



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE**

**USTAVNI SUD**

**CONSTITUTIONAL COURT**

**KABINETI I KRYETARIT / URED PREDSEDNIKA / CABINET OF THE PRESIDENT**

Prishtina, 29 January 2024

**Nr. Ref.: KK41/24**

**To: Ms. Domnica Manole, President  
Constitutional Court of the Republic of Moldova**

**Re: Application by the Constitutional Court of the Republic of Kosovo to join the  
Conference of European Constitutional Courts**

Honorable President Manole,

I am addressing this letter to You, in Your leadership capacity of the Circle of Presidents of the Conference of European Constitutional Courts (hereinafter: the CECC). As You are aware, including through the previous letters addressed to Your Court, the Constitutional Court of the Republic of Kosovo has continuously expressed its interest in becoming a member of the CECC and it continues to remain equally and deeply committed to joining this Conference. Aware of the upcoming CECC Congress in Chisinau, Moldova in May 2024, I am addressing another letter through which we renew our strong determination and devotion to finally join the CECC family.

Our Constitutional Court has made significant efforts and undertaken continuous steps in pursuit of this membership. It has submitted its first request to become an associate member for the consideration of the XV CECC Congress held in Bucharest, Romania in 2011. Regrettably, the Circle of Presidents did not include this application on the Congress agenda, opting to defer its consideration to the subsequent XVI CECC Congress in 2014, presided over by the Constitutional Court of Austria. While our Court appreciated the opportunity to have the application discussed in the plenary of the Congress in Vienna, unfortunately, despite significant support, the necessary votes were not secured. Subsequent attempts followed in 2015 and 2017, during two Circle of Presidents' meetings under the Presidency of the Constitutional Court of Georgia, leading to the XVII CECC Congress in Batumi. However, the Circle of Presidents decided against deliberating our application in the plenary. Ultimately, our Court's application was considered at the XVIII Congress in Prague and while a significant number of members present were in support of our application, our efforts proved futile once more, as the voting was deferred to the upcoming Congress, to be organized under Your esteemed Presidency. Expressing our outmost respect for all the members of the CECC, with most of which we have long standing and excellent partnerships as also reflected through their significant presence in Prishtina in October 2023, celebrating the anniversary the establishment of our Court, we consider that it is time for the CECC Circle of Presidents and the respective Congress to discuss and decide on our continuous efforts to join this Conference.

Let me please add that while our Court's efforts to join the CECC date back from over a decade now, our Court has not, under any circumstance, lost the strong determination to continue its efforts in this respect. In fact and as reflected below, as the youngest Constitutional Court in Europe, eager to draw upon the expertise of its counterparts across the continent, our Court has continued taking significant steps in expanding its international cooperation efforts. Today, it enjoys strong partnerships with Constitutional and/or Supreme Courts all across the European continent. In addition, since September 2014, our Court is a full member of the

World Conference on Constitutional Justice and of the Venice Commission. As of October 2023, it is a founding member of the Balkan Constitutional Courts Forum. It also maintains a lasting relationship with the European Court of Human Rights, including through the strong support of the Council of Europe Office in Kosovo. Furthermore, it is noteworthy to highlight recent significant developments, including but not limited to Kosovo's application for membership in the Council of Europe, the respective procedures pertaining to which are gradually progressing and the European Commission's decision to lift the visa regime for the citizens of the Republic of Kosovo.

Dear President Manole,

As continuously noted, our applications have been submitted based on paragraph 4 of article 6 (Access to membership) and paragraph 2 of article 9 (Circle of Presidents) of the Statute of the CECC. Our Constitutional Court fulfills the membership criteria as outlined in paragraph 1 (a) of article 6 (Access to membership) of the CECC Statute. It is a European Constitutional Court which exercises constitutional jurisdiction, in particular reviewing the conformity of legislation and conducts its judicial activities in accordance with the principle of judicial independence, being bound by the fundamental principles of democracy and the rule of law and the duty to respect human rights.

For the purpose of membership applications, paragraph 5 of article 6 (Access to membership) of the Statute, requires applications to be accompanied by (a) the legal instruments governing the establishment and composition of the candidate institution and the appointment and status of judges; (b) the texts establishing the nature and scope of its jurisdiction; and (c) documents demonstrating jurisdiction actually exercised. These documents have continuously been included in our applications in all official languages of the CECC as per its Statute. For the same purpose and for Your convenience, I am again attaching to this letter, (i) Annex 1, outlining the documents required by its points a) and b), namely the legal instruments governing the establishment and composition of the candidate institution and the appointment and status of judges and the texts establishing the nature and scope of its jurisdiction; (ii) Annex 2, outlining a list of key decisions of the Court throughout the years, as required by its point c), namely demonstrating that jurisdiction has been actually exercised; and (iii) a copy of the Constitution of Kosovo, Law no. 03/L-121 on the Constitutional Court and Rules of Procedure of the Constitutional Court no. 01/2023. These documents reflect a full alignment of our Constitutional Court with the aim of the CECC as outlined in article 3 (Aims) of its Statute, namely its commitment to the values of democracy, rule of law and human rights and fundamental freedoms.

While the abovementioned documents contain all the necessary information, for Your convenience, let me please also kindly remind You and the honorable members of the Circle of Presidents, that our Constitutional Court commenced its work in September 2009. Based on the Constitution, our Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. It has jurisdiction pertaining to (i) preventive control; (ii) abstract control; (iii) incidental control; and (iv) concrete, namely individual control, through an individual complaint mechanism.

The range of constitutional values and human rights and fundamental freedoms that the Constitutional Court has protected through its decisions thus far is extensive. Some of these decisions have treated very complex and delicate matters, ranging from issues of conflict of powers among the authorities in a newly established state, to issues of independence of the judiciary and independent institutions or issues related to fundamental rights and freedoms, including complex ethnic minorities related questions. In deciding these cases, the Constitutional Court has continuously referred to the Venice Commission Opinions, the relevant case-law of other Constitutional Courts as well as the relevant case-law of the European Court of Human Rights and the European Union Court of Justice.



For illustration, throughout the over 14 years of its existence, the Constitutional Court has issued, among others, decisions concerning issues such as: (i) whether a President of the Republic may hold another position during the exercise of the respective duty and the incompatibilities of the function of the Office of the President in representing the Unity of the People; (ii) the necessary constitutional procedure and quorum for the election of the President of the Republic; (iii) the constitutional criteria for the appointment of the candidate for the Prime Minister by the President of the Republic and the process for the election of a Government post parliamentary elections and/or in case the position of the Prime Minister remains vacant; (iv) the consequences of a vote of no-confidence in the Assembly and the circumstances under which this leads to extraordinary elections; (v) the transparency and accountability criteria pertaining to the election of high public officials including State Chief Prosecutor, Supreme Court President and Speaker of the Assembly; (vi) the Government's limitations in restricting human rights and fundamental freedoms, including throughout the Covid-19 pandemic; (vii) review of constitutionality of multiple laws, primarily pertaining to the proper balance among the branches of government and the institutional guarantees of independent institutions; and finally (viii) review of constitutionality of multiple acts of public authorities pertaining to the protection of minority community rights.

Its case-law is even richer and more diverse in the area of the protection of fundamental rights and freedoms. This because through its decisions, the Constitutional Court not only establishes its own interpretation pertaining to human rights and fundamental freedoms, but also, based on its constitutional duty, embeds the fundamentals of the European Court of Human Rights case-law into the continuously developing and advancing rule of law tradition in Kosovo. In this respect, the case-law of the Constitutional Court continuously contributes to the strengthening of rule of law values and integration of the principles deriving from the case-law of the European Court of Human Rights and the common heritage of the advanced democracies into the institutional functioning of the regular courts, but also other public authorities in the Republic of Kosovo.

Today, our Constitutional Court has over 2,000 published decisions in two local official languages as well as in English, and more recently in French. It is the only Constitutional Court in the region that publishes all its decisions in multiple languages.

