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

Prishtina, on 19 May 2025
Ref. no.: AGJ 2689/25

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

cases no. KO152/24 and KO158/24

Applicant

of referral KO152/24, Abelard Tahiri and 9 other deputies of the Assembly of the Republic of Kosovo;
of referral KO158/24, Arben Gashi and 9 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Law no. 08/L-289 on the Independent Media Commission

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Nexhmi Rexhepi, President
Safet Hoxha, Deputy President
Bajram Ljatifi, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge,
Enver Peci, Judge
Jeton Bytyqi, Judge

Applicants

1. Referral KO152/24 was submitted by Abelard Tahiri, Ariana Musliu-Shoshi, Ardian Kastrati, Rashit Qalaj, Bekim Haxhiu, Blerta Deliu-Kodra, Eliza Hoxha, Ferat Shala, Hajdar Beqa and Hisen Berisha, deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), of the parliamentary group of the Democratic Party of Kosovo (hereinafter: PDK), represented by Faton Fetahu, lawyer (hereinafter: the Applicants of referral/referrals).

2. Referral KO158/24 was submitted by Arben Gashi, Armend Zemaj, Avdullah Hoti, Agim Veliu, Besian Mustafa, Doarsa Kica-Xhelili, Dritan Selmanaj, Kujtim Shala, Hykmete Bajrami, and Rrezarta Krasniqi, deputies of the Assembly, of the parliamentary group of the Democratic League of Kosovo (hereinafter: LDK), represented by deputy Arben Gashi (hereinafter: the Applicants of referral/referrals).

Contested Law

3. Applicants of Referral KO152/24 contest the constitutionality of Articles 4 (Competencies of the IMC), 10 (Media education), 12 (Broadcasting policy), 15 (Election of IMC Members), 17 (Mandate of the Chairperson and members of the IMC), 18 (Dismissal of the Chairperson and member of the IMC), 43 *(*Regulation of ownership of the licensed/registered parties) and 60 (Sanctions with fines) of Law No. 08/L-289 on Independent Media Commission (hereinafter: Contested Law), adopted by Decision [no. 08-V-769] of the Assembly, of 11 July 2024. Whereas, the Applicants of Referral KO158/24 contest the constitutionality of the procedure followed for the adoption of the contested Law, by Decision [no. 08-V-769] of the Assembly, of 11 July, as well as the constitutionality of the provisions of Articles 4, 14 (Composition of IMC), 15, 17 and 18 of the contested Law.

4. Applicants of Referral KO152/24 also request the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to apply the provisions of Article 43 of the Law on the Court (hereinafter: the Law), as regards the suspensive *ex-lege* effect of the implementation of the contested Law adopted by the Assembly based on the practice of the Court and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution). Whereas the Applicants of Referral KO158/24 request the Court to impose an interim measure, in accordance with paragraph 2 of Article 116 of the Constitution, in conjunction with paragraph 1 of Article 27 [Interim Measures] of the Law, and Rule 55 (4) (c) of the Rules of Procedure no. 01/2023 of the Constitutional Court (hereinafter: the Rules of Procedure), in order to avoid irreparable consequences (damages) that the contested Law may cause, in (i) the credibility of the Republic of Kosovo (ii) in the media; (iii) in the freedom of media; and (iv) freedom of expression.

Subject matter

5. The subject matter of Referral KO152/24 is the constitutional review of the content of the provisions of articles 4, 10, 15, 17, 18, 43 and 60 of the contested Law, which the Applicants of this Referral claim are not compatible with Articles: 7 [Values], 24 [Equality Before the Law], 32 [Right to Legal Remedies], 42 [Freedom of Media], 54 [Judicial Protection of Rights], 119 [General Principles] and 141 [Independent Media Commission] of the Constitution.

6. Whereas, the subject matter of referral KO158/24 is the constitutional review of (i) the procedure followed during the adoption of the contested Law, by Decision [no. 08-V-769] of the Assembly, of 11 July 2024, claiming that the procedure followed for the adoption of the contested Law is unconstitutional, as well as (ii) the constitutional review of the content of the provisions of Articles 4, 14, 15, 17 and 18 of the contested Law, claiming that they are not compatible with articles: 7 [Values], 24 [Equality Before the Law], 32

[Right to Legal Remedies], 42 [Freedom of Media], 54 [Judicial Protection of Rights], 119 [General Principles] and 141 [Independent Media Commission] of the Constitution.

Legal basis

7. The referrals are based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, Articles 22 (Processing Referrals), 27 (Interims Measures), 42 (Accuracy of the Referral) and 43 (Deadlines) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and rules 25 (Filing of Referrals and Replies) and 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) of the Rules of Procedure.

Proceedings before the Court

8. On 18 July 2024, the Applicants of referral KO152/24 submitted the referral to the Court.

9. On 19 July 2024, the Applicants of referral KO158/24 submitted the referral to the Court.

10. On 24 July 2024, the President of the Court, by Decision [No. GJR. KO152/24], in case KO152/24, appointed Judge Jeton Bytyqi as Judge Rapporteur and by Decision [No. KSH. KO152/24] appointed the Review Panel, composed of judges: Bajram Ljatifi (presiding), Nexhmi Rexhepi and Enver Peci (members).

11. On the same day, the President, in accordance with sub-rule (3) of rule 32 (Joinder and Severance of Referrals) of the Rules of Procedure, by Order [KO152/24 and KO158/24], ordered the joinder of referral KO158/24, with referral KO152/24. Based on sub-rule (3) of the above-mentioned rule, for the joint referrals, the Judge Rapporteur and the composition of the Review Panel remains the same, as determined for the referral KO152/24.

12. On 26 July 2024, the Court notified the Applicants about the registration of referrals KO152/24 and KO158/24 and the joinder of referrals. Also, on the same day, in the capacity of interested parties, a copy of the referrals was sent to: (i) the President of the Republic of Kosovo (hereinafter: the President); (ii) the President of the Assembly of the Republic of Kosovo (hereinafter: the President of the Assembly), with the request that copies of the referrals be distributed to all deputies of the Assembly; (iii) the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); (iv) the Ombudsperson; (iii) the Secretary General of the Assembly; (vi) the Independent Media Commission (hereinafter: IMC); and (vii) the Association of Journalists of Kosovo (hereinafter: AJK).

