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ABOUT KLI

KLI, the Kosovo Law Institute, is a nongovernmental and non-profit public policy organization, and think tank specialized in the justice sector.

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CONTENT

	Abbreviations	
9	1. Executive summary	
10	2. The Importance of the Constitutional Court in Democratic Systems	
10	3. Laws and decisions approved since 2008 and their referral to the Constitutional Court by each legislature	
15	4. Constitutional Violations in Dismissals	
15	4.1 The Dismissal of Five (5) members of the Independent Oversight Board for the Civil Service of Kosovo	
16	5. The undermining of the independence of constitutionally established bodies	
16	5.1 The Law on the Kosovo Prosecutorial Council	
16	5.2 Draft Law on Supplementing and Amending the Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo	
17	5.3 Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets	
18	6. The undermining of the independence of legally established institutions	
18	6.1 The undermining of the independence of public broadcasters	
19	6.2 The violation of human rights	
19	7. Assessment of municipal responsibilities	
19	7.1 Assessment of Municipal Responsibilities in Education	
21	7.2 Violation of the right to spend municipal own-source revenues from previous years	
21	8. Non-exercise of the constitutional competence of the People's Advocate and the deputies of the Assembly	
22	9. Other laws in evaluation procedure by the Constitutional Court	
22	9.1. Contesting the Public Sector Salary Law	
23	9.2 Allegations of arbitrary interference with the principles and values of the free economy	
23	9.3 Allegations of violation of municipal responsibilities in the collection of own revenues	
24	9.4 Allegations for violation of values, equality before the law, protection of property, right to work and practice of profession and health and social protection	
25	9.5 Allegations of constitutional violations in the dismissal of the member of the Board of the Ombudsperson Institution	
25	9.6 Allegations of constitutional violations in the Draft Law on Sustainable Investments	
26	10. Implementation of the requests of the Constitutional Court by public institutions	
26	10.1 Violation of pensioners' rights due to delays in the adoption of the law on pension schemes	
26	10.2 Technical violations during the implementation of the Judgment on the Law on Public Officials	
27	11. Financial damage caused by unconstitutional decisions	

LIST OF ACRONYMS

RK	Republic of Kosovo
Constitution	Constitution of the Republic of Kosovo
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
CC	Constitutional Court
ARK	Assembly of the Republic of Kosovo
GRK	Government of the Republic of Kosovo
SC	Supreme Court
OI	Ombudsperson Institution
ANJF	Agency for Free Legal Aid
PA	Presidency of the Assembly
IOBCSK	Independent Oversight Board for the Civil Service of Kosovo
LV	Self-Determination
PDK	Democratic Party of Kosovo
LDK	Democratic League of Kosovo
AAK	Alliance for the Future of Kosovo
LS	Srpska Lista

1. Executive summary

For 14 years since its establishment, the Constitutional Court (hereinafter: CC), in 110 cases, has conducted a review of the constitutionality of proposed amendments, laws, decisions of the Assembly of Kosovo, other decisions of the Government, and other acts approved by the President of Kosovo. The constitutional obligation for the referral of constitutional amendments has been exercised by the Speaker of the Assembly, while the right to initiate cases in the Court as authorized parties under the Constitution has been utilized by deputies, the President, the Government, the Ombudsman, the Courts, and the Municipalities.

The eighth legislature of the Assembly of Kosovo marks the period during which there has been extensive public debate on the role of the CC in relation to its decisions. The opposition consistently criticizes the Government for constitutional violations during the approval of policies and laws, while the Government accuses the opposition of obstructing the implementation of its program by referring laws to the CC. This includes the government's political statements regarding the CC, publicly contesting the integrity of the court in decision-making.

The Constitutional Court's constitutional review of acts initiated for constitutional assessment has resulted in constitutional violations by the Government and the Assembly in several cases. According to the Constitutional Court, certain laws proposed by the government and approved by the Assembly have not been in line with the form of governance and the separation of powers. They have not adhered to values, equality before the law, the right to legal remedies, and judicial protection. Additionally, specific decisions of the Assembly have exceeded its competence concerning parliamentary oversight.

Thus, the Constitutional Court found that the reform in the Prosecutorial Council of Kosovo was not in accordance with the Constitution. It entirely rejected the Law on the Prosecutorial Council. Additionally, the Constitutional Court also annulled the Law on the Duties, Responsibilities, and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia, Law No. 06/L-111 on Salaries in the Public Sector, and Law No. 08/L-179 on Temporary Measures for Essential Products in Cases of Special Market Destabilization.

The Constitutional Court also found that the dismissal of members of the Independent Oversight Board of the Civil Service of Kosovo and members of the RTK Board constituted a constitutional violation. In another case, the Constitutional Court found that a decision and administrative directive issued by the Ministry of Education, Science, and Technology violated the competencies of municipalities.

In total, there are 28 cases where the Constitutional Court found that Draft Laws, decisions of the Assembly, and sub-legal acts of the Government violated the Constitution. Ten (10) cases, or 36% of these instances, involve the Government, namely the current Legislature (Legislature VIII). Six (6) cases, or 21% of these instances, belong to the Sixth Legislature. The fourth and seventh Legislatures each have four cases, while the third and fifth Legislatures each have two cases.

2. The Importance of the Constitutional Court in Democratic Systems

The Constitution of Kosovo and the Law on the Constitutional Court guarantee a high degree of institutional independence and autonomy for the Constitutional Court (hereinafter: CC) during the exercise of its functions and responsibilities. Since its establishment and functionalization in October 2009, the CC has developed a practice of setting examples to be followed by other institutions, with a particular emphasis on establishing and building a new tradition of constitutionalism in Kosovo.

During its 14 years of functioning, the Constitutional Court, through its judicial practice, has established high standards for human rights and the promotion and respect of fundamental freedoms in cases where they have been violated by public institutions.

Kosovo's Constitution, in addition to outlining the fundamental principles of the jurisdiction of the Constitutional Court, also specifies the right of parties and which parties are authorized to bring cases before it. Through the Constitution and the Law on the Constitutional Court, the minimum number and who is an authorized party before the Constitutional Court have been defined. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsman are the primary authorized parties that can raise a constitutional issue and the types of issues they can bring before the Constitutional Court. On the other hand, the Municipalities of Kosovo also have the right to present cases related to challenging the constitutionality of laws or acts of the Government that violate municipal responsibilities or reduce municipal revenues, in case the respective municipality is affected by that law or act.

3. 3.Laws and decisions approved since 2008 and their referral to the Constitutional Court by each legislature

From the declaration of Kosovo's Independence until November 29, 2023, the Assembly has adopted 867 laws, including amendments and supplements to specific laws.

According to publicly available data on the Constitutional Court's website and the response from the Constitutional Court to the Kosovo Law Institute (hereinafter: KLI), it appears that the right to exercise authorization as a party in the Constitutional Court under Article 113 of the Constitution (excluding paragraph 7) has been utilized 110 times. This includes requests for the assessment of the constitutionality of specific laws, other decisions of the Assembly of Kosovo, decisions and actions of the President of Kosovo, clarification of the competencies of the Mayor of the Municipality, clarification of the exercise of dual functions, and requests for the assessment of conflicts between the constitutional competencies of the President of the Republic of Kosovo and the Assembly of the Republic of Kosovo.