Finally, let me also kindly remind You that, for the first 10 years of its existence, our Court was subject to a hybrid composition, which included three international judges appointed by the International Civilian Representative upon consultation with the President of the European Court of Human Rights. The institutional hybridity introduced through the mixed national-international composition and extensive experience of the international judges and the respective international legal advisors, has been instrumental for the Court's successful functioning in its beginnings and its continuously advancing professional capacities. Since the mandates of the international judges expired in 2018, the Court is now composed of national judges only, including two that representing local minority communities. The Court has always had at least one third representation of women, while for most of its existence, it has been led by a woman President. In addition, the Constitutional Court is composed of 65 staff members, most of whom are at least bilingual and have legal and other degrees from European and American Universities, and have been trained on constitutional justice matters in prestigious institutions, including the European Court of Human Rights and the Venice Commission.

Dear President Manole,

Acknowledging that this is a repeated expression of interest and application by our Court for membership to the CECC, we remain hopeful that the upcoming Circle of Presidents meeting will include our request in the agenda and decide in our favor. While the criteria established under paragraph 1 (a) of article 6 (Access to membership) of the Statute are fulfilled by our Court, the latter certainly also fulfills the criteria outlined under paragraph 1 (b) of article 6

(Access to membership) of the Statute, if the Circle of Presidents considers this option more appropriate.

Let me please finally emphasize that at all times and especially at present, when the entire world is witnessing acts of violence affecting the system of international human rights protection and thus rule of law and democratic values, it is critical that Constitutional Courts join their forces to protect and safeguard the fundamental rights of European citizens. When the values of rule of law and human rights are risked at large and beyond national borders, it is only through international cooperation and professional platforms such as the CECC, that these threats and the subsequent damage can be prevented and/or addressed. As a truly committed Constitutional Court to the values of rule of law and democracy, our Constitutional Court is honored if provided the opportunity to benefit as well as provide its contribution to the family of the European Constitutional Courts in this respect.

Finally, expressing out tremendous appreciation for Your cooperation and support, please know that our Constitutional Court remains at Your disposal for any information that You and/or any Circle of Presidents member might additionally need pertaining to our application.

Cordially yours,

**Gresa Caka-Nimani**

President

Constitutional Court of the Republic of Kosovo



Attachments:

1. Annex 1: The legal instruments governing the establishment and composition of the Constitutional Court of the Republic of Kosovo, status of judges and the texts establishing the nature and scope of its jurisdiction;
2. Annex 2: Summary of key decisions of the Constitutional Court of the Republic of Kosovo through the years; and
3. A copy of the Constitution of the Republic of Kosovo, Law no.03/L-121 on the Constitutional Court and Rule of Procedure of the Constitutional Court no. 01/2023.



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## **Annex 1 – Legal instruments governing the establishment and composition of the candidate institution and the appointment and status of judges**

*[fulfillment of criteria outlined in paragraph 5. (a) and 5. (b) of article 6 - Access to membership – of the CECC Statutes]*

### **Introduction**

For the purpose of paragraphs 5. (a) and 5. (b) of article 6 (Access to membership) of the CECC Statutes, namely the criteria that applications of candidate courts should be accompanied by (a) legal instruments governing the establishment and composition of the candidate institution and the appointment and status of judges; and (b) the texts establishing the nature and scope of its jurisdiction, in what follows, the relevant provisions of the Constitution of the Republic of Kosovo and the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo will be reflected.

It should be noted that the Constitution of the Republic of Kosovo entered into force on June 15, 2008. The Law No. 03/L-121 on Constitutional Court entered into force on 15 January 2009. While the Constitutional Court's Rule of Procedure were initially adopted on 15 January 2011, and subsequently amended on 8 July 2011, 4 December 2012, 17 June 2013, 28 October 2014, 3 March 2015, 13 June 2018 and most recently, on 7 July 2023. The Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Constitutional Court are published in the Official Gazette of the Republic of Kosovo in five (5) language, namely, in Albanian, Serbian, English, Turkish and Bosnian.<sup>1</sup> Its most important Judgments are also published in the French language.

Taking into account the criteria of article 6 (Access to membership) of the CECC Statute, the relevant provisions of the Constitution and the Law on the Constitutional Court, that relate to the establishment and composition of the candidate institution, namely the Constitutional Court of the Republic of Kosovo and the respective appointment and status of judges, including the nature and scope of its jurisdiction, will be reflected in what follows below:

### **Constitution of the Republic 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.

<sup>1</sup> Official Gazette of the Republic of Kosovo, accessible at: <https://gzk.rks-gov.net/default.aspx?index=1>



## **Chapter VIII Constitutional Court**

### **Article 113**

#### **[Jurisdiction and Authorized Parties]**

1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:
  - (1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;
  - (2) the compatibility with the Constitution of municipal statutes.
3. The Assembly of Kosovo, the President of the Republic of Kosovo and the Government are authorized to refer the following matters to the Constitutional Court:
  - (1) conflict among constitutional competencies of the Assembly of Kosovo, the President of the Republic of Kosovo and the Government of Kosovo;
  - (2) compatibility with the Constitution of a proposed referendum;
  - (3) compatibility with the Constitution of the declaration of a State of Emergency and the actions undertaken during the State of Emergency;
  - (4) compatibility of a proposed constitutional amendment with binding international agreements ratified under this Constitution and the review of the constitutionality of the procedure followed;
  - (5) questions whether violations of the Constitution occurred during the election of the Assembly.
4. A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.
5. Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.
6. Thirty (30) or more deputies of the Assembly are authorized to refer the question of whether the President of the Republic of Kosovo has committed a serious violation of the Constitution.
7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.
8. The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue.
9. The President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.
10. Additional jurisdiction may be determined by law.

### **Article 114**

#### **[Composition and Mandate of the Constitutional Court]**

1. The Constitutional Court shall be composed of nine (9) judges who shall be distinguished jurists of the highest moral character, with not less than ten (10) years of relevant professional experience. Other relevant qualifications shall be provided by law. Principles of gender equality shall be respected.
2. Judges shall be appointed by the President of the Republic of Kosovo upon the proposal of the Assembly and shall serve for a non-renewable mandate of nine (9) years.
3. The decision to propose seven (7) judges requires a two thirds (2/3) majority of the deputies of the Assembly present and voting. The decision on the proposals of the other two (2) judges shall require the majority vote of the deputies of the Assembly present and voting, but only upon the consent of the majority of the deputies of the Assembly holding seats reserved or guaranteed for representatives of the Communities not in the majority in Kosovo.
4. If the mandate of a judge ends before the end of the regular mandate, the appointment of the replacement judge shall be made in compliance with this article for a full mandate without the right to re-appointment.

5. The President and Deputy President of the Constitutional Court shall be elected from the judges of the Constitutional Court by a secret ballot of the judges of the Court for a term of three (3) years. Election to these offices shall not extend the regular mandate of the judge.

**Article 115**  
**[Organization of the Constitutional Court]**

1. The Constitutional Court shall determine its internal organization, rules of procedure, decision-making processes and other organizational issues pursuant to law.
2. The Constitutional Court shall publish an annual report.

**Article 116**  
**[Legal Effect of Decisions]**

1. Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.
2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.
3. If not otherwise provided by the Constitutional Court decision, the repeal of the law or other act or action is effective on the day of the publication of the Court decision.
4. Decisions of the Constitutional Court are published in the Official Gazette.

**Article 117**  
**[Immunity]**

Judges of the Constitutional Court shall be immune from prosecution, civil lawsuit and dismissal for actions taken, decisions made or opinions expressed that are within the scope of their responsibilities as Judges of the Constitutional Court.

**Article 118**  
**[Dismissal]**

Judges of the Constitutional Court may be dismissed by the President of the Republic of Kosovo upon the proposal of two thirds (2/3) of the judges of the Constitutional Court only for the commission of a serious crime or for serious neglect of duties.

**Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo**

**CHAPTER I**  
**ORGANIZATION OF THE CONSTITUTIONAL COURT**

**1. General provisions**

**Article 1**  
**Scope**

This Law further regulates the organization and functioning of the Constitutional Court of the Republic of Kosovo, procedures for submitting and reviewing referrals to the Constitutional Court, terms and procedures for appointment and dismissal of the Constitutional Court judges, basic procedural principles and rules and other organizational issues.



**Article 2**  
**Organization of the Work of the Constitutional Court**

1. The Constitutional Court shall enjoy organizational, administrative and financial independence in performing duties assigned by the Constitution of the Republic of Kosovo ('Constitution') and the Law.
2. The Constitutional Court shall determine its internal organization, rules of procedure, decision-making processes and other organizational issues pursuant to law.

