 of Protocol No. 1 to the Convention as concerned the remaining part of the plot of land. The Court found in particular that the authorities' manner of dealing with Mr Ramaj's situation had lacked clarity and transparency. Interference by the executive with property titles, faulty land registry maps, a lack of clear procedures in cases of overlapping titles, and discrepancies in the domestic legal practice over compliance with court-ordered registration had all contributed to leaving Mr Ramaj in a state of uncertainty over his property for more than 26 years. The issues that had led to the non-enforcement of the final judgment in Mr Ramaj's favour apparently went beyond this specific case and were part of a challenging context of complex historical events. The Court advised the national authorities to establish efficient and transparent procedures and a functional immovable property registration system in order to ensure respect for property owners' rights.

* Prohibiting contact between children and their mother in Slovenian custody and contact rights case was unjustified (19/12/2024)

The case of **X and Others v. Slovenia** (application *nos. 27746/22 and 28291/22*) concerned custody decisions and contact rights following the separation of X from her children's father in 2018. It also concerned the reassignment of X's court case to a particular judge. In its Chamber judgment in the case, the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights, as regards X's right to a tribunal established by law, and **violations of Article 8 (right to respect for private and family life)** with respect both to:

- the applicant children, as regards the order to remove them from X's (their mother's) care in March 2020, their not being represented in the contact and custody proceedings, and their not being allowed contact with their mother;
- X, for not being allowed contact with her children.

The Court found in particular that the President of the District Court, in assigning the applicants' cases to a particular judge, contrary to objective pre-established criteria, had defied the clear purpose of the law – namely, to ensure randomness in the assignments of cases. It also considered that two interim orders and a judgment prohibiting contact between the children and their mother had not been justified and that the removal of the children from X had not been supported by relevant and sufficient reasons. Moreover, the national courts' failure to ensure proper representation of the children's interests during the contact and custody proceedings had amounted, in itself, to a breach of the children's right to respect for their family life.

* Parliamentary inquiry into Mafia infiltration of Masonic lodges: search and seizure in breach of the Convention (19/12/2024)

In it Chamber judgment in the case of **Grande Oriente d'Italia v. Italy** (*application no. 29550/17*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights. The case concerned a search of a Masonic association's premises ordered in the context of a parliamentary inquiry into the Mafia.

Paper and digital documents, in particular a list of names and personal data of more than 6,000 members of the association, were seized during the search. The Court found that there had been a lack of evidence or a reasonable suspicion of involvement in the matter being investigated which would have been sufficient to justify such a wide-ranging and indeterminate measure. Nor had the shortcomings in the search order been offset by sufficient counterbalancing guarantees, for example by an independent and impartial review. Indeed, as the system in Italy currently stands, Parliament has exclusive jurisdiction to rule on the validity of its decisions. The Court concluded that such a significant interference with the applicant association's rights, involving the authorities examining and retaining a wide range of documents, including confidential information, had not been "in accordance with the law". Nor had it been "necessary in a democratic society".

(*For more information please visit the website of the European Court of Human Rights: www.echr.coe.int*)

INFORMATION ON THE COURT

The building of the Constitutional Court:

The Constitutional Court of the Republic of Kosovo, since it became functional in 2009, has been located in the building of the former Kosovo Protection Corps - KPC, located in the center of Prishtina, in the area of Pejton. The position of the Court in the center of the capital city, symbolizes an equal access to all citizens and other authorized parties to the Constitutional Justice. Over the years this building has been adapted according to the needs and nature of work of the Constitutional Court. This has been carried out with the support of our donors, as in the case of construction of the Courtroom of the Court which has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the Library of the Court which was entirely supported by the GIZ Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011.
The building of the Court has a usable office space of 1 937 m^2 and is used by 65 employees.

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