In the third legislature, which lasted for two years (2008–2010, governing coalition LDK–PDK), 205 laws were adopted [1], Within six months from the date of the approval of the

[1] List of approved laws and draft laws in the procedure, 2001–2023, Assembly of Kosovo. (See this link: https://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_29_11_shq.pdf). (Last accessed on October 28, 2023).

the Ombudsman sent two laws to the Constitutional Court, while the Supreme Court of Kosovo and one from the Basic Court in Gjakova sent two other laws in their requests for incidental control [2] of the constitutionality of the three laws. The Constitutional Court partially rejected some provisions of the Law on the Rights and Responsibilities of Deputies, specifically regarding their pension benefits. It rejected a paragraph of Article 14 of the Law on the Red Cross in another case, while in another instance, it found that the contested provision was in accordance with the Constitution. In two other requests for the constitutionality of laws, the Constitutional Court issued a Decision of Inadmissibility, while in another case, it removed from the list the request of more than ten deputies.

In this legislature, the Constitutional Court issued a judgment through which it found serious violations of the Constitution of Kosovo by the President of Kosovo, Fatmir Sejdiu, for simultaneously holding the position of President and Chairman of the Democratic League of Kosovo (hereinafter: LDK). The request had been submitted to the Constitutional Court by more than thirty-two (32) deputies of the Assembly.

In the fourth legislature, which lasted for three years (2011-2014, coalition PDK, AKR, SLS, GP "6+", and the List "Dr. Ibrahim Rugova"), 220 laws were adopted. Thirteen laws from this legislature were sent for constitutional assessment to the Constitutional Court, along with two decisions of the Assembly. Additionally, six draft constitutional amendments were sent to confirm whether they did not diminish human rights. Six draft laws were sent by the Self-determination Movement (LVV), and in two cases, the Constitutional Court decided that the contested provisions were in accordance with the Constitution (Law on the village of Hoçë e Madhe and the Law on the Historical Center of Prizren). In another case, the Constitutional Court found that the follow-up procedure was not in violation of the Constitution, and the contested act fell outside the material jurisdiction of the Court. [3] Concerning this political subject, the Constitutional Court declared some provisions of the Amnesty Law [4], invalid in one case, declared a request inadmissible in another case, and removed a request from the list because rapid legislative changes had substantially affected the petitioner's claim. Regarding seven other cases, the Constitutional Court declared two paragraphs of the Health Law invalid, invalidated five provisions of the Law on Banks, Microfinance Institutions, and Non-Bank Financial Institutions. In one case, no violation of the legislative process was found, in another case, the law was in accordance with the constitution, while the Constitutional Court declared three requests inadmissible. The Constitutional Court rejected a specific provision of the Pension Schemes Law adopted in this legislature and requested the Government and the Assembly to enact new changes so that hundreds of thousands of pensioners would not continue to be discriminated against.

[2] Paragraph 8, Article 113 of the Constitution of the Republic of Kosovo.

[3] Review of the law, No. 04/L-199, for the ratification of the first international agreement on the principles that regulate the normalization of relations between the Republic of Kosovo and the Republic of Serbia and the implementation plan for this agreement. (See for more the Judgment of the CC: https://gjk-ks.org/wpcontent/uploads/vendimet/gjkk_ko_95_13_shq.pdf)

[4] See for more the Judgment of the Constitutional Court from this link: <https://gjk-ks.org/decision/vlersim-i-kushtetutshmris-s-ligjit-nr-04l-209-pr-amnisti/>

The Constitutional Court rejected the decision of the Assembly regarding the election of the President of the Republic of Kosovo, Behgjet Pacolli, stating that this decision is unconstitutional because the constitutional procedure for his election was not followed. [5]

The fourth legislature marks the highest number of requests for the confirmation of constitutional amendments submitted through the Speaker of the Assembly (six requests with 49 constitutional amendments).

In the fifth legislature (2014–2017, governing coalition LDK–PDK), 115 laws were approved. Six laws were sent to the Constitutional Court, three from the Serbian List, one law jointly from the three parliamentary groups LVV–AAK–NISMA, one from the Ombudsman, and one law from the Specialized Chamber of the Supreme Court of Kosovo (hereinafter: SCSCk). These laws were related to issues concerning the Kosovo Privatization Agency. In this legislature, three decisions of the Assembly were also sent for constitutional assessment, while two requests with draft constitutional amendments were submitted.

In the three cases initiated by the Serbian List, the Constitutional Court did not find constitutional violations regarding the procedure and the content of the laws. In the case sent by LVV–AAK–NISMA, it found that only one paragraph of the Law on Veterans is not in accordance with the Constitution. The case sent by the SCSCk was declared inadmissible, and the request of the Ombudsman, certain provisions of the Law on Counteraction, were found in accordance with the Constitution of Kosovo.

Three decisions of the Assembly in this legislature were sent for evaluation to the Constitutional Court. One decision from LVV–AAK–NISMA and another decision presented separately by LVV were declared inadmissible. The Constitutional Court, in the case submitted by the Democratic Party of Kosovo (hereinafter: PDK), completely rejected the decision of the Assembly of Kosovo regarding the election of the Speaker of the Assembly.

In this legislature, two requests for the confirmation of constitutional amendments were also submitted through the Speaker of the Assembly.

In the sixth legislature (2017–2019, governing coalition PDK–AAK–NISMA), 109 laws were approved, while seven draft laws were sent to the Constitutional Court. One from LVV, one jointly from LVV and LDK, four draft laws from the Ombudsman, and one draft law from the Judges of the Department for Serious Crimes, the Basic Court in Prishtina. The Constitutional Court also received for constitutional assessment a decision of the Assembly sent by LVV and the confirmation of constitutional amendments by the Speaker of the Assembly.

The Constitutional Court received the Law No. 06/L-060 on the Ratification of the State Border Agreement between the Republic of Kosovo and Montenegro, sent by LVV deputies.

[5] *Judgment in case KO 29/11, Constitutional Court of the Republic of Kosovo*, March 28, 2021. (See this link: https://www.kuvendikosoves.org/Uploads/Data/Documents/Evidencaeligjeve_KkaXUuYb2e.pdf). (Last accessed 28 October 2023).

The court found that the procedure followed was constitutional, the law was not in contradiction with the Constitution, the request was not within the material jurisdiction of the Constitution, and it was outside the scope of the Court's jurisdiction.

Furthermore, the Law No. 06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo, sent by the Ombudsman, was mostly declared inconsistent with the Constitution of Kosovo by the Constitutional Court. The Law No. 06/L-145 on the Duties, Responsibilities, and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia, sent by LVV-LDK, was entirely rejected by the Court because it was not in compliance with the Constitution.

The fourth law in this legislature that reached the Constitutional Court was the Law No. 06/L-010 on Notary. The Constitutional Court decided that the contested provisions of this law were not in conflict with the Constitution. The fifth law sent to the Constitutional Court was the Law on Courts, and the Court declared the request for its evaluation as inadmissible.