**Article 3**  
**Office and Symbols**

1. The Office of the Constitutional Court shall be in Pristina.
2. The Constitutional Court shall hold its meetings in its Office, but exceptionally, on its decision may hold meetings in other places of the Republic of Kosovo.
3. The Constitutional Court shall have its symbol and stamp which shall be determined in the Rules of Procedure.

**2. Judges of the Constitutional Court**

**Article 4**  
**Additional Conditions for Appointment of Judges**

1. Judges of the Constitutional Court shall be:
  - 1.1. citizens of the Republic of Kosovo;
  - 1.2. distinguished jurists with an excellent professional reputation with no less than ten (10) years of professional work experience, particularly in the field of public and constitutional law, which, inter alia, is proved through professional work as judges, prosecutors, lawyers, civil servants or university professors and other relevant working experience in the legal field;
  - 1.3. individuals with excellent moral reputations who can act in full capacity and who have not been convicted of any criminal offence.

**Article 5**  
**Incompatibility of function**

1. During his/her mandate, a judge of the Constitutional Court shall not have the right to be:
  - 1.1. member of a party, movement or any other political organization;
  - 1.2. member of a steering board of a publicly owned enterprise; trade association or non-governmental organization;
  - 1.3. member of a trade union.
2. In addition to the prohibitions referred to in Paragraph 1 of this Article, a judge of the Constitutional Court shall not hold any other public or professional office with remuneration, except the performance as lecturer of legal sciences in an accredited university. For the purposes of this Law, public or professional office shall not be considered if the judge without payment engages in scientific activities, or if he/she becomes a member of an institute or jurists association, humanitarian, cultural, sports and other organizations without remuneration, provided that such activities are not related to the work of any political party.
3. A judge proposed by the Assembly of Republic of Kosovo shall not be appointed by the President of Republic of Kosovo if he/she does not present the evidence that he/she has resigned from all relevant functions defined in Paragraphs 1 and 2 of this Article.
4. Each judge shall be obliged to inform the President of the Constitutional Court in writing about any activity he/she wish to perform outside the office of judge of the Constitutional Court for which he/she is paid honorariums or any other forms of remuneration. In case the President of the Constitutional Court expresses his/her opposition, the judge is entitled to request that the decision of the President of the Constitutional Court be reconsidered by all judges of the Constitutional Court. The said decision of the President can be overturned by a majority of all judges of the Constitutional Court.



## **Article 6**

### **Procedure for Review of Candidates for Appointment to the Constitutional Court**

1. A Special Committee for the Review of Candidates for Appointment to the Constitutional Court (hereinafter referred to as the "Committee") is hereby established. . The said Committee shall present to the Assembly a shortlist of qualified candidates for Judges of Constitutional Court in accordance with the procedure set forth in this Article.
2. The Committee shall be composed of the following members:
  - 2.1. The President of the Assembly of the Republic of Kosovo or a member of the Assembly acting as his/her designated representative;
  - 2.2. Leaders of each Parliamentary Group of the Assembly of the Republic of Kosovo or members of the Assembly acting as their designated representative;
  - 2.3. President of the Kosovo Republic Judicial Council;
  - 2.4. Ombudsperson;
  - 2.5. A representative of the Consultative Committee for Communities;
  - 2.6. A representative of the Constitutional Court.
3. The Committee shall be summoned and chaired by the President of the Assembly of the Republic of Kosovo or his/her designated representative. The Committee shall have two vice chairs selected from its members, one of which shall be from the deputies of a Community different from the Community of the Chair.
4. The Committee shall decide with simple majority of votes. In case of equal vote, the vote of the President of the Assembly of the Republic of Kosovo or his/her designated representative will be decisive.
5. In case that one of members of the Committee has a conflict of interest in relation to a case, he/she shall not take part or otherwise participate in any aspect of the committee proceedings on that case.
6. The procedure for determining the short list of judges of the Constitutional Court shall be instituted by the Committee. The Committee shall publish an invitation/call published in the written and electronic media including those widely read by the Communities not in the majority in Republic of Kosovo, in the Assembly, in the judicial institutions, law faculties, chamber of attorneys, judges and prosecutors associations, political parties, and other relevant legal persons and individuals to propose candidates for the election of one or more judges of the Constitutional Court (hereinafter: invitation/call). An individual may propose himself as candidate.
7. The invitation/call shall define the conditions for electing a judge of the Constitutional Court determined by the Constitution and this Law, the deadline for proposing a candidate to the Committee, which should not be less then fifteen (15) or longer than twenty (20) days, and the enclosures that shall be delivered with the proposal.
8. After the deadline provided in the previous Paragraph expires, the Committee, within fifteen (15) days, shall investigate whether the candidates comply with the conditions for being elected judge of the Constitutional Court as determined by the Constitution and this Law, and shall reject invalid candidacies. In carrying out this responsibility, the Committee shall adopt practices developed for the selection and appointment of other members of the judiciary in Kosovo.
9. The Committee shall conduct an interview with each of the candidates who comply with the conditions for being elected judge of the Constitutional Court and, on the basis of presented data and interview results, shall prepare a short list of qualified candidates for judges of the Constitutional Court.
10. The said short list shall include more candidates than the number of judges, who will be appointed, but not more than five (5) candidates for one vacant position.
11. The Committee shall submit to the Assembly of the Republic of Kosovo, together with its short list, the list of all the candidates who comply with conditions for being elected judge of the Constitutional Court.
12. The proposal of the Committee shall include the reasons showing why the Committee gave a particular candidate priority over the other candidates.

## **Article 7**

### **Appointment and commencement of mandate**

1. Procedure for appointment of a new judge, pursuant to this Law, commences at least three (3) months before the expiry of mandate of previous judge.
2. The mandate of new judge shall begin on the day the mandate of previous judge expires. A new judge shall be appointed by the President and shall take the oath in front of the President before commencement of his/her mandate. In case the mandate of judge expires pursuant to Article 8 of this law, mandate of

replacing judge shall begin upon the appointment by the President and taking the oath in front of the President.

3. As exception from paragraphs 1 and 2 of this Article, mandate of first judges of the Constitutional Court shall begin upon the appointment by the President and taking the oath in front of the President.
4. The text of oath of a Constitutional Court judge shall be as follows: "I solemnly swear that in performing duties as judge of the Constitutional Court of the Republic of Kosovo I shall uphold the Constitution of the Republic of Kosovo and shall perform the function of judge honorably, responsibly and impartially, respecting rules of professional ethics."

## **Article 8**

### **Termination of mandate**

1. The mandate of a judge of the Constitutional Court shall end upon:
  - 1.1. expiry of regular period for which he/she is elected;
  - 1.2. prior termination of the mandate pursuant to Article 9 of this Law.
2. Six (6) months before the mandate of a judge of the Constitutional Court terminates, pursuant to Paragraph 1, 1.1 of this Article, the President of the Court shall inform the Assembly of the Republic of Kosovo in order for the Assembly to initiate the procedure for proposing a new judge.

## **Article 9**

### **Prior termination of the mandate**

1. The mandate of a judge of the Constitutional Court shall end prior to the expiry of regular period for which he/she is elected in case of:
  - 1.1. resignation;
  - 1.2. death;
  - 1.3. permanent loss of ability to act as determined by the competent court;
  - 1.4. illness or any other health problem, which makes it impossible for him/her to exercise his/her functions as a judge of the Constitutional Court;
  - 1.5. dismissal pursuant to Article 118 of the Constitution.
2. The termination of a mandate pursuant to item 1.4. of Paragraph 1 of this Article shall be based upon a decision taken by the judges of the Constitutional Court following the examination of all relevant medical examination and findings. The said decision shall require a two thirds (2/3) majority of the judges of the Constitutional Court excluding the judge whose mandate is under consideration.

## **Article 10**

### **Duties of judges**

1. The judges of the Constitutional Court are obliged to perform their functions with conscience and impartiality, to decide with their own free will in compliance with the Constitution.
2. Judges of the Constitutional Court are obliged to preserve the reputation and dignity of the Constitutional Court.
3. Each judge is obliged to participate in the work and decision-making process of the Court, and to perform any other duties as defined in this Law and Rules of Procedure.