13. Interested parties were also notified about (i) the joinder of the referrals, in accordance with sub-rule (3) of rule 32 of the Rules of Procedure; and (ii) the possibility of submitting comments, if any, by 9 August 2024. The Deputy Secretary General of the Assembly was requested to submit to the Court all relevant documents related to the contested Law. Whereas, the Court on the effects of contesting the contested Law before the Court, notified: (i) the President, (ii) the President of the Assembly and (iii) the Deputy Secretary General of the Assembly, recalling the requirements of paragraph 2, Article 43 of the Law on the Court, which stipulates that: "*...in the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113,*

Paragraph 5 of the Constitution, such a law or decision shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest". The Court explained that this provision of the Law implies that the contested Law cannot be decreed, enter into force, or produce legal effects until the final decision of the Court, regarding the case filed before it.

14. On 2 August 2024, the Deputy Secretary General of the Assembly, regarding the review and adoption of the contested Law in the Assembly, submitted the following documents:

    1. Draft Law on the Independent Media Commission (hereinafter: the Draft Law on IMC), together with the explanatory memorandum and accompanying letters proceeded by the Government of the Republic of Kosovo (hereinafter: the Government), on 11 January 2024;
    2. Report of the Functional Committee on Public Administration, Local Government, Media and Regional Development, for consideration in principle of the Draft Law on IMC, no. 08/5031/L-289, of 7 February 2024;
    3. Minutes of the meeting of the Functional Committee on Public Administration, Local Government, Media and Regional Development, for consideration in principle of the Draft Law on IMC, no. 08-V-697, of 7 February 2024;
    4. Copy of the Decision of the Assembly, on the adoption in principle of the Draft Law on IMC, no. 08-V-697, of 7 March 2024;
    5. Part of the transcripts of the plenary sessions, for the first review of the Draft Law on IMC, of 15 February and 7 March 2024;
    6. Part of the minutes of the plenary sessions of the Assembly, for the first review of the Draft Law on IMC, of 7 March 2024;
    7. Comments of the EU Office on the Draft Law on IMC, of 22 March 2024;
    8. Comments of the Mission of the Organization for Security and Cooperation in Europe in Kosovo (hereinafter referred to as OSCE), regarding the Draft Law on IMC of March 2024;
    9. Comments of the IMC, regarding the Draft Law on the IMC;
    10. Attitudes of "*BIRN*" and "*Internews Kosova" regarding the* Draft Law on IMC;
    11. Recommendations of the Forum on Information Integrity regarding the Draft Law on IMC of 25 March 2024;
    12. Report of the Directorate for Legal Services and approximation of legislation related to the Draft Law on IMC of 23 April 2024;
    13. Legal Opinion of the Council of Europe on the Draft Law on IMC, of 24 May 2024;
    14. Report with amendments regarding the Draft Law on IMC, of the Functional Committee on Public Administration, Local Government, Media and Regional Development, of 5 June 2024;
    15. Final report with amendments of the Functional Committee on Public Administration, Local Government, Media and Regional Development, proceeded for consideration and voting at the plenary session, no. 08/5551/L-289, of 6 June 2024;
    16. Final report with amendments of the Committee on Budget, Labor and Transfers no. 08/5496/L-289, of 6 June 2024;
    17. Report of the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency no. 08/5505/L-289, of 6 June 2024;
    18. Report of the Committee on the Rights and Interests of Communities and Return, no. 08/5519/L-289, of 7 June 2024;

19. Report of the Committee on European Integration, no. 08.5542/L-289, of 19 June 2024;
20. The referral of the Chair of PG the PDK, Abelard Tahiri to withdraw from consideration in the Assembly of the Draft Law on IMC, of 11 July 2024;
21. Copy of the Decision of the Assembly, for the adoption of the Law on IMC, no. 08-V-769, of 11 July 2024;
22. The contested Law.

15. On 2 August 2024, the President of the Board of AJK requested from the Court an additional deadline until 20 August 2024, for submitting comments regarding the referrals of the Applicants, by which the constitutionality of the contested Law was contested.

16. On 6 August 2024, the Court notified the Chair of the AJK Board about the approval of his request for granting an additional deadline for submitting comments. Consequently, the Court informed AJK that the comments regarding the contested Law should be submitted to the Court no later than 20 August 2024.

17. On 9 August 2024, the Court, in relation to the referrals, received comments from (i) the Prime Minister, on behalf of the Government; and (ii) the Ombudsperson.

18. On 20 August 2024, AJK, regarding the contested Law, submitted the comments to the Court. On the same day, the Court notified the Applicants and interested parties about the receipt of comments from (i) the Prime Minister; (ii) the Ombudsperson; and (iii) AJK.

19. On 18 September 2024, the Court considered the report of the Judge Rapporteur and decided to postpone the consideration of the referral for a next session, following additional supplementations.

20. On 10 October 2024, the Court considered the report of the Judge Rapporteur and decided to postpone the consideration of the referral for a next session, following additional supplementations.

21. On 10 December 2024, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution, Rule 8 (Election of President and Deputy President) of the Rules of Procedure, and the Decision of the Court [KK-SP 812-1/24] of 10 December 2024, Judge Nexhmi Rexhepi was elected President of the Constitutional Court. Pursuant to paragraph 2 of Rule 8 of the Rules of Procedure and the aforementioned Decision of the Court, it was determined that Judge Rexhepi would assume the office of President of the Court after the expiry of the mandate of the current President of the Court, Gresa Caka-Nimani, on 30 December 2024. On the same day, namely 10 December 2024, by Decision of the Court [KK-SP 812-2/24], Judge Safet Hoxha was elected Deputy President of the Court, and based on paragraph 2 of Rule 8 (Election of President and Deputy President) of the Rules of Procedure and the aforementioned Decision of the Court, it was determined that Judge Safet Hoxha would assume the office of Deputy President on 11 December 2024.

22. On 30 December 2024, pursuant to paragraph 2 of Rule 8 of the Rules of Procedure and the Decision of the Court [KK-SP 812-1/24] of 10 December 2024, Judge Nexhmi Rexhepi assumed the office of President of the Court, while based on sub-paragraph 1.1 of

paragraph 1 of Article 8 (Termination of mandate) of the Law, President Caka Nimani's mandate as President and Judge of the Constitutional Court ended. On the same day, based on sub-paragraph 1.1 of paragraph 1 of Article 8 of the Law, Judge Selvete Gërxhaliu-Krasniqi also ended her mandate as Judge of the Constitutional Court.