The Court entirely rejected the Law on Salaries in the Public Sector, while for the Law on Public Officials, it declared dozens of provisions inconsistent with the Constitution. In the case sent by LVV for the constitutional assessment of the Decision No. 06/V-145 of the Assembly of the Republic of Kosovo regarding the Proposal of the Parliamentary Group of LVV for the dismissal of Aida Dërguti from the position of Deputy Speaker of the Assembly of the Republic of Kosovo, the Court found that such a decision by the Assembly is in accordance with the Constitution.

In the seventh legislature (2019-2020, governing coalition LV-LDK, and 2020-2021, governing coalition LDK-AAK-NISMA), at least laws were approved, only 17, but none were contested in the Constitutional Court. In the Constitutional Court, the decision of the Assembly of Kosovo No. 07/V-014, dated June 3, 2020, for the Election of the Government of the Republic of Kosovo, was contested. The Court found that it is not in conformity with paragraph 3 of Article 95 [Election of the Government] of the Constitution because the Government did not receive the majority of votes from all deputies of the Assembly of the Republic of Kosovo. The Court also ordered the President to announce new elections. In two other cases, the CC declared invalid Government Decision no. 01/15 dated March 23, 2020, since such decision was contrary to the Constitution. The Court of Justice partially declared invalid some decisions of the Ministry of Health (Decision no. 229/IV/2020, no. 238/IV/2020, no. 239/IV/2020 dated April 14, 2020).

The eighth legislature (2021 - ongoing, LVV) is the one in which the most laws and decisions of the Assembly were sent to the Constitutional Court. Out of the 201 laws approved so far, ten laws, six decisions of the Assembly, and one decision of the Speaker of the Assembly for the convening of a regular plenary session have been sent to the Constitutional Court for constitutional assessment. Of the ten laws submitted, the Constitutional Court has completely rejected the Law on the Prosecutor's Council of Kosovo and the Law on Temporary Measures for Essential Products in Cases of Special Market Destabilization. It partially rejected the Law on Public Officials, leaving the way open for decreeing without those articles, while for the Law Amending and Supplementing Law No. 06/L-005 on Immovable Property Tax, it found that it is not in contradiction with the Constitution.

The Constitutional Court has also examined several decisions of the Assembly of Kosovo, three of which it has declared in conformity with the Constitution. It has rejected the Assembly's decision to dismiss five (5) members of the Independent Oversight Board for the Civil Service of Kosovo and has also rejected the Assembly's decision to dismiss members of the Board of the RTK. According to the Constitutional Court, the decision of the Speaker of the Assembly to convene the plenary session on July 13, 2023, is not a constitutional matter; consequently, it has declared this request inadmissible.

In the review procedure before the Constitutional Court of the Republic of Kosovo (GjK), there are six draft laws and one decision of the Assembly: the Law on Salaries in the Public Sector, the State Agency Law for the Verification and Confiscation of Unjustified Assets, the Code of Criminal Procedure of Kosovo (CCPK) No. 08/L-032, the Law on Amendment and Supplement of Laws Determining the Amount of Benefit in relation to the minimum wage, procedures for determining the minimum wage, procedures for determining the minimum wage and tax scales on annual personal income, the Law on the Independent Oversight Board for Civil Service, the Assembly Decision on the dismissal of Kimete Gashi from the position of a board member of the Procurement Review Body, and the Law on Sustainable Investments.

Different international reports indicate that Kosovo has a constitution containing constitutional norms that generally align with international standards. However, these norms should go beyond these standards, not contravene them. Recently, the Report on the adaptation of Kosovo's legal system to the standards of the Council of Europe has also recommended that, in the case of proposed laws by the government and the approval of those laws by the Assembly, the recommendations of the Council of Europe should be taken as a basis. The report highlights issues regarding the implementation of standards in practice.

4. Constitutional Violations in Dismissals

4.1 The Dismissal of Five (5) Members of the Independent Oversight Board for the Civil Service of Kosovo

On June 21, 2021, the Commission for Public Administration, Local Government, Media, and Regional Development (hereinafter: CPLGMRD) recommended to the Assembly of Kosovo not to approve the Annual Report for the year 2020 of the Independent Oversight Board for the Civil Service.^[6] During the plenary session on August 12, 2021, citing the justification that the annual work report did not fulfill legal obligations for reporting, the Assembly was advised not to approve it. Furthermore, the recommendation from the Committee on Budget, Labour, and Transfers as a standing committee was also not to approve the report, stating that it did not meet the criteria as outlined in the Law on Public Finance Management.^[7] During the same session, the Assembly, with no votes in favor, 57 votes against, and 7 abstentions, did not approve the Annual Report of the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: IOBCSK) for the year 2020.

[6] "Commission meeting minutes". Assembly of the Republic of Kosovo, June 1, 2021. (See the link https://www.kuvendikosoves.org/Uploads/Data/CommitteeMeetingDocumentFiles/5.Procesverbalishqip01.06.2021_szqDsMNJ3C.pdf). (Last accessed 28 October 2023).

[7] "Transcript of the plenary session of the Assembly, p. 3". Assembly of the Republic of Kosovo, August 12 and October 4, 2021. (See the link https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2021_08_12_ts_Seanca_01_eUv5F4Pc5V.pdf). (Last accessed 28 October 2023).

The rejection of the report in the committee and subsequently in the plenary session led the Committee to seek additional information about the work of this Council. Consequently, during the Committee meeting held on June 15, 2021, it was decided to recommend to the Assembly the dismissal of five members of this Council.[8] In the plenary session on June 30, 2021, with 62 votes in favor, 3 votes against, and 11 abstentions, the Assembly of the Republic of Kosovo decided to dismiss five (5) members of the Independent Oversight Board for the Civil Service of Kosovo.[9]

The Constitutional Court of Kosovo, after evaluating the request of the Members of the Assembly regarding the constitutionality of this decision, on December 9, 2021, issued Judgment No. KO127/21 [10] stating that the decision was inconsistent with the Constitution of Kosovo and annulled the decision for their dismissal.

The Court found that the Assembly had exceeded its competencies concerning Article 65, paragraph 9 of the Constitution, in terms of undermining the institutional guarantees of the Council defined in paragraph 2 of Article 101 of the Constitution. The exceeding of competence was observed in the meetings of the Administrative Committee in the questions posed by the deputies, members of this committee, where they, in most cases, presented questions related to the content of the decisions of the PRCSC [11], questions that, according to the Constitutional Court, constitute interference in the independence of the PRCSC regarding decision-making within constitutional and legal functions.[12]

5. The undermining of the independence of constitutionally established bodies

5.1 The Law on the Kosovo Prosecutorial Council

On March 24, 2023, the Constitutional Court declared invalid in its entirety the amendments made by the Kosovo Assembly to the Law on the Prosecutor's Council of Kosovo. According to the Constitutional Court, the law approved by the Assembly, sponsored by the Ministry of Justice, was not in line with the form of governance and the separation of powers. It undermined the independence of the functioning of the Prosecutor's Council of Kosovo, violated the principles of the separation and balance of powers, and compromised the functional independence of the Prosecutor's Council of Kosovo. It also jeopardized the security of the mandates of the members of the Prosecutor's Council.[13]

[8] "Commission meeting minutes". Assembly of the Republic of Kosovo, June 15, 2021. (Shih linkun

https://www.kuvendikosoves.org/Uploads/Data/CommitteeMeetingDocumentFiles/6.Procesverbalishqip15.06.2021_pe2ML4Mt3p.pdf). (Last accessed 28 October 2023).