## **Article 11**

### **President and Deputy President**

1. The President of the Constitutional Court shall:
  - 1.1. coordinate activities of the Constitutional Court and the work of judges of the Constitutional Court;
  - 1.2. summon and chair sessions of the Constitutional Court;
  - 1.3. represent the Constitutional Court;
  - 1.4. sign acts of the Constitutional Court;
  - 1.5. perform other duties defined in this Law or in Rules of Procedure of the Constitutional Court.
2. The Deputy President of the Constitutional Court shall perform the duties of the President of Constitutional Court when the latter is absent or for any other reason is unable to perform his/her duties. The President of the Constitutional Court may delegate to the Deputy President certain duties to support the President in performing his/her duties.



## **Article 12**

### **Secretariat**

1. The Constitutional Court shall have its Secretariat which shall be chaired by the Secretary General of the Constitutional Court.
2. The Secretariat performs administrative works and is obliged to support the work of the Constitutional Court. The Secretariat:
  - 2.1. receives and sends all documents and other official communications;
  - 2.2. maintains the registry of the Court;
  - 2.3. ensures recording as defined in the Law;
  - 2.4. prepares transcripts and minutes;
  - 2.5. performs public information works and replies to requests for information about the work of the Constitutional Court;
  - 2.6. keeps the stamp of the Constitutional Court; and
  - 2.7. performs other works as defined in the law and Rules of Procedure of the Constitutional Court.
3. The organization and the work of the Secretariat shall be further regulated by the Rules of Procedure of the Constitutional Court.
4. The Secretary General is responsible for the organization and administration of the Secretariat. The Secretary General is elected and appointed by judges of the Constitutional Court with a simple majority vote. Details about election, appointment, terms of work and salary of the Secretary General shall be defined in the Rules of Procedure of the Constitutional Court. The Secretary General reports to the President of the Constitutional Court and shall be accountable for his/her work to all the judges of the Constitutional Court.
5. The Secretary General appoints and dismisses employees of the Secretariat in compliance with the applicable law on civil service. Legal provisions foreseen for civil servants shall apply for employees of the Secretariat.

## **Article 13**

### **Legal Advisors**

Legal advisors shall support the professional work of the judges of the Constitutional Court. The terms of appointment, dismissal and status of legal advisors shall be defined in the Rules of Procedure of the Constitutional Court. Salaries of legal advisors shall be defined in accordance with applicable legislation.

## **Article 14**

### **Budget**

1. The Constitutional Court shall be funded from the Kosovo Republic budget.
2. Notwithstanding provisions of other laws, the Constitutional Court shall prepare its annual budget proposal and forward the said budget proposal to the Assembly of the Republic of Kosovo for adoption. Neither the Government nor any other budget organization shall be entitled to amend or otherwise modify or influence the budget proposal prepared by the Constitutional Court. The budget proposed by the Constitutional Court shall be included in its entirety in the Republic of Kosovo Consolidated Budget submitted to the Kosovo Republic Assembly for adoption.
3. The Constitutional Court shall manage its budget independently and shall be subject to internal audit as well as external audit by the General Auditor of Republic of Kosovo.

## **Article 15**

### **Remuneration of Judges**

The remuneration of Constitutional Court judges shall be 1.3 times that of the judges of the Supreme Court of the Republic of Kosovo.



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USTAVNI SUD

CONSTITUTIONAL COURT

## **Annex 2 – Decisions of the Constitutional Court of Kosovo "*demonstrating jurisdiction actually exercised*"**

*[fulfillment of the criteria outlined in paragraph 1. (a) and 5. (c), Article 6 (Access to membership) of the CECC Statutes]*

### **I. Introduction**

Tasked with interpreting a newly adopted Constitution of 2008, with no previous case-law to refer to, in a young democracy such as Kosovo, the Constitutional Court has played a determining role in strengthening and advancing the rule of law and human rights values in the Republic of Kosovo. In the historical and political context of Kosovo, the cases that the Court has decided to date reflect complex and delicate matters, ranging from issues of conflict of powers between the authorities to issues of independence of the judiciary and independent institutions, as well as issues related to fundamental rights and freedoms, including ethnic minorities' related questions.

To date, the Constitutional Court has decided on and published 2,000 decisions. All decisions of the Court are published in the Official Gazette of the Republic of Kosovo and on the Court's website: <https://gjk-ks.org/en/decisions/>. All decisions are translated into Albanian and Serbian, whereas judgments and important resolutions on inadmissibility are translated into English. Selected important decisions are also published in French and translated into Turkish if relevant to the parties before the Court.

For the purpose of paragraphs 1. (a) and 5. (c) of article 6 (Access to membership) of the CECC Statutes, namely demonstrating that "*jurisdiction is actually exercised*" and "*in particular reviewing the conformity of legislation and conducting their judicial activities in accordance with the principle of judicial independence, being bound by the fundamental principles of democracy and the rule of law and the duty to respect human rights*", in what follows, the short summaries of thirty (30) of the most important decisions the Court has issued to date will be reflected. The abovementioned cases are grouped into two main categories: (a) requests submitted by public authorities, concerning issues and questions of conflict of powers between the public authorities, including issues related to the division and balance of power, with particular focus on the independence of the judiciary and independent institutions; and (b) individual requests, related to the protection of fundamental rights and freedoms, as guaranteed under the Constitution and applicable international legal instruments.

### **(a) Decision-Making Pertaining to the Principles of Division and Balance of Power among the Branches of Government**

- (i) *The tale of two Presidents: the incompatibility of the function of the Office of the President in representing the Unity of the People and the necessary constitutional procedure and quorum for the election of the President of the Republic*
1. The case [KO47/10](#), Judgment of 22 September 2010, concerned Mr. Fatmir Sejdiu, who, on 27 February 2010, was reelected as President of the Republic of Kosovo. Simultaneously to serving as President, Mr. Sejdiu was held the leadership position of his political party, that of the Chairman of the Democratic League of Kosovo, although he had "*frozen the exercise of the function*" in the abovementioned political party. Soon after his reelection, the respective number of the deputies of the Assembly referred to the Constitutional Court the question on whether the President of the Republic of Kosovo has committed a serious violation of the Constitution. In its Judgement, the Court assessed



whether the holding of a position in a political party by the President of Kosovo, although not fully exercising it, was in contradiction with the Constitution, primarily with the duty of the President to represent the Unity of the People. The Court concluded that the President conducted a serious violation of the Constitution. According to the Court's decision, among others, when the President of the Republic allows a political party to claim that he/she is the Chairman of their political party, even under circumstances when he/she, as Chairman, does not make any active decisions on behalf of the party, he/she is, nevertheless, exercising a political activity, or at least allowing the political party to "make use of" his/her name and position as President of the Republic. Despite the fact that according to the Constitution, it is the Assembly of the Republic that may dismiss a President after the Court finds that he/she has seriously violated the Constitution, after the Constitution Court decision, former President Sejdiu resigned from the Presidency.

2. The case [KO29/11](#), Judgment of 28 March 2011, concerned another President of the Republic of Kosovo, namely whether the procedure followed by the Assembly for the election of the President complied with the Constitution. The respective constitutional provision stipulates that to be elected in the first or second ballot, a successful candidate must receive the votes of two-thirds (2/3) of all 120 deputies of the Assembly. If neither candidate receives the necessary majority in the first two rounds, then the two most successful candidates advance to a third round and the one who receives the most votes of all the deputies of the Assembly, namely sixty one (61) votes, is elected President of the Republic. In the circumstances of the case, the Assembly elected Mr. Behgjet Pacolli as President of Kosovo on its third ballot/round of voting. He was the only proposed candidate, and throughout the voting process in the Assembly less than two thirds (2/3) of all the deputies of the Assembly were present and/or participated in the voting process. The Court was requested to review the Decision of the Assembly of the Republic of Kosovo concerning the election of the President of the Republic of Kosovo, with the primary question on whether the number of deputies present in the Assembly, in the first two rounds of voting which require the majority of two thirds (2/3) to elect the President, can be lower but sufficient for the necessary majority for the third round, namely majority of the deputies present and voting. The Court found that according to the respective constitutional provisions (i) there must be at least two (2) candidates running for President; and (ii) since the first and second rounds require two thirds (2/3) of the votes of all deputies in order to elect the President, it is considered that the voting procedure cannot be carried out in the first and second ballots if at least two thirds (2/3) of all the deputies of the Assembly are not present in the voting, thereby clarifying the necessary quorum of two thirds (2/3) of all the deputies of the Assembly for the voting process on the election of the President on the first two ballots/rounds. The Court clarified that the fact that a lower majority is required in the third round of voting, does not mean that the first two rounds can be held with a lower quorum than the required votes to elect a President. As a result of the above Judgment of the Court, the Assembly repeated the President election process with a new proposed candidates and following the procedures established in the Constitution of Kosovo. A new candidate for President of the Republic of Kosovo was elected.