23. On 16 April 2025, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of referrals for review on merits.

24. On 16 April 2025, the Court unanimously decided to (i) declare the referrals admissible; and (ii) to hold that sub-paragraphs 1.2 and 1.3 of paragraph 1 of Article 15 (Election of IMC members) of the contested Law are not compatible with Article 141 [Independent Media Commission] of the Constitution; (iii) to hold that sub-paragraphs 3.4 and 3.5 of paragraph 3 of Article 18 (Dismissal of the Chairperson and member of the IMC) of the contested Law are not compatible with Article 7 [Values] and Article 141 [Independent Media Commission] of the Constitution; (iv) to hold that sub-paragraphs 2.4 and 2.5 of paragraph 2 of Article 4 (Competencies of the IMC), paragraph 5 of Article 25 (Broadcasting license and their renewal), and paragraph 2 of Article 43 (Regulation of the ownership of the licensed/registered parties) of the contested Law are not compatible with paragraph 1 of Article 7 [Values] of the Constitution; (v) to hold that items 1.2.1 and 1.2.24 of sub-paragraph 1.2 of paragraph 1, and items 1.3.5 and 1.3.6 of sub-paragraph 1.3 of paragraph 1 of Article 60 (Sanctions with fines) of the contested Law are not compatible with paragraph 1 of Article 7 [Values] of the Constitution; (vi) to hold that the contested Law is repealed; and (vii) to reject the requests for interim measure.

Summary of facts

25. In 2021, the Government initiated the procedure for drafting the contested Law.

26. From 15 November 2021 to 3 December 2021, the Draft Law on IMC was open to public consultations through the platform for public consultations of the Government.

27. On 27 September 2022, the Opinion of the Ministry of Finance was issued regarding the budgetary cost of the Draft Law on IMC, while on 17 October 2022, the Legal Office within the Office of the Prime Minister issued the Declaration of Compliance with the European Union *Acquis*.

28. On 27 December 2023, the Government by the Decision [No. 03/180] approved the Draft Law on IMC.

29. On 11 January 2024, the Draft Law on IMC, together with the accompanying letters, including the Explanatory Memorandum and the list of comments from public administration institutions and civil society organizations, regarding the Draft Law of IMC, was processed in the Assembly for parliamentary review.

30. On 15 January 2024, the President of the Assembly assigned the Committee on Public Administration, Local Government, Media and Regional Development (hereinafter: Functional Commission) to review the Draft Law on IMC and to submit the Report with recommendations to the Assembly.

31. On 7 February 2024, the Functional Committee, after the first review of the Draft Law on IMC, recommended to the Assembly the adoption of the same in principle.

32. On 7 March 2024, the Assembly, after the first review, by Decision [No. 08-V-698] with sixty one (61) votes "*for*" and one (1) "*against*", adopted in principle the Draft Law on IMC. The Assembly, by the same Decision, assigned (i) the Functional Committee; as well as (ii) the Committee on Budget and Finance, the Committee on European Integration and the Committee on Rights and Interests of Communities and Returns (hereinafter: Standing Committees), to review the Draft Law on IMC and the Assembly within the time limit set by the Assembly's Rules, to submit the reports with their recommendations.

33. During the month of April 2024, the public discussions regarding the draft of the contested Law were organized in seven (7) main regions of the country, while the Assembly organized a public hearing on 25 March 2024.

34. Between 5 June 2024 and 19 June 2024, the standing committees submitted their reports regarding the Draft Law on IMC.

35. On 21 June 2024, the Functional Committee, after reviewing the Draft Law on IMC, approved the Report with recommendations. The final report of the Functional Committee, together with the proposed amendments, was distributed to all deputies of the Assembly, with the recommendation that the Draft Law on IMC, together with the proposed amendments, be adopted.

36. The Assembly, after receiving the final report from the Functional Committee, invited the deputies to the next plenary session, where among other things, the item of agenda was the second review of the Draft Law on IMC.

37. On 11 July 2024, the Assembly, after the second review, with fifty-nine (59) votes "*for*", no "*against*" and two (2) "*abstentions*", adopted the contested Law.

Applicants' allegations of referral KO152/24

38. The Applicants of referral KO152/24 claim that Articles 4, 10, 12, 15, 17, 18, 43 and 60 of the contested Law are not in compliance with Articles 7 [Values], 24 [Equality before the Law], 32 [Right to Legal Remedies], 42 [Freedom of Media], 54 [Judicial Protection of Rights], 119 [General Principles], and 141 [Independent Media Commission] of the Constitution.

39. The Court will further reflect the Applicants' claims of referral KO152/24 for the incompatibility of specific articles of the contested Law with specific articles of the Constitution.

I. Allegations for incompatibility of Article 4 (Competencies of IMC) of the contested Law with Articles 141 [Independent Media Commission] of the Constitution

40. The Applicants of referral KO152/24 emphasize that pursuant to Article 141 of the Constitution, the IMC is an independent body that regulates the broadcasting frequency spectrum in the Republic of Kosovo, which licenses public and private broadcasters, and determines and implements the broadcasting policy, including the exercise of other competencies defined by law. The applicants emphasize that while the Constitution has

reserved a special place for the IMC in its Chapter XII [Independent Institutions], Article 4 of the contested Law, among other things, stipulates the competence of the IMC in paragraph 2.21, to establish the Appeals Commission to handle the complaints of the parties in relation to licensed and registered parties in accordance with this law and sub-legal acts, as well as to draft and approve the regulation for the functioning of this Board.

41. That is, until Law no. 04/L-44 on the Independent Media Commission (hereinafter: the current Law in force or the Law of 2012), from Article 36 (Board of Appeals) to Article 44 (Decisions of the Board of Appeals), has clearly defined the double-instance of assessing the referrals or complaints of the subjects to which this law, the contested Law applies, in an unconstitutional manner, ceases the existence of the Board of Appeals, as a second instance authority in an administrative and independent procedure to assess the legality of the decisions of the IMC, thus violating Article 32 of the Constitution, according to which, every person has the right to use legal remedies against judicial and administrative decisions that violate his/her rights and interests. Furthermore, the Applicants emphasize that while the current law in force, in Article 44, had regulated the legal effect of the decisions of the Board of Appeals, as final decisions in an administrative procedure against which the law has expressly allowed the right of the subjects to pursue their legal right by legal remedies, the contested Law not only violates the guarantee for administrative review, according to Article 32 of the Constitution, but also strips the subjects to whom this law applies, from the right to enjoy judicial protection in case of violation or denial of a legal right. The Applicants emphasize that they do not contest the creation, namely the existence of the Appeals Board established through the contested Law, but consider that this commission, since it is elected by the IMC itself, cannot make an impartial and independent assessment of the legality of the IMC decisions, and therefore, such an instance of appeal is clearly ineffective. According to the Applicants, the IMC, being an independent constitutional institution, has failed to provide effective legal remedies that effectively ensure the assessment of legality by a second instance body in an administrative procedure, as is the case with the current law in force, which through the Appeals Board provided administrative control of the legality of the work of the IMC, which also in a special electoral procedure is elected by the Assembly.