[9] "Transcript of the plenary session of the Assembly, p. 63". Assembly of the Republic of Kosovo, June 30, 2021. (See the link

https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2021_06_24_ts_Seanca_JmNCzadYPq.pdf). (Last accessed 28 October 2023).

[10] Judgment in case KO127/21, Constitutional Court of the Republic of Kosovo, December 9, 2021. (https://gjk-ks.org/wp-content/uploads/2021/12/ko_127_21_agj_shq.pdf). (Last accessed 28 October 2023).

[11] See the first question of MP Besim Muzaqi to Eshref Shabani, Chairman of the Independent Supervisory Council for the Civil Service of Kosovo, https://www.kuvendikosoves.org/Uploads/Data/CommitteeMeetingDocumentFiles/5.Procesverbalishqip01.06.2021_szqDsMNJ3C.pdf.

[12] Item 118, Judgment in case KO127/21, Constitutional Court of the Republic of Kosovo, August 2, 2023 (https://gjk-ks.org/wp-content/uploads/2021/12/ko_127_21_agj_shq.pdf). (Last accessed 28 October 2023).

[13] Judgment in cases no. KO100/22 and KO101/22, Constitutional Court of the Republic of Kosovo, March 24, 2023. (https://gjk-ks.org/wp-content/uploads/2023/04/ko_100_101_22_agj_shq.pdf). (Last accessed 28 October 2023).

On July 12, 2023, the government submitted new proposals for the Law on the Prosecutor's Office of Kosovo to the Assembly of Kosovo. The same draft law, on July 30, 2023, the Speaker of the Assembly, under the justification that the proposed draft has undergone changes since the evaluation by the Venice Commission, sent this draft law to the said institution to obtain their opinion.

5.2 Draft Law on Supplementing and Amending the Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo

On October 12, 2023, the Assembly of Kosovo approved Law No. 08/L-180 to amend and supplement Law No. 06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo. In relation to this draft law, before its approval in the first reading, the Kosovo Law Institute (KLI), in the analysis "Tendencies for Politicization of the Independent Oversight Board for the Civil Service of Kosovo," found that the same undermines the constitutional independence of the Independent Oversight Board, restricts its function, limits the competencies and responsibilities guaranteed by the Constitution, and, on the other hand, opens the way for the politicization of the public sector in Kosovo, legal insecurity, and arbitrariness towards public officials.^[14] Furthermore, according to the draft law, the Independent Oversight Board will not have the competence to decide on appeals against the government's decision on civil servants in senior managerial positions. The draft law aims to remove functional immunity from the Chairman and members of the Independent Oversight Board, and obtaining immunity for the Chairman and members of the Independent Oversight Board directly undermines the independence of this institution and violates the rights of the parties involved.

Due to the same identified problems in the KLI report, on October 20, 2023, within the constitutional deadline, the parliamentary group of the Democratic Party of Kosovo (PDK) sent the aforementioned law to the Constitutional Court. The reason being that the law is not in line with the Constitutional Court's Judgment in case KO171/18, is not in conformity with the Constitution of Kosovo, and transforms the independent constitutional body into a mechanism that legitimizes, supports, and does not prevent political appointments. Furthermore, the approved law strips all members of the Independent Oversight Board of immunity, excluding them from the scope of legality control by the Council for positions at the senior management level.

5.2 Draft Law on Supplementing and Amending the Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo

On February 9, 2023, the Assembly of Kosovo adopted Law No. 08/L-121 for the State Bureau of Verification and Confiscation of Unjustified Assets.^[15] During the first reading, after requests from the heads of opposition parliamentary groups, the Speaker of the Assembly sent this draft law to the Venice Commission to obtain their opinion.^[16]

[14] Shala G. *Tendencies for politicization of KPMSHCK*, Prishtina. November 2022. (Shih linkun: <https://kli-ks.org/tendencat-per-politizim-te-kpmshck/>). (Last accessed 2 November 2023).

[15] *Decision on the adoption of Law no. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustifiable Assets*, Assembly of Kosovo, 2023. (https://www.kuvendikosoves.org/Uploads/Data/Documents/121Vendim_Ez8jYFuKYy.pdf). (Last accessed 2 November 2023).

[16] *The Assembly examined the Draft Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets*, 2022. (<https://kuvendikosoves.org/shq/per-publikun/lajmi/kuvendi-shqyrtoi-projektligjin-per-byrone-sht-28982/>). (Last accessed 2 November 2023).

In relation to this draft law, during the first and second readings, deputies from opposition parliamentary groups, especially the PDK group, raised concerns about this draft law, stating that it contains constitutional flaws.

The essential remarks on the Draft Law have also been reflected in the report of KLI titled "Confiscation of Unjustified Assets: Legal Issues of the Current Draft Law"[17], which were subsequently echoed by the Venice Commission in their opinion on June 17–18, 2022.[18]

KLI's findings indicate that the authority for implementing the Draft Law is not objectively independent, the investigative powers of the Office for gathering information are not fully in harmony with the Constitution, and there is a lack of adequate judicial control over the measures that the Office can undertake. Furthermore, according to the Draft Law, the competence for judicial review is centralized (Basic Court in Prishtina and, at the appellate level, the Court of Appeals). During implementation, the Draft Law may infringe on the peaceful enjoyment of property rights.

The Draft Law does not adequately regulate the relationship between civil confiscation procedures and criminal procedures that may be conducted against the owner of the property. The determination of the temporary security measure does not fully respect the rights of the party in property.

On February 21, 2023, under the allegation of constitutional violation, the Law on State Bureau for Verification and Confiscation of Unjustified Property was sent by the Democratic Party of Kosovo to be assessed for its constitutionality in the Constitutional Court. [19]

6. The undermining of the independence of legally established institutions

6.1 The undermining of the independence of public broadcasters

The Assembly of Kosovo, following the recommendation of the Public Administration Committee and the Budget Committee, did not approve the Annual Report of the Public Broadcaster (RTK) for the year 2020. As a consequence, the Public Administration Committee had also recommended the collective dismissal of the RTK Board, namely, the eight members of the RTK Board. On July 21, 2021, the Assembly dismissed all eight members of the RTK Board.

[17] Shala G. and Hasani J., *Unjustifiable asset confiscation: legal problems of the current Draft Law*, Prishtina. November 2023. (See link: https://kli-ks.org/wp-content/uploads/2022/01/IKD_Raporti_Konfiskimi-i-Pasurise-se-pajustificikueshme-problemet-juridike-te-projektligjit-aktual-19.01.2022.pdf). (Last accessed on November 2, 2023).