(ii) *The establishment of institutions after the elections and/or when the Government is dismissed*

3. In case [KO103/14](#), Judgment of 30 June 2014, the Court was requested to interpret the constitutional provision which entitles "the party or coalition" with the right to propose the candidate for Prime Minister following the general elections. The question arose after the parliamentary elections of 8 June 2014. One political party had won the most seats in the Assembly, however, it did not have the necessary sixty-one (61) votes in the Assembly to form the Government. The other political parties had entered into a post-election coalition and in that manner, obtained the necessary majority in the Assembly to form the Government. The Court, based on the provisions of the Constitution and upon the request of the President of the Republic, clarified the term "political party or coalition" with the right to propose the candidate for Prime Minister following the general election. The Court concluded that such a "political party or coalition" means the party or coalition that has won most seats in the Assembly through general elections and thus maintains the right to propose the candidate for the Prime Minister. Consequently, the President of the Republic has the duty to nominate the proposed candidate for Prime Minister, providing the opportunity for the Assembly to vote on the election of the respective Prime Minister. If the nominated candidate for Prime Minister does not receive the necessary majority in the Assembly, the President of the Republic appoints/mandates another candidate for Prime Minister, after consulting with the parties or coalitions which have won seats in the Assembly. As a consequence and based on the abovementioned Judgment of the Court, the political



party that won the most seats in the Assembly of Kosovo, following a new coalition with other political parties, proposed the candidate for Prime Minister, who was subsequently elected and formed the new Government.

4. In case [KO119/14](#), Judgment of 21 August 2014, after the general elections of 8 June 2014, and following a proposal from a post-election coalition of several political parties, not including the political party that had won the most seats in the Assembly of Kosovo, the latter on 17 July 2014, proposed and elected the President of the Assembly as a first constitutional step towards the establishment of new institutions after the general elections. The applicants, namely the political party that has won most seats in the Assembly after the general elections, lodged a request with the Court, requesting the constitutional review of the procedure followed by the respective deputies of the Assembly of Kosovo to elect the President of the Assembly. The Court took the view that based on the provisions of the Constitution as well as its case-law pertaining to the establishment of the new institutions after a general election, the "*political party or coalition that won most seats in the Assembly*" has the right to propose the candidate for the President of the Assembly. Therefore, the contested decision to elect the President of the Assembly was annulled, and the election of a new President of the Assembly took place based on the findings of the Judgment of the Court.
5. In case [KO72/20](#), Judgment of 28 May 2020, following the vote of no-confidence of the Government of 25 March 2022 with a two thirds (2/3) majority vote in the Assembly, the President of the Republic was faced with two alternatives (i) to declare the general elections; or (ii) to nominate another candidate for Prime Minister. The case was brought to the Court through the respective authorized parties, namely the respective Assembly members, requesting the Court to decide on (i) whether the vote of no-confidence triggers the automatic dissolution of the Assembly of Kosovo, resulting into new elections; and if this is not the case, (ii) to clarify what is the procedure for the election of the new Government, namely the "*political party or coalition*" with the right to propose the candidate for Prime Minister after a successful vote of no-confidence in the Assembly. The Court found that: (i) a successful vote of no-confidence does not lead to the automatic dissolution of the Assembly and consequence of the general elections; (ii) the President does not have the unconditional competence to dissolve the Assembly, as the exercise of this competence is conditioned to the consultation with all political parties and coalitions represented in the Assembly in determining whether there is another majority in the Assembly to elect a new Government; and (iii) the Government does not have any constitutional competence regarding the dissolution of the Assembly or the announcement of the general elections. The Court emphasized that since the will of the majority of the Assembly in the circumstances of the case was to not dissolve the Assembly but to propose a new candidate to form the Government, the President could not dissolve the Assembly and announce early elections. A new Government was elected after the Constitutional Court Judgment. As it will be elaborated below, the election of this Government was again contested to the Constitutional Court.
6. In case [KO95/20](#), Judgment of 21 December 2020, following the dismissal of the Government by the Assembly through a vote of no-confidence, the President decreed a new candidate to form the Government. In order to be elected, the new Government needed the majority of the votes of the deputies present and voting, namely the votes of at least sixty-one (61) deputies of the Assembly. While the new Government received sixty-one (61) votes, it later became known that one (1) of the deputies that voted for the Government, had previously been found guilty of a criminal offence punishable by imprisonment. While the respective decision was not yet executed, based on the applicable electoral law, the fact that he had been convicted, prevented him from running and being elected as an Assembly member to begin with. The applicants, namely the opposition Assembly members, challenged before the Court the Assembly decision on the election of the Government, alleging that the new Government was not elected by the votes of sixty one (61) deputies, since the said Assembly member, who voted in favor of the new Government, did not have a valid mandate as a member of the Assembly. In addressing the allegations of the applicants, the Court found that the mandate of the said Assembly member was invalid prior to the voting for the Government to be formed, thus the Government has only received sixty (60) valid votes. Consequently, the procedure for electing the Government was not conducted in accordance with the Constitution, because the new Government did not receive a majority of votes of all deputies of the Assembly of the Republic of Kosovo, namely sixty one (61) votes in favor. As a result of the failure of the Assembly to elect the Government, the Assembly was dissolved and new general elections were held.



(iii) *The legislative and oversight role of the Assembly and the independent institutions*

7. In joint cases KO100/22 and KO101/22, Judgment of 24 March 2023, pursuant to the constitutional provision that authorizes ten (10) or more deputies of the Assembly to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed, the applicants challenged the respective Law on Amending the Law on Prosecutorial Council, alleging that it violates the constitutional independence of the Prosecutorial Council, a fully independent institution established by the Constitution. The contested law envisaged, among others, changes to the size, composition, manner of elections of the members and the internal decision-making procedures of the Prosecutorial Council. It also foresaw the termination of existing mandates of the Prosecutorial Council members. In this regard, the Court, in elaborating the principles of balance and division of power, as well as the independence of the justice institutions, provided for in the Constitution, concluded that: (i) the composition, namely the ratio between prosecutorial and lay members of the Prosecutorial Council according to the provisions of the contested law, is in compliance with the Constitution; however, (ii) the competence of the Ombudsperson to elect/appoint lay members of the Prosecutorial Council, is not in compliance with the Constitution, since the Constitution explicitly foresees that the Assembly elects members of the Prosecutorial Council and this competence cannot be delegated to the Ombudsperson through the effect of a law; and (iii) the premature termination of the mandates of the sitting Prosecutorial Council members, as per the contested law, is contrary to the principle of security of tenure and is not proportionate to the legitimate aims sought. Finally, the Court deemed that, taking into account the nature of the provisions of the contested law declared as not in compliance with the Constitution, and the fact that it would be difficult to implement the remainder of the contested law following the invalidation of such provisions, in the service of the principle of legal certainty, the contested law must be declared invalid, in its entirety.
8. In case [KO216/22](#), Judgment of 12 September 2023, the Court assessed the constitutionality of the Law on Public Officials, among others, with regard to the allegations of the applicants, namely the respective members of the Assembly, that the respective law violated the independence of independent institutions. The contested law, among others, foresaw (i) the transformation of the mandates of certain categories of civil servants from permanent term mandates to temporary ones; (ii) enabled the dismissal of the respective civil servants from the public service after a transitional period; and (iii) strengthened the oversight role of the Government in the entire civil service, including pertaining to the independent institutions. The Court declared the contested law partly unconstitutional, primarily in respect to (i) the constitutional guarantees pertaining to the internal organization of the independent institutions; (ii) the constitutional role of the Oversight Board on civil service and the fact that the Government cannot decrease its competencies through an act raking lower in hierarchy, namely through a law; and (iii) rights to property, including their legitimate expectations of the existing civil servants, because while the “*interference*” with their rights was “*prescribed by law*” and followed a “*legitimate aim*”, it was not “*proportionate*” to the aims sought.
9. In case [KO219/19](#), Judgment of 30 June 2020, the Court assessed the constitutionality of the Law on Salaries in Public Sector, among others, addressing the allegations of the applicant, namely the Ombudsperson, that the respective law was in contradiction to the principle of separation and balance of power and the constitutional guarantees for the independence of the judicial branch and of the independent institutions. The Court found that the contested law, among others, (i) was in contradiction with the principle of the division and balance of power, including due to the fact that it had not taken into account the “*functional, organizational and budgetary*” independence of the judicial branch and the independent institutions foreseen in the Constitution; (ii) it had not equally treated the branches of Government, through increasing the autonomy of the legislative branch and reducing the constitutional independence of the judicial branch; (iii) delegated the regulation of significant aspects of internal organization of the respective institutions to the level of sub-legal acts, however, providing the possibility of sub-legal regulation only to the executive and the legislative branches of government, while excluding this competence pertaining to the judicial branch and the constitutionally independent institutions. As a result, the contested law was annulled in its entirety. Recently, the new Law on Salaries in Public Sector has been approved by the Assembly and referred to the Court again by the Ombudsperson for assessment of its compliance with the Constitution. It is currently being reviewed by the Constitutional Court.