II. Allegations for non-compliance of Article 10 (Media education) of the contested Law and Article 12 (Broadcasting policy) with Article 42 [Freedom of Media] of the Constitution

42. Further, the Applicants point out that despite the fact that paragraph 1 of Article 10 of the contested Law defines the responsibility of the IMC to prepare *"textual materials, animations, videos and other forms of communication to promote media education",* paragraphs 2, 3 and 4 thereof, through which Radio Television of Kosovo (hereinafter: RTK), as well as other generalistic channels, are obliged to transmit the materials defined by the IMC, constitutes a violation of the principle and guarantee of media freedom, within the meaning of paragraph 1 of Article 42 of the Constitution. On the other hand, Article 12 of the contested Law, within the responsibilities of the IMC to decide on the broadcasting policy, in its paragraph 7 has imposed the obligation for broadcasters to reserve at least 10% of their broadcasting time, as well as 10% of their programming budget to orient it "*for European works created by producers that are independent of the broadcaster*." Such a determination, the Applicants stress, although it may have a legitimate purpose, constitutes a disproportionate interference with the guaranteed freedom of the media, based on Article 42 of the Constitution.

III. Allegations for incompatibility of Article 15 (Election of the IMC members) of the contested Law, with Article 141 [Independent Media Commission] of the Constitution

43. Regarding this allegation, the Applicants emphasize that the contested Law, in paragraph 1 of Article 15 thereof, has stipulated that the members and the Chairperson of the IMC elected by the Assembly. The Applicants of referral KO152/24, in fact, emphasize that they do not challenge the right of the Assembly to elect members of the IMC, but the latter, being an independent constitutional institution with collegial composition, emphasize that the election of the Chairperson of the IMC by the Assembly and not by other members of the IMC constitutes a violation of the functional and organizational independence of this constitutional institution. As a result, the Applicants emphasize that the election of the Chairperson of the IMC as a collegial body by the Assembly constitutes a direct interference of the Assembly in the decision-making independence of this institution, which leads to the creation of the "*dependence*" and "*subordination*" of the Chairperson of the IMC, to the Assembly and not to the IMC, in which it exercises its function. Unlike this definition and setting another standard for the same institution, paragraph 3 of Article 17 of the contested Law, on the other hand, has determined that the deputy chairperson of the IMC is elected by the members of the IMC, "*by a simple majority, with a four (4) year term, with the possibility of re-election for another term, and is of another gender by the Chairperson*".

IV. Allegations for incompatibility of Article 17 [Dismissal of the Chairperson and members of the IMC] of the contested Law, with Article 7 [Values] of the Constitution

44. Allegations for non-compliance of paragraph 1 of Article 17 of the contested Law, the Applicants stress that, while this provision of this Article stipulates that the Chairperson and members of the IMC elected for a four (4) year mandate, with the possibility of re-election for another mandate, paragraph 2 of the same Article has created the possibility that in case of failure to elect the President and new members of the IMC, the Chairperson and members of the IMC, whose mandate has expired to continue exercising their duties and responsibilities until the election of the President and new members by the Assembly. Such a standard defined in this article constitutes an unprecedented case of unconstitutional justification of the exercise of the function and mandate of the member and/or chairperson of the IMC and which is in complete contradiction with paragraph 1 of the same article, creating circumstances of legal uncertainty, namely the violation of the principle of the rule of law, as one of the values guaranteed by Article 7 of the Constitution and as such is in full contradiction with the concept of mandate as a time definition, but also in full contradiction with the constitutional standards applicable in terms of exercising the mandate of holders of positions of independent constitutional institutions defined not only in Chapter XII [Independent Institutions] of the Constitution, but in relation to all other mandated positions provided for in the Constitution, except those in Chapter XII.

V. Allegations for incompatibility of Article 18 (Dismissal of Chairperson and Members of the IMC) of the contested Law, with Article 7 [Values] of the Constitution, namely with the principle of legal certainty

45. Regarding this allegation, the Applicants emphasize that the IMC, being an independent constitutional institution, which has a collegial composition, with the contested Law has been put in a pure situation of "*dependence*" and "*subordination*" by the Assembly, respectively by its simple majority, also in terms of the dismissal of the chairperson and

member of the IMC. Unlike other independent constitutional institutions on the one hand, as well as unlike the law in force on the other, which have determined that the member of an independent constitutional institution, respectively the IMC in the circumstances of the present case, can be made on the proposal of the members of the IMC itself, the contested Law, in paragraph 2 of the same article, has determined the only possibility of dismissal of the chairperson and member of the IMC, only by the Assembly, respectively on the proposal of the Parliamentary Committee responsible for media.

46. In light of this allegations, the Applicants consider that in relation to this Article it is important to address at least three aspects: (i) that the President and members of the IMC, as an independent constitutional institution, are dismissed by a simple majority of the Assembly, respectively with the same majority which elects them and not with a larger majority of deputies, so that their dismissal reflects the independence and impartiality in the report, among others, with the Assembly, without fear that the latter can easily dismiss them for their actions and decisions, as is the case with the Ombudsperson, who is part of Chapter XII of the Constitution and who is elected by a majority vote of all deputies of the Assembly, while he is dismissed by a majority of all its deputies, or as is the case with members of the KJC and KPC who are elected by the Assembly with a majority of deputies present, while the latter can be dismissed by a majority of deputies of the Assembly. So, even in the case of the IMC, as an independent constitutional institution, such a standard for dismissal should be higher than the standard for appointment*; (ii)* Article 18 of the contested Law, in its paragraph 3, has explicitly foreseen the circumstances, the fulfillment of which may lead to the dismissal of the IMC members, but has not foreseen the circumstances which may lead to the dismissal of the IMC president, while for the latter, although it has foreseen a special election procedure, has not set any circumstances for his dismissal. This regulation according to the Applicants clearly constitutes unequal treatment before the law, within the meaning of Article 24 of the Constitution, while the members of the IMC are placed in an unequal position in relation to the President of this institution; and (iii) Article 18 of the contested Law, in subparagraph 5 of paragraph 3 thereof, has explicitly provided that one of the circumstances for the dismissal of the IMC member is *"the loss of trust by the supervisory body due to violation of integrity, biased attitudes in favor of a party licensed or registered in the IMC"*. In this context, the Applicants consider that the criterion of *"integrity"* proposed in this subparagraph, in the sense of the principle of legal certainty, does not meet the requirements of "*clarity and accuracy*" but also the "*foreseeability"*" of the legal norm, especially due to the fact that the proposer of the contested Law, in the preparatory documentation, which he sent to the Assembly, has not clarified and defined that for the purposes of "*integrity*" what are the circumstances that violate it, in order to clearly and predictably ascertain how such a criterion is fulfilled or not. Furthermore, the Applicants point out that the issue of *"loss of trust by the supervisory body"* (the Assembly) constitutes an unprecedented and inapplicable standard with regard to independent constitutional institutions, such as the IMC. In this way, the IMC member is placed in a situation of constant exposure to dismissal, a circumstance that directly affects the exercise of his duty and function in a *"biased"* and "*dependent*" manner by a simple parliamentary majority.