[18] Venice Commission, "Kosovo – Opinion on the Draft Law N°08/L-121 on The State Bureau for verification and confiscation of unjustified assets, adopted by the Venice Commission at its 131st Plenary Session."

[19] EXCLUSIVE: PDK sends the Law for the Bureau to the Constitutional Court, 2022. (<https://betimiperdrejtesi.com/ekskluzive-pdk-dergon-projektligjin-per-byrone-ne-gjykaten-kushtetuese/>). (Last accessed on November 2, 2023).

Acting within the authorizations under Article 113, paragraph 5 of the Constitution, a group of deputies had submitted a request for the constitutional review of the Assembly. The Constitutional Court, on August 1, 2023, issued the Judgment in case no. K0134/21 [20] through which it declared the decision of the Assembly of Kosovo inconsistent with paragraph 1 of Article 7 and paragraph 9 of Article 65. According to the Court, the Assembly exceeded the competencies defined in the law it had adopted, specifically the Law on RTK.

According to the Court, under no circumstances can the Assembly dismiss the entire Board of RTK, as such a dismissal is contrary to Article 36 of the Law on RTK. The mandates of the members have different durations, and according to the law, they should not be elected at the same time, as the purpose of the law when adopted was for the elections not to take place at the same time and not by the same parliamentary majority. Furthermore, the Court found that the Assembly dismissed the Board members without any accurate legal basis. It is crucial, according to the court, that such a provision be explicitly stated in the law.

6.2 The violation of human rights

The Assembly of Kosovo approved Law No. 08/L-063 amending and supplementing laws related to the rationalization and establishment of the financial reporting lines of Independent Agencies. According to this law, the Agency for Free Legal Aid (hereinafter: AFLA) would be incorporated as an executive agency within the Ministry of Justice. With this action by the Government and the Assembly of Kosovo, legal aid suffered significant damage and degradation of an institution due to the unconstitutional politicization of the Agency for Free Legal Aid.

In the report titled "Politicalization Against the Constitution of the Legal Aid Agency," KLI found that the incorporation of the AFLA into the Ministry of Justice was done in violation of the constitution. Furthermore, placing the Legal Aid Agency as an executive agency within the Ministry of Justice would politicize the legal aid system. Moreover, according to the analysis, citizens' requests would be handled by an institution led by a politically appointed figure. To make matters worse, the criteria for providing legal aid by NGOs would be determined by the Ministry of Justice.

The Ombudsman also made a similar observation, stating that placing the Legal Aid Agency (ANJF) within the Ministry of Justice (MD) is not progress but degradation and regression.[21] Despite his finding that placing free legal aid within the Ministry of Justice constitutes a regression compared to the previous regulation and despite KLI's request to refer such a law to the Constitutional Court, he did not exercise his right as an authorized party.

[20] *Judgment in case K0134/21, Constitutional Court of the Republic of Kosovo*, August 2, 2023. (https://gjk-ks.org/wp-content/uploads/2023/09/ko_134_21_agj_shq.pdf). (Last accessed 28 October 2023).

[21] *Qelaj: Establishing the Agency for Free Legal Aid within the MoD is degradation*, Betimi për Drejtësi, 2022. (<https://betimiperdrejtesi.com/qelaj-vendosja-e-agjencise-per-ndihme-juridike-falas-ne-kuader-te-md-se-eshte-degradim/>). (Last accessed 2 November 2023).

7. Violation of Municipal Responsibilities

7.1 Violation of Municipal Responsibilities in Education

In 2021, the Municipality of Kamenica made a decision to reorganize the teaching process in several elementary schools within its jurisdiction. These decisions were known as a comprehensive reform in the local education of this municipality. The decisions aimed at determining the continuity of teaching in some respective schools to other locations. Such a reform was initiated with the reasoning that the number of students in some villages was significantly decreasing, and in some schools, there were fewer than five students in the entire school. However, with the implementation of the reform in the field, dissatisfaction among some parents had started, and after the inspection by the Inspectorate of Education, it was found that some children had not continued the learning process for nearly a year because the parents of these children were not satisfied with the reorganization.

The Ministry of Education, Science, Technology, and Innovation (hereinafter: MESTI), following the findings of the ad-hoc commission in this municipality, had issued a Decision on the organization of accelerated alternative learning for 441 students in the Municipality of Kamenica, through which it had organized accelerated alternative teaching in five (5) schools and corresponding parallel classes in the Municipality of Kamenica, which had already been reorganized through decisions of the Municipality of Kamenica.

After the request of the Municipality of Kamenica, exercising its right, it managed to persuade the Constitutional Court to annul the contested decision. The Court found that MESTI had encroached on municipal competencies regarding the administration and provision of public pre-school, primary, and secondary education.[22] More specifically, the court found that the contested decision was incompatible with Article 2 of Article 12, Article 1 and 3 of Article 123, and Article 2 and 3 of Article 124 of the Constitution of Kosovo.

The provision of public pre-school, primary, and secondary education, including the registration and licensing of educational institutions, employment, salary payment, and training of education instructors and administrators, is a fundamental competence of municipalities. MASHTI has intervened in the full and exclusive competencies of municipalities, as expressly stipulated in Law No. 03/L-068 on Education in the Municipalities of the Republic of Kosovo.[23]

In another case, MASHTI had issued Administrative Instruction No. 104/2020 of the Ministry of Education, Science, and Technology (MEST) on the Criteria and Procedures for the

[22] *Judgment in case KO145/21, Constitutional Court of the Republic of Kosovo*, December 9, 2021. (https://gjk-ks.org/wp-content/uploads/2022/04/ko_145_21_agj_shq.pdf). (Last accessed 28 October 2023).

[23] *Article 4, paragraph 1 of Law No. 03/L-068 for Education in the Municipalities of the Republic of Kosovo*. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2543>). (Last accessed 28 October 2023).

Establishment and Closure of Pre-University Education Institutions,[24] through which it attributed to itself competencies in the opening, closing, and organization of schools at the pre-primary, primary, and secondary levels.

The competencies of MASHTI envisaged that the General Secretary of this ministry had the right to decide on the municipality's proposal regarding the verification of conditions for the development of educational activities in municipalities. Furthermore, the appeal by municipalities in case of rejection of the proposal by the General Secretary would be addressed to the Ministry of Education, Science, and Technology.

The CC in this case demonstrated that MASHTI cannot define competencies for itself that are not determined by a law approved by the Assembly of the Republic, and which competencies may interfere with the local self-government's activities in the field of education or undermine municipal responsibilities in this regard.

After the request from the Municipality of Kamenica, the CC on December 7, 2022, issued the Judgment in case KO173/21 [25] in which it partially declared Administrative Instruction No. 104/2020 incompatible with the Constitution.

The findings of the CC identified a violation of municipal responsibilities and the inherent competences of the municipality, as no central authority, including the Ministry of Education, can, through sub-legal acts, attribute itself competences that have not been determined by law approved by the Assembly of the Republic. Moreover, the contested provisions of the Administrative Instruction encroach upon municipal responsibilities for providing pre-university public education.[26]

7.2 Violation of the right to spend municipal own revenues from previous years

In another case, the Kosovo Law Institute found that in contradiction to the Constitution and based on the approval of a specific provision in the Budget Allocations Law for the year 2023 [27], the Government had not transferred own-source revenues to municipalities. This resulted in funds collected by municipalities from previous years (2021 and onwards) becoming part of the central budget and not being used for municipal expenditures, as had been the previous practice.