10. In case [KO127/21](#), Judgment of 9 December 2021, the applicants challenged the dismissal by the Assembly, before the expiry of their original mandates, of five (5) members of the Independent Oversight Board for the Civil Service of Kosovo, an independent institution established by the Constitution. The applicants claimed, among others, that such dismissal violated the independence of the Independent Oversight Board as an independent constitutional institution. The Court declared the respective decision of the Assembly in contradiction with the Constitution and clarified that the Assembly, by dismissing the members of the Independent Oversight Board because of their decision-making in concrete cases and pertaining to which they are equipped with functional immunity, had exceeded the limits of its competence to supervise the work of public institutions, and has consequently violated the guarantees of independence of the Board in exercising its function defined by the Constitution.
11. In case [KO134/21](#), Judgment of 1 August 2023, the applicants challenged the collective dismissal of all members of the Board of the public broadcast, namely the Radio Television of Kosovo by the Assembly of Kosovo. The applicants alleged before the Court that in dismissing the members of the Board of the public broadcaster, the Assembly exceeded its oversight competencies in contradiction with the respective constitutional provisions and those of the Law on the Radio Television of Kosovo. In addressing the above allegations, the Court elaborated the principles concerning the oversight of public broadcasting service media by the Assembly, as well as the principles deriving from the constitutional guarantees pertaining to the freedom of expression and the plurality of media in a democratic society. In applying these and the principles deriving from the applicable international instruments, including the recommendations of the Committee of Ministers of the Council of Europe, the Court concluded that the dismissal of the entire board of the public broadcaster was not in compliance with the Constitution, primarily due to the fact that the Assembly had exceeded its oversight competencies by collectively dismissing the entire board of the public broadcaster without a legal basis.

(iv) *Immunity of the President, the members of the Assembly and of Ministers*

12. In case [KO98/11](#), the Government had raised before the Court a question concerning the interpretation of the constitutional provisions regarding the immunities of the President, members of the Assembly and of Ministers, namely, to clarify the extent and nature of such immunity. The Court found that based on the provisions of the Constitution, the President, the deputies of the Assembly and the members of the Government, enjoy functional immunity, that is, immunity for opinions expressed, votes cast or decisions taken in the course of their work and other actions taken while performing their duties. This type of immunity is of unlimited duration and extends to after the end of their mandates. However, the Court emphasized that functional immunity does not cover actions beyond their scope of work, namely the public officials do not enjoy immunity in the event they are accused of criminal offenses that are not related to the exercise of their functions, concerning the views expressed, the manner of voting or the decisions taken during their work. After this Judgment, a number of indictments followed against a number of high level officials.

(v) *Division and balance of competencies between central and local level governance*

13. The request in case [KO130/15](#), Judgment of 21 December 2014, was submitted by the President of the Republic of Kosovo, who requested the assessment of compatibility with the Constitution of the principles contained in the document entitled "*Association/Community of Serb majority municipalities in Kosovo*", agreed upon by the Prime Minister of Kosovo following the international agreement between Kosovo and Serbia on Normalization of Relations between the Republic of Kosovo and the Republic of Serbia within the auspices of the European Union facilitated dialogue between the respective countries. This international agreement foresaw the establishment of an Association of Serb Majority Municipalities in Kosovo. The document that was challenged before the Court, namely the principles based on which this Association would have to be established, included the objectives of the Association, its organizational structures, its relationship with central institutions, as well as its legal capacity. While the Court maintained that the obligation to establish the respective Association derives from an international agreement and thus is binding on the authorities of Kosovo, the contested act was not in compliance with the Constitution, primarily due to the fact that the respective Association was vested with executive powers, which based on the Constitution, can only be vested upon two levels of government, those being the local or central levels, respectively.



14. The request in the case [KO145/21](#), Judgment of 8 April 2022, was lodged with the Court by the Major of the Municipality of Kamenica. The essence of the case before the Court was the division of competencies between the local and central government and the circumstances under which the central government can interfere in the decision-making of the local authorities. More precisely, following a significant decrease in the number of students in some schools in the said municipality, in 2019, the Major initiated a reorganization of schools, which was initially approved by the Ministry for Education. However, some parents did not agree and challenged the decision on reorganizing schools before regular courts on allegations that the reorganization had caused their children not to attend school. Consequently, the Ministry of Education annulled the decisions of the local authorities regarding the organization of alternative and supplementary education in the Municipality of Kamenica. The said municipality challenged this decision of the respective Ministry for Education before the Court, claiming that the latter had interfered with the municipality's own powers. The Court concluded that the contested decision of the Ministry of Education had infringed upon the municipality's responsibilities under the Constitution and the European Charter of Local Self-Government. The Court found that (i) the provision of public preschool, primary and secondary education, based on the respective Law on Local Self-Government, is an own competence of the Municipality and that these competencies are full and exclusive; and (ii) the Ministry of Education exceeded its competencies and violated the municipal competencies in interfering with the exercise of the own competencies of the municipality without a legal base. The Court emphasized the principles of the European Charter of Local Self-Government and the fact the any interference of the central government into the competences of the local government, must be clearly specified in the applicable law.

(vi) *Preservation, protection and development of the identity of communities in the municipalities*

15. In case [KO01/09](#), Judgment of 27 January 2010, the applicant, in his capacity as Deputy Mayor of the Municipality of Prizren, challenged before the Court the Statute of the Municipality, alleging that the Municipality Emblem, as approved through the Statute, did not reflect the multi-ethnic representation of the communities living in Prizren. In this regard, after addressing the allegations of the applicant, the Court took the view that the contested Municipality Emblem did not represent the identity of all communities living in Prizren, contrary to the principles enshrined in the Constitution of Kosovo, which foresaw that Kosovo is a multi-ethnic society and equally guarantees the rights of communities to use and display their symbols. In the Court's view, the Constitution establishes the state's responsibility to ensure appropriate conditions enabling communities and their members to preserve, protect and develop their identity. Therefore, it ruled that the Municipality of Prizren had not acted in accordance with the Constitution when it approved the contested Emblem.

## **(b) Protection of Fundamental Rights and Freedoms**

(i) *Right to life: positive obligations of the state in domestic violence cases*

16. In case [KI129/21](#), Judgment of 7 March 2023, the Court assessed the allegations of the applicant, namely the daughter of the deceased S.M., for the violation of the right to life of her mother S.M., as guaranteed by Article 25 (Rights to Life) of the Constitution and Article 2 (Right to life) of the ECHR, as a result of the failure of the public authorities to undertake the necessary protection measures with regard to the reported domestic violence against the deceased S.M., committed by her husband. The Court found that the Kosovo Police and the State Prosecutor, failed in their positive obligations to protect the life of S.M., in contradiction with the constitutional guarantees and those of the ECHR as well as the Convention on Preventing and Combating Violence against Women and Domestic Violence, known as the Istanbul Convention. The Court, based on the practice of the ECtHR, noted that the respective public authorities (i) did not react immediately; (ii) did not carry out a genuine risk assessment, which must be autonomous, proactive and immediate; (iii) in the circumstances of the case at hand, taking into account that the perpetrator L.S., was already previously convicted of the criminal offense of domestic violence, the respective authorities were aware or should have been aware of the immediate and real danger to the life of S.M.; and (iv) did not take preventive measures to protect or prevent the deprivation of life of S.M. This case represents the first decision of the Court making reference to and applying the Istanbul Convention, which became binding in Kosovo in 2020. The Court also noted that it was the obligation of the state to ensure mechanism through which the respective victims can benefit from appropriate compensation.