VI. Allegations of incompatibility of Article 43 [Regulation of the ownership of the licensed/registered parties] of the contested Law, with Article 42 [Freedom of Media], in conjunction with Article 119 [General Principles] of the Constitution

47. The Applicants claim that the contested Law, in paragraphs 1, 2 and 4 of Article 43, imposes obligations on licensed/registered entities regarding the change of ownership and shares of the entity, in such a way that for each change not only to notify the IMC in writing, but also to obtain the prior written approval of this institution if the volume of change of ownership is over 10% of the value of the shares. In addition to these obligations, in paragraph 4 of this article, the licensed/registered entity is prohibited from owning more than 10% of the shares of another licensed entity. In this sense, the imposition of such obligations according to the Applicants constitutes a flagrant interference with the freedom of the media from Article 42 of the Constitution, as well as a flagrant interference with the right to economic activity, as a constitutional right which, among other things, in the circumstances of the present case is regulated by the legislation in force for Business Organizations in Kosovo and its violation also constitutes a violation of paragraph 1 of Article 119 of the Constitution, according to which, the Republic of Kosovo is obliged to provide a favorable legal environment for free market economy, freedom of economic activity and security of public and private property.

VII. Allegations of incompatibility of Article 60 [Sanctions with fine] of the contested Law with Article 7 [Values] of the Constitution

48. In connection with this allegation, the Applicants of referral KO152/24 claim that the contested Law has stipulated that the violation of its provisions by the subjects against whom it is applied, constitutes a basis for imposing punitive measures, namely fines from five hundred (500,00), up to four thousand (4,000.00) euro, for natural persons, while five hundred (500,00) up to twenty thousand (20,000.00) euro for legal persons. While the Law on Minor Offenses, the Applicants emphasize, has uniformly defined the minor offenses that can be applied, including subjects related to "*public information*", by defining the conditions of article which can be imposed a fine, as such. In this context, the Applicants emphasize that the collision of laws constitutes a sufficient basis for violating constitutional guarantees, such as the principle of legal certainty, legality and foreseeability, as elements of the rule of law, within the meaning of Article 7 of the Constitution.

49. In sum, the Applicants emphasize: *"In the light of the facts and the protection of constitutional guarantees on the independence of the IMC, guarantees violated by the contested law (in the aforementioned articles), we request the Court, as a constitutional and independent institution for the protection of the constitutionality that makes the final interpretation of the Constitution, to assess the constitutionality of the contested law and to partially repeal it, as ungrounded and incompatible with the Constitution. As the Applicants, we are convinced that the contested law, which has no constitutional and legal basis, is contrary to the democratic order of the Republic of Kosovo, it violates and undermines the independence of independent institutions and freedom of media, as a constitutional right."*

50. Based on the above, the Applicants of referral KO152/24, on the basis of the elaborated allegations of this referral, based on paragraph 5 of Article 113 of the Constitution, propose and request the Court that according constitutional and legal responsibilities render Judgment, and (i) declare the referral admissible; and (ii) declare Articles 4, 10, 15, 17, 18, 43 and 60 of Law no. 08/L-289 to the IMC, contrary to the Constitution.

Allegations of referral KO158/24

51. The Applicants of referral KO158/24 claim that the Decision [No. 08-V-769] of the Assembly of 11 July 2024 on the adoption of the contested Law is unconstitutional, because the procedure established by the legal acts in force during the adoption of the contested Law by the Assembly has been violated. Furthermore, they also claim that Articles 4, 14, 15, 17 and 18 of the contested Law are not in compliance with Articles 7 [Values], 24 [Equality Before the Law], 32 [Right to Legal Remedies], 42 [Freedom of Media], 54 [Judicial Protection of Rights], 119 [General Principles] and 141 [Independent Media Commission] of the Constitution.

52. The Court will further reflect the allegations of Applicants of referral KO158/24 of (i) violation of the procedure followed by the Assembly during the adoption of the contested Law, and (ii) will summarily present the allegations for incompatibility of specific articles of the contested Law with specific articles of the Constitution.

I. Allegations related to the procedure followed during the adoption of the contested Law in the Assembly

53. The Applicants emphasize that the contested Law is a legal act of general interest, which contains general rules for regulating the areas of a public and independent constitutional institution, such as the IMC. The provisions of the contested Law, according to them, affect freedoms and fundamental human rights, freedom of the media and freedom of expression, as well as the independence of the IMC. The Applicants claim that during the process of drafting the contested Law there were not enough public consultations for the inclusion of the media, journalists, citizens and interest groups directly affected by this Law, pointing out that these actions have seriously violated transparency and democracy, as fundamental constitutional principles in decision-making on issues of public interest. Further, the Applicants emphasize that the Functional Committee organized only three (3) days of public consultations, respectively from 21 March 2024, to 25 March 2024, where two of the three days were weekend days, namely days off. According to the Applicants, the appropriate public consultations regarding this law could lead to the amendment of the draft proposal of the contested Law, through which the potential problems in the early phase of the approval process could be highlighted, giving the proposing public authorities time to amend the draft proposal of the contested Law.

54. In this context, the Applicants of referral KO158/24 stress that public consultation is important to identify unwanted consequences for freedom of media and freedom of expression as fundamental constitutional principles. According to them, the participation of citizens, media, journalists and other interested parties in public discussions in the process of drafting laws by the Assembly is the essence of democracy and a fundamental constitutional principle. In conclusion, the Applicants claim that the Functional Committee failed to provide the opportunity and timely involvement of citizens, media, journalists and interested parties in public discussions during the process of drafting and adopting this law.

II. Allegations regarding the incompatibility of Article 4 (Competences of the IMC) of the contested Law, with articles 24 [Equality Before the Law], 32 [Right to Legal Remedies], 42 [Freedom of Media], 54 [Judicial Protection of Rights], 119 [General Principles] of the Constitution

55. The Applicants allege that paragraph 21 of Article 4 of the contested Law is contrary to Articles 24, 32, 42, 54 and 119 of the Constitution, because this Article seriously violates

legal certainty, the right to legal remedies, as well as equality before the law of the media, journalists and those persons affected by this Law, or by the work of licensees under the contested Law. The Applicants further emphasize that in no other provision of the contested Law, the Appeals Board (Article 4, paragraph 2.21) has not been assigned duties, has not been guaranteed independence in decision-making by the IMC, nor has it been assigned structure or composition, nor budget to function as an independent body for reviewing the complaints of the parties in relation to the licensed and registered parties in accordance with this Law, elements which, according to the Applicants, are essential to function as an independent body handling the complaints of the parties. Further, in the wake of their claims, it is emphasized that the independence of the Appeals Board should be guaranteed by law and not by sub-legal acts approved by the IMC. Furthermore, the Applicants point out that from the text of the provision of Article 2.21 it is not clear whether the Appeals Board also handles the complaints of the parties, in relation to the decisions of the IMC, and this fact, according to them, violates the principle of two instance decision-making in the procedure for deciding on the complaints of the parties, as well as the procedure how the members of the Appeals Board were elected, and on the basis of what criteria, and what is the composition of this body.