[24] Accessible from this link: <https://masht.rks-gov.net/wp-content/uploads/2022/05/ua-me-nr-104-kriteret-dhe-procedurat-te-themelimit-dhe-pushimit-te-veprimtaris-se-institucioneve-te-arsimit-parauniverzitar-l-rotated-1.pdf>. (Last accessed 28 October 2023)

[25] Judgment in case KO173/21, Constitutional Court of the Republic of Kosovo, December 7, 2022. (https://gjk-ks.org/wp-content/uploads/2022/12/ko_173_21_agj_shq.pdf). (Last accessed 28 October 2023).

[26] Item 263, Judgment in case KO173/21, Constitutional Court of the Republic of Kosovo, December 7, 2022. (https://gjk-ks.org/wp-content/uploads/2022/12/ko_173_21_agj_shq.pdf). (Last accessed 28 October 2023).

[27] Paragraph 6, Article 9 of Law No. 08/L-193 on Budget Allocations for the Budget of the Republic of Kosovo for 2023. (https://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjinr.08-L-193_8LfEC&GhNf.pdf). (Last accessed 2 November 2023).

According to the Constitution of Kosovo, municipalities have the right to determine, allocate, collect, and spend their own-source revenues, while also having the ability to receive funds from the Government of Kosovo.[28]

After receiving complaints from opposition parliamentary groups and mayors of municipalities about the unconstitutionality of Article 9 of the Budget Law, on June 8, 2023, the Government of Kosovo submitted to the Kosovo Assembly a draft law amending and supplementing the budget. Through this draft law, the concerns of the mayors of municipalities and opposition parliamentary groups were addressed. Consequently, the government, along with the deputies, avoided sending another law to the Constitutional Court.

8. Non-exercise of the constitutional competence of the Ombudsperson and the deputies of the Assembly

The public data on the Constitutional Court's website indicate that since 2010, the Ombudsperson has referred 9 cases to the Constitutional Court, which have involved challenging the constitutionality of laws enacted by the Kosovo Assembly.

The former Ombudsperson, Sami Kurteshi, submitted three cases during his five-year term. The former Ombudsperson, Hilmi Jashari, submitted five cases during his five-year term, and the current Ombudsperson has submitted one law to the Constitutional Court during the more than three years of his term in office.

9. Other laws in the assessment procedure by the Constitutional Court

In addition to the laws for which the CC has already rendered a decision, several other laws are currently in the process of assessment. The majority of contested laws have been submitted by opposition parliamentary groups (PDK, LDK, and AAK), while one draft law has been submitted by the Ombudsperson and one law by the Supreme Court of Kosovo. In two cases, thanks to the work of the Kosovo Institute for Justice, the Assembly managed to address the recommendations published in the analysis titled 'Repressive Measures for the Protection of Women,' which was sent to all deputies of the Assembly of the Republic of Kosovo.

9.1 Contesting the Public Sector Salary Law

In December 2022, the Assembly of Kosovo adopted Law No. 08/L-196 on public sector salaries. The draft law was approved through an expedited procedure.[29] Despite the government's stated intention and promise for public administration reform, the Institute for Development Policy (KLI) published an analysis on December 22, 2022, titled "Salaries in the Public Sector," revealing serious constitutional issues with this law.

[28] Paragraph 3, Article 24 of the Constitution of Kosovo, 2008. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>). (Last accessed 2 November 2023).

[29] Transcript of the plenary session of the Assembly, Assembly of the Republic of Kosovo, December 15, 2022. ((See link https://www.assembly-kosova.org/Uploads/Data/SessionFiles/2022_12_15_ts_Seanca,ora14.00_2gy8gjjvHy.pdf). (Last accessed 28 October 2023).

The approved law was in contradiction with the Constitutional Court's decision in case No. KO219/19, undermining the legal security of public sector employees by not specifying the monetary value of coefficients. Furthermore, the law unconstitutionally reduced the salaries of judges and prosecutors. In some cases, the law contains provisions that present unequal treatment of public sector employees, which constitutes a violation of Article 24 of the Constitution of the Republic of Kosovo. Ultimately, according to the analysis by the Institute for Development Policy (KLI), the approved law contains provisions that undermine the functional independence of the justice system, constituting a violation of the Constitution of the Republic of Kosovo. KLI had sent the complete analysis to all deputies before the law's approval in the first reading.

On January 6, 2023, the Institute for Development Policy (KLI), through an official and public letter, requested the Ombudsperson to initiate investigations into human rights violations and to bring the Law No. 08/L-196 on Public Sector Salaries before the Constitutional Court.[30] The request to the Ombudsperson was also endorsed by 104 unions and various organizations in Kosovo.

The request was the same: the referral of the Salary Law to the Constitutional Court. Only after reaching a number exceeding 100 complaints and facing significant public pressure from labor organizations, the Ombudsperson, on April 7, 2023 [31], sent the salary law to the Constitutional Court.

9.2 Allegations of arbitrary interference with the principles and values of the free economy

On November 8, 2022, the Assembly of Kosovo adopted Law No. 08/L-179 on temporary measures for essential products in cases of specific market destabilization.[32] In connection with this draft law, during the first review [33] as well as during the second reading, deputies from opposition parliamentary groups, especially the LDK group, had raised objections to this draft law, arguing that it contains constitutional flaws and arbitrary intervention in the principles and values of a free economy.

On November 16, 2022, the parliamentary group of the Democratic League of Kosovo (LDK) submitted the law to the CC.[34] According to the LDK, through its deputy Hykmete Bajrami, this law is not in line with Article 10 of the Constitution, which states that "A free market economy is the basis of the economic order of the Republic of Kosovo."

[30] IKD has filed a request with the People's Advocate to process the Law on Wages in the Public Sector in the Constitutional Court, IKD Prishtina, 2023. (See the link <https://kli-ks.org/ikd-ka-deponuar-kerkesen-tek-avokati-i-popullit-qe-ta-procedoje-ligjin-per-pagat-ne-sektorin-publik-ne-gjykatene-kushtetuese/>). (Last accessed 28 October 2023).

[31] Media release - The People's Advocate sent to the Constitutional Court Law no. 08/L-196 on Salaries in the Public Sector, with a request for the assessment of its compatibility with the Constitution, IAP Prishtina, 2023. (See the link <https://oik-rks.org/2023/04/07/komunikate-per-media-avokati-i-popullit-dergoi-ne-gjykatene-kushtetuese-ligjin-nr-08l-196-per-pagat-ne-sektorin-publik-me-kerkese-per-vleresimin-e-perputhshmerise-se-tij-me-kushtetuten/>). (Last accessed 28 October 2023).

[32] Decision on the adoption of Law no. 08/L-179 on temporary measures of basic products in special cases of destabilization in the market, Assembly of Kosovo, 2022. (https://www.kuvendikosoves.org/Uploads/Data/Documents/179Vendim_eeaPLDDGSm.pdf). (Last accessed 28 October 2023).