17. In case [KI41/12](#), Judgment of 26 February 2013, the Court assessed the allegations of the applicants, namely the parents of the deceased D.K. for the violation of the right to life of the deceased as guaranteed by Article 25 [Right to Life] of the Constitution and Article 2 (Right to life) of the ECHR, as a result of the failure of the Municipal Court to issue an emergency protection order requested by D.K. against her former partner, who is accused of murdering her three weeks later. In assessing the allegations of the applicants about the failure of the judicial authorities to protect the life of D.K., the Court stressed that it is the duty of state authorities to not only refrain from the intentional and unlawful taking of life, but to also take appropriate steps, known as positive obligations, to safeguard the lives of those within their jurisdiction. Thus, the Court concluded that the Municipal Court was responsible for taking actions foreseen by the respective Law on Protection against Domestic Violence and that its inaction, despite the formal request of the deceased D.K. for a protection order against the accused perpetrator, resulted in violation of her right to life. The Court also noted that it was the obligation of the state to ensure mechanism through which the respective victims can benefit from appropriate compensation.

(ii) *Right to non-discrimination*

18. The case [KO93/21](#), Judgment of 12 January 2022, concerned the payment of the electricity bills by the citizens of Kosovo and derogation of this principle in only four (4) municipalities of Kosovo which are inhabited by an ethnic minority whose electricity bills are covered by the state. In this respect, the Assembly of Kosovo, in its capacity as a sole shareholder of the public enterprise, Kosovo Electricity Transmission, System and Market Operator (KOSTT), rendered a decision through which it authorized the payment of electricity bills, namely the electricity deviations in the respective four (4) municipalities. In this context, the Court found that the contested act interfered with the rights of the Kosovo citizens, namely differentiated them in treatment based on the municipalities where they lived. Nevertheless, the Court maintained that this difference in treatment is “*prescribed by law*”, follows a “*legitimate aim*” and is “*proportional*” to the means sought. In terms of the legitimate aim, the Court emphasized the importance of exercising sovereignty pertaining to the electricity system, with all the rights and obligations defined by international agreements, and preserving the energy independence of Kosovo through serving the public interest to guarantee the supply of electricity throughout the territory of the Republic of Kosovo. In addition, the Court maintained that the difference in treatment of the electricity consumers in the four (4) respective municipalities was proportionate, because it had a temporary character, with the clear aim towards finding the solution to include the electricity consumers of those four (4) municipalities into the billing system.

19. The individual requests in the joint case [KI45/20 and KI46/20](#), Judgment of 26 March 2021, were filed by two applicants, *Tinka Kurti*, and *Drita Millaku*, respectively. The two women participated in the general elections of 6 October 2019. They did not receive the necessary votes to be elected as members of the Assembly of Kosovo and were placed on the waiting list of their respective political party. Following the resignation of men members of the Assembly who belonged to the same political party due to their appointment to the Government, the competent electoral bodies had decided to fill in the vacancies and replace the former as members of the Assembly with other men candidates in line on the respective waiting list, although the two women applicants ranked higher on the waiting list, namely had received more votes in the general elections than the two men. The replacement was made pursuant to a provision of the respective law that foresaw that the resigned members of the Assembly should be replaced by candidates on the waiting list of the same gender. The applicants alleged before the Court that they had been discriminated against based on gender in relation to their constitutional rights to equality before the law and the right to be elected. In its Judgement, the Court noted that the legislator's intention to replace deputies with candidates of the same gender was to ensure the minimum quota of 30% of representation of women in the Assembly. Nevertheless, the Court noted that once the requirement for a 30% representation of women quota is fulfilled, the obtaining of seats in the Assembly, must be based on merits, namely depending on the electoral result. In the respective case, filling the vacant positions of deputies with candidates of the same gender, namely men, while two women candidates had reached a better electoral result, resulted in discrimination based on gender in relation to the applicants' rights to be elected.



(iii) *Right to private and family life*

20. In case [KI56/18](#), the deceased son of the applicant, I.F., traveled to Sweden to recover from a severe illness and was registered there, during asylum procedures, under another name. After he died in a health institution in Sweden, the deceased I.F. was transported and buried in Kosovo. However, the relevant authorities in Kosovo refused to register his death because of the discrepancy between the relevant documents from the Swedish medical authorities and the documents under which the deceased was registered in Kosovo. The lack of the death certificate affected the deceased son, who, among others, until reaching the age of 18 years, was not able to travel due to lack of authorization from both parents. The applicant alleged before the Court that the failure of the respective authorities in Kosovo to register the death of his deceased son, constituted a violation of his right to privacy and family life. The Court found that the applicant's right to privacy was violated because the public authorities, when refusing to register the death of I.F., (i) did not take into account the fact that it is not disputed that the applicant's son had died, as also confirmed by the public authorities of the Republic of Kosovo, namely the Embassy of Kosovo in Sweden; (ii) had applied the applicable law in an excessively formalistic manner, thus failing to take into consideration either the possibility of international legal cooperation with the Swedish state or the possibilities provided through the provisions of the non-contentious procedure; and (iii) did not consider the balance between the competing interests, namely the essence and features of the applicant's allegations and the obligations of the state to protect right to privacy and family life guaranteed by Article 36 [Right to Privacy] of the Constitution in conjunction with Article 8 (Right to respect for private and family life) of the ECHR.
21. The applicant in case [KI113/21](#), Judgment of 5 January 2022, was charged with a criminal offense foreseen by the Criminal Code of Kosovo. During the investigations, the competent court had issued orders authorizing interception against the applicant, including obtaining correspondence retroactively, namely from before the respective court orders were issued. The applicant alleged, among others, that her right to private life was violated and that the evidence used in the criminal proceedings against her was obtained unlawfully, due to the fact that the correspondence used in the case against her, was obtained without a court order. In this regard, the Court elaborated that the authorization of covert and technical measures of surveillance and investigation can result in "interference" with the right to "private life" and "correspondence", unless (i) the restriction has been "provided by law"; (ii) pursues a "legitimate aim"; and (iii) is "proportional". The Court found that the order issued by the competent court authorizing the use of retroactive covert and technical surveillance measures, more specifically authorizing the retrieving of SMS messages retroactively, was not provided by the Criminal Procedure Code, which specifically foresees that the interception of SMS messages can only be ordered for the future. Therefore, based on the Court's Judgment, the applicant's right to privacy, guaranteed by Article 36 of the Constitution in conjunction with Article 8 (Right to respect for private and family life) of the ECHR, was violated.

(iv) *Right to liberty and security*

22. The applicant in case [KI10/18](#), Judgment of 8 October 2019, was detained pending trial for about seven (7) years, on the suspicions that he had committed the respective criminal offenses foreseen under the Provisional Criminal Code of Kosovo. He claimed before the Court that the fact that he was kept in detention pending trial for about seven (7) years, with periodic assessment of his detention each time resulting in the issuance of detention orders containing the same reasoning, amounted to a violation of his right to liberty and security guaranteed by Article 29 [Right to Liberty and Security] of the Constitution and Article 5 (Right to liberty and security) of the ECHR. The Court found that the (i) orders of regular courts for continuing the detention of the applicant for seven (7) years clearly lacked a reasoned assessment of the facts and the concrete circumstances of the case; and (ii) the regular courts failed to provide a concrete and sufficient reasoning as to why the extension of detention pending trial against the applicant was necessary and why the alternative measures were not applicable in the applicant's case. Therefore, the Court found that the applicant's constitutional right to liberty and security had been violated.