56. In order to guarantee the right to legal remedies, as guaranteed by Article 32 of the Constitution, the Applicants emphasize that the Appeals Board should be an independent body, clearly defined by the contested Law, and not by a sub-legal act, which should have a clear composition and structure and with a budget allocated by the IMC. Given that the Appeals Board lacks the abovementioned attributes and elements, the Applicants consider that Article 4, point 2.21 of the contested Law, violates the rights of the parties to effective legal remedies guaranteed by the Constitution, where, among other things, there is a risk of creating dependence and subordination of the Appeals Board to the IMC, and to act unilaterally in relation to the complaints of the parties, becoming a tool of the IMC to punish licensed and registered parties, thus violating the constitutional principle of media freedom.

III. Allegations related to the incompatibility of Articles 15, 17 and 18 of the contested Law with Articles 42 and 141 of the Constitution.

57. The Applicants, in this context, stress that paragraph 2 of Article 15 of the contested Law does not guarantee gender equality in representation in the composition of the IMC, because it generally refers to the legislation on gender equality. Further, the Applicants emphasize that if we refer to Law no. 05/L-020 on Gender Equality, respectively paragraph 6 of Article 8 thereof, it is clearly noted that in relation to the IMC there is no mandatory provision which requires representation in the quota of fifty percent (50%) for each gender. In this context, the Applicants claim that paragraph 2 of Article 15 of the contested Law has gender discrimination, because this provision has not accurately specified gender representation, thus guaranteeing gender non-discrimination, in the composition of the IMC. On this basis, the Applicants ask the Court to declare this Article unconstitutional, forcing the Assembly to avoid gender discrimination in the composition of the IMC.

58. In what follows, the Applicants claim that Articles 15, 17 and 18 of the contested Law, violate the independence and integrity of the IMC, by the parliamentary political majority, directly affecting the freedom of media, given that all members have a four (4) year mandate, it subordinates the Chairperson and members of the IMC to the parliamentary political majority to control the composition of the IMC. By having control

and supervision over the members of the IMC, the parliamentary majority, according to the Applicants, can impose the dismissal of the chairperson and members of the IMC, and create dependence of the chairperson and members of the IMC, on the parliamentary political majority. This fact, according to the Applicants, is best expressed in the language of the contested Law itself, which states: *"Loss of trust by the supervisory body due to violation of integrity, biased attitudes in favor of a licensed or registered party"*. It is emphasized that this legal provision legitimizes and creates legal opportunities for the parliamentary political majority, that by using the supervisory function of the Assembly, towards the IMC, as an independent constitutional body, may dismiss at any time, the chairperson and members of the IMC, since the contested Law does not set any measuring criteria "*of violation of integrity, biased attitudes in favor of a licensed or registered party",* and that this opportunity is left entirely to the discretion of the supervisory body of the Assembly (see, in this context, the provisions of Articles 17 and 18 of the contested Law).

59. In addition, the Applicants emphasize that the independence of the IMC is closely related to the constitutional principle of media freedom, adding that when the independence of the IMC is violated, the constitutional principle of media freedom is also violated. On these claims, the Applicants emphasize that the international organizations where our country intends to join, such as the Council of Europe, the OSCE and the European Union have expressed their disagreement regarding the manner and form in which this law has been adopted by the parliamentary majority, which through legal opinions and reports have assessed that the independence of the IMC has been violated and the freedom of media has been endangered. Furthermore, it is at the discretion of the Court to assess the legal significance of these documents issued by these international organizations, regarding the establishment of this constitutional issue.

60. In conclusion, the Applicants request the Court: (i) to impose an interim measure against the contested Law, in accordance with Article 116.2 of the Constitution, in conjunction with Article 27.1 of the Law on the Court, and Rule 55. 4 (c) of the Rules of Procedure; (ii) to declare the referral admissible for consideration on merits and procedure; (iii) to declare, the contested Law and Decision [no. 08/V-769] of the Assembly, of 11 July 2024, in its entirety, incompatible with the Constitution, namely with articles: 7 [Values], 24 [Equality Before the Law], 32 [Right to Legal Remedies], 42 [Freedom of Media], 54 [Judicial Protection of Rights], 119 [General Principles] and 141 [Independent Media Commission] of the Constitution; (iv) to declare invalid, the contested Law and Decision [no. 08/V-769] of the Assembly, of 11 July 2024.

Comments submitted by the Prime Minister on behalf of the Government

61. In the capacity of the interested party, the Prime Minister, on behalf of the Government on 9 July 2024, submitted comments regarding the referrals KO152/24 and KO158/24. The Government initially emphasizes that the right to media is recognized through Article 10 of the European Convention on Human Rights, (hereinafter: ECHR) for guaranteeing freedom of expression referring to the case of the European Court of Human Rights (hereinafter: ECHR) *The Sunday Times v. United Kingdom*, no. 6538/74, Decision of 26 April 1979. The Applicants, according to the Government, have not presented any arguments explaining how the contested Law restricts the possibility or ability of the media to express themselves freely.

62. Moreover, in his comments, it is emphasized that even if the Applicants were to argue in any way that the contested Law restricts freedom of expression, in order to hold constitutional violations, it would have to be argued by the same that these restrictions are however not justified and do not pursue a legitimate aim, as required by paragraph 2 of Article 10 of the ECHR. According to the Government, these two steps have not been argued by the Applicants, to establish whether the contested Law has produced any violation of constitutional rights or of the international norm incorporated in the Constitution. The contested Law not only does not violate European human rights norms, but also implements them in the framework of the International Stabilization and Association Agreement with the European Union, through which the Republic of Kosovo has undertaken obligations in the implementation of European standards. In the comments, it is further noted that the contested Law transposes the European Union Directive on Audio-Visual Media 2010/13, of 10 March 2010, as amended by Directive 2018/1808 of 14 November 2018 (hereinafter: AVMS Directive) and carries its spirit.