[33] Transcript of the plenary session of the Assembly, Assembly of the Republic of Kosovo, June 30, 2022. (See link https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2021_06_24_ts_Seanca_JmNCzadYPq.pdf). (Qasur për herë të fundit më 28 tetor 2023).

[34] The LDK submits to the Constitutional Court the Law on setting ceiling prices, Koha, 2022. (<https://www.koha.net/arberi/352831/ldk-ja-dorezon-ne-kushtetuese-ligjin-per-caktimin-e-cmimeve-tavan/>). (Last accessed on November 2, 2023).

This law, according to LDK, undermines the key components of the market economy, including private property, free choice of activity, competition, and profit, as driving forces. [35] On November 8, 2023, it entirely rejected the contested law, stating that it is not in accordance with the values, economy, and general principles of the Constitution.[36]

9.3 The Allegations of violation of municipal responsibilities in the collection of own revenues

In January 2023, new property tax bills were sent to the citizens of Kosovo following the general property assessment at the national level conducted by the Department of Property Tax within the Ministry of Finance, Labor, and Transfers (hereinafter: MFPT) at the end of 2022. In many cases, these bills were doubled, and in numerous instances, they were tripled.[37] Due to this increase, citizens raised numerous complaints as they were unable to cope with such a surge. In response to these bills, the municipalities of Kosovo and a significant number of members of the Assembly reacted.

The Assembly of Kosovo debated the property tax increase on February 16, 2023,[38] where the main request of some deputies was to suspend the assessment conducted for the year 2022 and, in the meantime, apply the assessment made for previous years.

Civil society also demanded that the reassessment be annulled, and a new general reassessment process of properties be conducted in 2025 [39], as Law No. 06/L-005 on Immovable Property Tax allows for reassessment every five years, and the recent assessment was in the third year after the entry into force of the Law on Immovable Property TaxTop of Form.[40]

The requests of the mayors of municipalities, some members of parliament, and a portion of civil society were not considered by the Government of Kosovo. On April 4, 2023, it sent to the members of the Kosovo Assembly the Draft Law No. 08/L-224 amending and supplementing Law No. 06/L-005 on property tax. The purpose of the draft law was to ensure progressive taxation, tax relief for primary residence and agricultural land, forgiveness of tax for the 2023 tax year, and restrictive rules for the application of the tax obligation and interest.[41]

[35] *Transcript of the plenary session of the Assembly, Assembly of the Republic of Kosovo, October 20, 2022.* (See link https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2022_10_14_ts_Seanca_ora15.00_LEss42aYME.pdf). (Last accessed 28 October 2023).

[36] Judgment in case KO173/22, Constitutional Court of the Republic of Kosovo, November 8, 2023. (https://gjk-ks.org/wp-content/uploads/2023/11/ko_173_22_agj_shq.pdf). (Last accessed 28 October 2023).

[37] "Property tax bills alarm citizens" 2023,2023, Koha. (<https://www.koha.net/arberi/362646/faturat-e-tatimit-ne-prone-alarmojne-qytetaret/>). (Last accessed 2 November 2023).

[38] "Transcript of the plenary session of the Assembly". Assembly of the Republic of Kosovo, February 16, 2023. (See the link https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2023_02_16_ts_Seanca_92c3K4mTq.pdf). (Qasur për herë të fundit me 28 tetor 2023).

[39] IKD asks the government to suspend the doubling of the property tax until 2025, Koha. (<https://www.koha.net/arberi/366578/ikd-ja-i-kerkon-qeverise-ta-pezuilloje-dyfishimin-e-tatimit-ne-prone-deri-me-2025/>). (Last accessed 2 November 2023).

[40] Article 18 of Law No. 06/L-005 on Real Property Tax, Official Gazette of the Republic of Kosovo. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=15984>). (Last accessed 2 November 2023).

[41] Draft Law on Amendments and Supplements to Law No. 06/L-005 on Real Property Tax, 2023, Assembly of the Republic of Kosovo. (https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperndrysheligitpertatiminnepronenepalujiteshme_Bg6tYNALVX.pdf). (Last accessed 2 November 2023).

The approved law allows municipalities to forgive debts up to 100 euros to those municipalities that were supposed to make a decision on this matter by September 15. The draft law was opposed by the parliamentary opposition, claiming that it violated the Constitution of Kosovo, specifically arguing that it undermined the competence of the municipalities of Kosovo for their own revenues, which, according to the Constitution, are the sole and exclusive responsibility of the municipalities of Kosovo. Under the claim of constitutional violation, the Mayor of the Municipality of Prizren forwarded this draft law to the Constitutional Court to assess certain provisions of this law.

On November 15, 2023, the Court decided that Article 5 of the contested Law is not in contradiction with the Constitution and does not undermine the competence of own-source revenues.[42]

9.4 The Allegations for violation of values, equality before the law, protection of property, right to work and practice of profession and health and social protection

According to the Labor Law, the determination of the minimum wage is made at the end of each calendar year by a decision of the Government of Kosovo, following a proposal from the Economic and Social Council through the Ministry of Finance, Labor, and Transfers (hereinafter: MFTL). Since the trade unions did not agree with the proposed amount by MFTL, the unions did not vote for this amount, consequently, the proposal was not processed to the Government of Kosovo because, under the Law on the Economic and Social Council, decisions of this body are approved by 2/3 of the votes of its permanent members.[43]

With the justification that such a legal obstacle is hindering the minimum wage procedure, the Government of Kosovo proceeded to the Assembly of Kosovo with Law No. 08/L-142, which would amend and supplement several laws to determine the procedure for setting the minimum wage and tax scales on annual personal income. The draft law would bypass the Economic and Social Council for the determination of the minimum wage because, according to the law, in case of the impossibility of reaching consensus in the Economic and Social Council (ESC), MFTL would have the right to propose the wage amount to the Government after formal notification to the ESC. Veterans of the KLA, blind persons, paraplegic, and tetraplegic individuals would be exempted from the link to the minimum wage amount.[44]

[42] *Judgment in case KO177/23, Constitutional Court of the Republic of Kosovo*, November 15, 2023. (<https://gjk-ks.org/decision/vleresimi-i-kushtetutshmerise-se-nenit-5-te-ligjit-nr-08-l-224-per-ndryshimin-dhe-plotesimin-e-ligjit-nr-06-l-005-per-tatimin-ne-pronen-e-palujtshme/>). (Last accessed 28 October 2023).

[43] *Paragraph 1, Article 17, Law No. 04/L-008 for the Economic-Social Council*, 2011, Official Gazette of the Republic of Kosovo. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2747>). (Last accessed 2 November 2023).

[44] *Draft law no. 08/L-142 on the amendment and completion of the laws that determine the amount of the minimum wage benefit, the procedures for setting the minimum wage and the tax rates on annual personal income*, 2022, Assembly of Kosova. (https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperproceduratpercaktiminepagesminimaledheshkallatatimoreneTPV_sAk8chU6h6.pdf). (Last accessed 2 November 2023).