(v) *Right to a fair and impartial trial*

a. *Principle of “res judicata” and the rights to property*

23. The case [KI132/15](#), Judgment of 19 May 2016, concerned the referral submitted by the Deçani Monastery, an UNESCO protected entity, challenging the decisions of the regular courts, alleging that the same have violated its rights to property. The essence of the case concerns the Monastery's right to the said property, which had been subject to procedures before the regular courts for almost two decades. While in 2012, the respective chamber of the Supreme Court had confirmed the property of the Monastery, three years later, namely in 2015, the same Court, acting on the appeal by an unauthorized party, rendered a new decision, returning the question of the respective property to retrial at the basic court level, including without providing the affected party, namely the Monastery, with the right to submit its observations. The Court declared the contested act, namely the Supreme Court decision which reopened the case and returned it to retrial, was in contraction with the Constitution and declared the 2012 Supreme Court decision, which confirmed the right of the Monastery to property, as final and *res judicata*.
24. The case [KI86/18](#), Judgment of 3 February 2021, concerned an applicant whose right to a property was confirmed by a final and binding regular court decision. Nevertheless, in the enforcement proceedings, the applicant was initially obliged to cover the expenses for the demolition of the unauthorized building that was illegally built in the respective property, with the explanation that the creditor would be compensated by the debtor at a later stage. In its decision, the Court addressed the applicant's allegations that despite the *res judicata* judgement which confirmed the right to property, the regular courts conditioned the enforcement of the judgment, on the costs of the creditor, namely the owner of the property, irrelevant of her financial ability to do so. In this regard, the Court found that the regular courts had taken an excessively formalistic approach to the interpretation of the respective legislation regulating the enforcement proceedings and have not taken into account the applicant's financial situation, and as such, have put an excessive financial burden on her side, interfering with the respective right to peacefully enjoy the property. Consequently, the Court found that the applicant's right to property guaranteed by Constitution and ECHR, had been violated.

b. *Denial of access to justice*

25. In case [KI10/22](#), Judgment of 18 July 2022, the applicant, namely the Trade Union of the Institute of Forensic Medicine, challenged the legality of the respective Regulation the Internal Organization and Systematization of the Institute of Forensic Medicine, drafted and approved by the Ministry of Justice in relation to the respective Law on Forensic Medicine, claiming that the Regulation in question was contrary to the said law. The regular courts rejected the applicant's lawsuit with the justification that they did not have competence to review the legality of the sub-legal acts. In addressing the allegation of the applicants for violation of the right to “access to a court” before the Court, the latter concluded that by rejecting the review of the legality of the sub-legal act, the regular courts denied the applicant's right to access to a court, within the meaning of the right to a fair and impartial trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the ECHR and emphasized that it is the obligation of the regular courts to ensure the preservation of the supremacy of the laws, including assessing the compatibility of the sub-legal acts with the applicable law.
26. The case [KI214/21](#), Judgment of 7 December 2022, concerned an applicant, who was dismissed as Ambassador of the Republic of Kosovo to a foreign country through a decree by the President of the Republic. The regular courts rejected his lawsuit challenging the legality of the Presidential decree and the violation of his constitutional rights, reasoning that decrees of the President of the Republic, cannot be subject to assessment in the administrative procedure before regular courts, but can only be subject to the constitutional review procedure by the Constitutional Court. The Court, in assessing the allegations of the applicant, including from the perspective of the respective right to access to justice as guaranteed by the Constitution and the ECHR, elaborated that the contested decree of the President of the Republic, had affected the civil rights of the applicant and consequently, constituted a decree of an individual nature qualifying it as an act the legality of which is subject to the review of compatibility with the applicable law by the regular courts. Therefore, the Court found that the dismissal of the applicant's lawsuit as inadmissible by the regular courts, denied him the right to access to justice in



violation of the rights guaranteed by the Constitution and consequently, returned the case for reconsideration before regular courts, establishing the standard that the decrees of President of the Republic are subject to both, legality and constitutionality control.

c. *Delivering a decision within a reasonable time*

27. The applicant in case [KI19/21](#), Judgment of 17 August 2022, alleged, among others, that his right to a fair and impartial trial as guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the ECHR, had been violated due to prolonged court proceedings. More specifically, the proceedings before regular courts regarding his claim for compensation for bodily injuries he had suffered at his workplace took more than fourteen (14) years to be concluded. In addressing the applicant's claims and applying the case-law of the ECtHR, the Court found that (i) the respective case was not one of high complexity because the regular courts simply applied and interpreted the provisions of the applicable law regarding the timeliness and statute of limitation of the respective lawsuit; and that (ii) the applicant did not contribute to the delay of the proceedings through his actions, therefore, due to the prolongation of the proceedings under these circumstances, there has been a violation of the right to a fair and impartial trial as a result of the length of proceedings.

(vi) *The Government's limitations in restricting human rights and fundamental freedoms, including throughout the Covid-19 pandemic*

28. In Case [KO54/20](#), Judgment of 31 March 2020, the President of the Republic challenged the decision of the Government, which, based on the respective Law for Prevention and Fighting against Infectious Diseases and the Law on Health, imposed measures against COVID-19, including limitation of movement, public gatherings and religion activities. The applicant claimed, among others, that the Decision of the Government to limit certain rights during the COVID-19 pandemic was not in line with the said law and that in limiting the fundamental rights and freedoms of the Kosovo citizens, the Government had acted beyond its competences. The Court held that the applicable legislation does not authorize the Government to limit the constitutional rights for freedom of movement, right to privacy and freedom of gathering in the entire Republic of Kosovo and therefore, declared the said Government decision unconstitutional.

29. In Case [KO61/20](#), Judgment of 1 May 2020, the applicants alleged before the Court that the decisions of the Ministry of Health (i) to declare one municipality as a "quarantine zone"; and (ii) to order measures that limited the movement of citizens in three other municipalities, exceeded the competencies provided to the Government based on the applicable legislation. The Court decided that by declaring the respective municipality a "quarantine zone", the Ministry of Health exceeded the authorizations provided by the respective Law for Prevention and Fighting against Infectious Diseases, and consequently, the "interferences" with the right of freedom of movement of the citizens of the entire municipality, were not "prescribed by law". Therefore, the Government's decision to declare the entire municipality as a "quarantine area" was declared unconstitutional. Nevertheless, pertaining to the other three municipalities in which the Government had rendered certain limitations pertaining to the right of freedom of movement through the contested decision, the Court concluded that the respective "interference" with the respective rights, was "prescribed by law", followed "a legitimate aim" and was "proportional" to the aims sought, thus declaring it in compliance with the Constitution.

(vii) *Electoral rights and representation of communities that are not a majority in Kosovo, the legislative body*

30. The facts of the case [KI69/21](#), Judgment of 20 April 2023, relate to the early elections for the Assembly of the Republic of Kosovo held on 14 February 2021, whereby the two applicants, representatives of the political entities from non-majority communities, had failed to win seats in the Assembly. These seats were won by other political parties representing the same non-majority communities in Kosovo. The respective applicants claimed before the Court that the seats guaranteed by the Constitution for their community, had been occupied by political parties who received the necessary votes by other non-majority communities. More specifically, according to the applicants, the reserved seats for the non-majority communities in Kosovo can be obtained only by candidates who receive the votes of the same non-majority community. In its decision, the Court noted that (i) pursuant to Article 45 [Freedom of Election and Participation] of the Constitution, the vote is personal, equal, free and secret; while (ii)

pursuant to Article 64 [Structure of the Assembly] of the Constitution, regardless of the number of seats won, twenty (20) seats in the Assembly belong to communities that are not in the majority in the manner specified in this article. The Court explained that notwithstanding the fact that there are twenty (20) seats reserved for the non-majority communities in Kosovo, there is no constitutional nor legal provision which conditions the gaining of those seats only through votes by the same majority community, consequently limiting the constitutional rights of the citizens of Kosovo to a personal, equal, free and secret vote. In elaborating the balance between the passive and active electoral rights, the Court also noted that the Constitution, the international instruments directly applicable in the legal order of Kosovo, as well as the case-law of the ECtHR and the respective Law on General Elections, in the context of active electoral rights, do not include the obligation for the voters to vote only for parties, coalitions, citizens' initiatives and independent candidates that have declared themselves as representing the community they represent, and in the context of passive electoral rights, neither are the seats in the Assembly guaranteed for parties, coalitions, citizens' initiatives and independent candidates, solely gained on the condition of receiving the votes of citizens belonging to the communities they declare to represent. The Court noted that if the state opts for such a system, the same must be stipulated in applicable laws adopted by the Assembly and in compliance with the constitutional provisions and values. The Court, therefore, found that the constitutional passive electoral rights of the applicants, were not violated.