I. Regarding public consultations

63. Regarding the Applicants' allegations of lack of public consultations, the Government emphasizes that, after the public consultations held by the Office of the Prime Minister as a sponsor of the contested Law, from 15 November 2021 to 3 December 2021, the public discussion procedure was conducted (25 November 2021 and 6-7 September 2022), where civil society, citizens, international partners and all interested parties had the opportunity to submit comments and thus become part of the drafting of the new policy that follows that of the EU, regarding the IMC. Following the comments, it is emphasized that the Office of the Prime Minister has also organized a roundtable with European Union experts who have drafted the Law on IMC, with stakeholders and representatives of public institutions, to address any questions regarding the final form of the contested Law. Further, it is emphasized that for the contested Law, the OPM has been informed that the responsible Committee of the Assembly in 7 main regions of the country has also held a public hearing. The contested Law states that a significant number of amendments have been improved and perfected after the discussions, so the claim that it is in this case violated the principle of the rule of law, according to the Government, does not stand under any circumstances. The contested Law includes the legislation of the European Union and guarantees equal, professional and dignified treatment, in order to ensure quality in relation to the regulation of the media system in Kosovo and that the provisions of the law regarding the functioning of the IMC do not contradict any provisions of the Constitution. This is because the contested Law regulates the competencies of the IMC in relation to the Constitution and the principles of freedom of expression, media and protection of human rights for the citizens of Kosovo, especially for children.

II. Regarding the competencies of the IMC, according to Article 4 (Competencies of the IMC) of the contested Law

64. The allegation of the Applicants of incompatibility of Article 4 of the contested Law with the Constitution, according to the Government, tries unsuccessfully to prove constitutional violations for lack of foreseeability, in conjunction with the Board that would supervise the decision-making of the IMC, more precisely the members of the IMC, elected by the Assembly. Following the comments, it is noted that the Applicants claim that the absence of a second instance of complaint in the administrative procedure constitutes a violation of Article 32 of the Constitution, which results in the denial of the exercise of the complaint. However, according to the Government, such a claim does not

correspond either to the essence of Article 32 of the Constitution or to the jurisprudence of the ECtHR, a case law implementing the ECHR. The Government claims that neither in the Constitution nor in the ECHR, this right does not guarantee the possibility of appealing specifically through the administrative procedure, as long as there is another form of appeal at the national level, guaranteed by law, namely in the Court.

65. In this regard, it is emphasized that the decisions of the IMC cannot be subject to another commission as a second instance, within this institution itself, and that the Constitution does not recognize these complaints commissions as constitutional categories, therefore as such they cannot be even allowed by law. In order to ensure the implementation of the right to effective remedies in the Republic of Kosovo, courts of all levels exist and can be used without any obstacles, as argued above, and that the decisions of the IMC in case of dispute are subject to review by the court, a rule which applies to decisions of all independent institutions and agencies of the Assembly. It is further emphasized that neither the Independent Oversight Board for the Civil Service, nor the Procurement Review Body, nor the Competition Authority, nor the "ICMM", the Energy Regulatory Office, the Regulatory Authority of Electronic and Postal Communications have a complaints commission over their collegial bodies, thus the possibility of appealing to the court to challenge the decisions of the IMC, meets this criterion, therefore it cannot be found a violation of Article 32 of the Constitution and the lack of use of effective legal remedies to challenge the decision. Furthermore, in the comments, it is emphasized that the contested Law clearly states that the Appeals Board will address the complaints of the parties in relation to the licensed and registered parties in accordance with this Law and this Board will serve to address the complaints of the citizens regarding the work of the licensed and registered parties, and will not serve as a complaints commission against the decisions of the IMC, since the decisions of the IMC, as an independent constitutional body, are final in the administrative procedure.

III. Regarding "Articles 9 and 12 - Media education and Broadcasting Policy"

66. Regarding this article (*note of the Court*: the comments refer to Article 9 regarding media education, however this issue is regulated by Article 10 of the contested Law), the Government emphasizes that one of the competencies of the IMC is also the obligation of RTK and other generalist channels to broadcast media education materials, and that this cannot be taken as an interference in editorial policies, but as a duty that the IMC should implement within the competencies it has and the legislator. This responsibility of the IMC is clearly given by law and as such, is known to the general public. In this context, the Prime Minister, on behalf of the Government, emphasizes that the allegations of the Applicants for violation of Article 42 of the Constitution are ungrounded, because the obligation of broadcasting media education on behalf of the IMC regulatory itself, does not fall into editorial policies, does not limit or in any other way affect the independence of the media when broadcasting the news. Consequently, it cannot be argued that these provisions of the contested Law violate Article 42 of the Constitution.

IV. Regarding Article 15 (Election of IMC members)

67. Regarding the election of IMC members, the Government emphasizes that the contested Law foresees the election of eleven (11) IMC members by the Assembly, with a tendency to ensure inclusive participation of professionals in the field, significantly reducing the concentration of power within a small group of people. According to the Government, the lawmaker has thus foreseen the election of the chairperson of the IMC by the Assembly,

as he has done with the Procurement Review Body or the Competition Authority, adding that the chairperson of the IMC is the first among equals, with the same weight of votes as any other member of the IMC. The contested law provides that all members are accountable to the relevant committee of the Assembly for their work. So, with the fact that the chairperson is elected by the Assembly, like any other member, the Government emphasizes, it does not distinguish him from other members, neither in terms of performance, nor of responsibility in decision-making, within the IMC. In this context, the Government refers to paragraph 2 of Article 141 of the Constitution, which stipulates that: *"The members of the Independent Media Commission shall be elected in a transparent process in accordance with the law,"* stressing further that nowhere in this provision, or any other provision of the Constitution, is mentioned either explicitly or indirectly, that the chairperson of the IMC should be subject to another selection procedure that differs from the procedure for the selection of other members of the IMC. Consequently, the comment of the Applicants, according to the Government, has nothing to do with the violation of Article 141, or any other provision of the Constitution.

V. Regarding Article 17 – (Mandate of the Chairperson and members of the IMC)

68. The contested Law clearly stipulates that the members of the IMC are elected for a four (4) year term and are unable to be re-elected. This, according to the Government, also coincides with Article 141 of the Constitution and the commentary on the Constitution. This regulation, according to the Government, has been made to prevent vacuum and legal uncertainty, in relation to the exercise of the duty of the chairperson and members of the IMC, until the election of new members. According to the Government, the claim of the Applicants for violation of Article 7 of the Constitution is not based on the fact that the members of the IMC are elected by the Assembly, as defined by the Constitution itself. Therefore, this regulation has been made to prevent and avoid legal uncertainty as well as the lack of regulation of the media sphere in Kosovo, and in full this has been done by the Assembly in accordance with Article 7 of the Constitution.