After significant clashes between the opposition and the government, the Assembly had managed to vote on this draft law with a procedural delay of 9 months. However, within the constitutional deadline of eight days from the last day of law approval, the parliamentary group of AAK had submitted the law for Constitutional Court assessment with a request. According to this group, the law violated values, equality before the law, infringed on property protection, the right to work and exercise a profession, and health and social protection.

9.5 Allegations of constitutional violations in the dismissal of the member of the Board of the PShP

On July 13, 2023, the Assembly of Kosovo, with 58 votes in favor, 1 against, and two abstentions, dismissed Kimete Gashi from the position of a member of the Board of the Public Procurement Regulatory Commission. Her dismissal was opposed by parliamentary opposition parties. One of them, the Democratic League of Kosovo (LDK), contested the decision on July 20, 2023, by submitting it to the Constitutional Court. According to the LDK, they challenge the case both in terms of the form and the procedure of issuing the decision, as well as its content. The decision is alleged to be unconstitutional and illegal, and the Constitutional Court is expected to verify these claims.[45]

9.6 Allegations of constitutional violations in the Draft Law on Sustainable Investments

On November 9, 2023, the members of the parliamentary group of the PDK sent a request to the CC for an assessment of the constitutionality of Law No. 08/L-209 on Sustainable Investments.[46] Some members of the parliamentary group of the PDK claim violations of values, equality before the law, further violations of general principles, and Article 122 (Use of Property and Human Resources). The Kosovo Assembly approved this law in a plenary session held on October 19, 2023.

10. The Implementation of the Constitutional Court's Requests by Public Institutions

10.1 Violation of the Rights of Pensioners Due to Delays in the adoption of the law on Pension Scheme

"On December 30, 2022, in case no. KO190/19, the CC annulled paragraph 2 of Article 8 of Law No. 04/L-131 on Pension Schemes because, in a discriminatory manner, through this provision, thousands of citizens who did not meet the 15-year work experience criterion

[45] *The dismissal of Kimete Gashi ends in the Constitutional Court*, Kosovapress. (<https://kosovapress.com/%E2%80%8Bperfundon-ne-kushtetuese-edhe-shkarkimi-i-kimete-gashit/>). (Last accessed 2 November 2023).

[46] *Exclusive: PDK also sends the Draft Law on Sustainable Investments to the Constitutional Court*. Betimi për Drejtësi. (<https://betimiperdrejtesi.com/ekskluzive-pdk-e-dergon-ne-gjykate-kushtetuese-edhe-projektligjin-per-investime-te-qendrueshme/>). (Last accessed 26 November 2023).

before January 1999 did not enjoy the contributory pension, but only the age-based one. The Court ordered the Assembly and the Government to take necessary actions to amend and supplement this law no later than July 15, 2023, and that these provisions would be repealed by July 15, 2023.

Although the Government and the Assembly were aware of the Constitutional Court's decision, as it had been submitted to them, such a draft law was not included in the Legislative Program for the year 2023.^[47] Only in the fifth amendment and supplementation of the legislative program for 2023, the Government decided to include the approval of the draft law on pension schemes in the legislative agenda and that these changes would take place on July 30, 2023 – 15 days later.

The Government approved the draft law on pension schemes on July 4, 2023, while in the second reading, the Assembly adopted it on July 27, 2023. In both cases, the Government and the Assembly violated the Constitutional Court's decision because, according to this court, its request is the approval of the law, which implies its entry into force and the start of its implementation from July 15, 2023, not the approval in the government initially with a delay of 19 days and by the Assembly with 42 days. When added to this is the requirement for the law to enter into force, the deadline for contestation in the Constitutional Court according to Article 113, paragraph 5, and the period when the President is expected to sign it, then we have a situation and a bad practice in implementing the Constitutional Court's decision. Instead of the law being in force by June 15, 2023, to start the implementation of the new pension schemes, consequently eliminating discrimination, the Government and the Assembly applied the decision of the Constitutional Court with a delay of 62 days.

10.2 Technical violations during the implementation of the Constitutional Court Decision on the Law on Public Officials

On August 2, 2023, the Constitutional Court, declaring the requests for the assessment of the constitutionality of the Law on Public Officials acceptable, determined that certain provisions of this law are not in line with the Constitution. The Court obligated the President to promulgate the law without the contested provisions. Additionally, the Court ordered the Assembly to take necessary actions within six months from the entry into force of this decision to amend and supplement the contested law in accordance with the Constitution.^[48]

In implementation of the Constitutional Court decision, the Law on Public Officials was published in the Official Gazette with additions to paragraph 2 and 5 of Article 9, even though the Constitutional Court rejected a sentence of these paragraphs.

[47] *Legislative Program for 2023, Government of Kosovo, 2023.* (<https://kryeministri.rks-gov.net/wp-content/uploads/2023/01/Programi-Legjislativ-per-vitin-2023-25.1.2023.pdf>). (Last accessed 2 November 2023).

[48] *Judgment in cases KO216/22 and KO220/22, Constitutional Court of the Republic of Kosovo, August 2, 2023.* (https://gjk-ks.org/wp-content/uploads/2023/09/ko_216_220_22_agj_shq_.pdf). (Last accessed 28 October 2023).

The findings of the non-correct application of the Constitutional Court decision were noted by the petitioner, who, on September 21, 2023, submitted a request for correction of the Constitutional Court decision in cases K0216/22 and K0220/22. The Court observed that the reference to the criterion of 'appropriateness' has been eliminated from paragraph 5 of Article 9, has also been eliminated from the beginning of paragraph 2 of the same article, but not from the second sentence of paragraph 2 of Law No. 08/L-197 on Public Officials.

Seven days later, the Court issued an order to correct a technical error in the decision, without formulating appropriateness in the entire paragraph 2 and in paragraph 5 of Article 9 of the Law on Public Officials. The decision will be communicated to the parties and published in the official gazette.[49]

11. Financial damage caused by unconstitutional decisions

The CC in its judgment in case 134/21, had overturned the decision of the Assembly of Kosovo to dismiss the Board of Radio Television of Kosovo. However, according to the Court, the judgment would not have retroactive effect and would not affect the acquired rights of third parties, in this case, the mandates of the new members of the RTK Board. According to the Court, it does not have the competence to determine compensation for cases where a violation of constitutional provisions is found. However, this does not exclude the legal possibility for affected parties, due to an unjust decision, to seek compensation from public authorities in case of the violation of their rights and freedoms based on the Constitution and applicable laws in the Republic of Kosovo.

[49] *Correction Order for case KO145/21, Constitutional Court of the Republic of Kosovo, August 2, 2023.* (https://gjk-ks.org/wp-content/uploads/2023/09/ko_216_220_22_agj_shq_.pdf). (Last accessed 28 October 2023).

Raporti “Kushtetueshmëria në qeverisje” është realizuar nga Instituti i Kosovës për Drejtësi me mbështetjen e Byrosë së Narkotikëve Ndërkombëtar dhe Çështjeve të Zbatimit të Ligjit (INL) - Departamenti i Shtetit Amerikan apo te National Endowment for Democracy (NED).



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