VI. Regarding Article 18 (Dismissal of the Chairperson and members of the IMC)

69. Regarding the dismissal of the chairperson and members of the IMC, the Government recalls Article 141 of the Constitution and the commentary of the Constitution (without specifying the same), which clarifies that the members of the IMC are elected by the Assembly, according to the procedure provided by law, adding that the competencies of the IMC, but also the procedures for electing members, as well as their composition, is provided by law. Thus, according to the Government, the dismissal of members is foreseen by law, as is their appointment, so the number needed for appointment is also applied for dismissal, adding that this is foreseen by law and does not contradict the Constitution. Further in the comments it is emphasized that a parallel cannot be drawn between the procedure that foresees the selection and dismissal of the Ombudsperson, the judges of the Constitutional Court and the President, which is expressly provided by the Constitution, due to the fact that the Constitution has left the regulation of the IMC to the Assembly by the law. The integrity of the members cannot be measured quantitatively, therefore it cannot be defined by issuing a certain number of decisions, or attending IMC meetings, and that on the other hand public positions cannot belong or continue to belong to someone who shows a lack of integrity, as can be ascertained by the majority of the IMC Parliamentary Oversight Committee. Also, according to them, a member can be dismissed only if the majority of deputies of the Assembly vote for dismissal. In this line, it is emphasized that the IMC member does not play the role of a

judge, whose competencies and duties have a greater impact on the rights or limitation of citizens' rights. Consequently, considering the fact that the purpose of the Constitution is to leave the regulation of the IMC in the hands of the legislator, it cannot be argued that one of the grounds for dismissal, such as integrity, is contrary to the Constitution.

VII. Regarding Article 43 (Regulation of the ownership of the licensed/registered parties)

70. In this context, the Government refers to the AVMS Directive [no. 2010/13/EU] and the opinions of the Venice Commission regarding Freedom of Expression and of Media. According to the Government, the guaranteed principle of media freedom has as an imperative the prohibition of the concentration of media ownership in the same owner, therefore Article 43 of the contested Law is a breakdown in practice of the constitutional regulation on media pluralism. This provision of the contested Law, according to the Government, not only does not violate Article 42 of the Constitution, on the contrary, it is a necessary measure for the implementation of this Article in practice. In this line, for the purpose of ensuring political pluralism and the functioning of democracy, the comments are referenced in the Law no. 08/L-228 on General Elections, which does not allow an individual to be the president of more than one political entity. According to the Applicants, this may seem like a restriction on freedom of association, but this fact is absurd in itself, because such a restriction is necessary to ensure political pluralism, so that political power is not concentrated in the hands of only one or few persons. In this sense, media pluralism is a matter of particular importance for the IMC. As a result, the same must be regulated by law as it guarantees it. Moreover, the Government emphasizes that the percentages set by the contested Law are already part of the IMC regulation in force, which contain internationally accepted standards for the media sector and market, therefore, according to him, in order to ensure media pluralism there should be a clear limitation of the concentration of shares of the same owner in different media. Further, in the comments it is stated that the Applicants object to the fact that the contested Law requires that for any change in ownership to be informed the IMC, namely to seek permission from the same body, when the change of ownership is over ten percent (10%) of the value of the shares, claiming that Article 43 constitutes a flagrant interference in economic activity, as it is forbidden to own more shares in another licensed entity. According to the Government, the request to receive a preliminary approval from the IMC and to notify it, in case of a change in the value of the shares to a certain percentage, is a guarantee that prevents the concentration of media ownership in the same owner, as the AMSD directive and EU legislation require, that every citizen is familiar with the final beneficiaries of the media, and thus know who launchs the news and media content. Consequently, the Applicants have failed to prove or argue their allegations of violations of Articles 42 and 119 of the Constitution.

71. In conclusion, referring to the arguments elaborated above, it is emphasized in the comments of the Government, the Applicants have failed to argue that in the contested Law there is any element that is contrary to the Constitution, moreover that the latter was drafted by transposing in full form, as far as possible from a non-member EU country, the AVMS directive, and that this law is also in full compliance with the international Stabilization and Association Agreement, as well as the international principles of media freedom and media pluralism.

Comments submitted by the Ombudsperson

72. On 9 August 2024, the Ombudsperson, in the capacity of interested party, submitted comments regarding the Applicants' referrals. The Ombudsperson considers that the issue of media freedom and freedom of expression is closely related between them, taking into account this fact considers that it is very important to assess the contented issues that have been raised in referrals KO152/24 and KO158/24, with regard to the contested Law. The Ombudsperson's comments focus on issues related to (i) freedom of the media, a right guaranteed by Article 42 of the Constitution; (ii) freedom of expression, a right guaranteed by Article 40 of the Constitution; and the spirit of Chapter Twelve (XII) of the Constitution, which concerns independent constitutional institutions.

73. The Ombudsperson, through his comments, says that for the content of the provisions of Article 18 of the contested Law, stressing that the competence of the Assembly for the dismissal of the chairperson or member of the IMC is not disputed, because as the Court has determined in some of its cases, the Assembly has supervisory competence over public institutions. However, according to him, in the present case, care should be taken in the dismissal procedures, namely in the majority required by the Assembly for the dismissal of the chairperson or member of the IMC, as well as in the circumstances for which dismissal may be requested. In this context, the Ombudsperson recalls the case KO134/21, paragraph 114, where the Court, among other things, had emphasized that: *"the exercise of the supervisory role of the Assembly is of special importance, especially in the field of media freedom considering its role and importance in a democratic society [...].The case law of the ECtHR establishes not only the obligation of the state not to interfere with the values of freedom and pluralism of the media and the freedom of expression, but also the positive obligations of the state [...]"*. In this sense, the Ombudsperson emphasizes that taking into account the established principles on media freedom, through which media freedom and pluralism is guaranteed, and freedom of expression as freedom that includes the right to express, disseminate and receive information, opinions and other messages, without being hindered by anyone, in relation to IMC, as an independent constitutional institution that regulates the spectrum of Broadcasting Frequencies in the Republic of Kosovo, licenses public and private broadcasters, defines and implements the broadcasting policy, and exercises other powers defined by law, considers that the Court's assessment regarding the compliance of Article 18 of the contested Law, regarding the dismissal procedure and the circumstances for which the chairperson or member of IMC may be dismissed is necessary.

I. Regarding the dismissal of the chairperon and member of the IMC, according to paragraph 2 of Article 18 of the contested Law.

74. Based on this provision, the Ombudsperson considers that the possibility of dismissing the chairperon or member of the IMC by a simple majority by the Assembly, seemingly reveals a much easier possibility of political influence on the chairperson or member of the IMC, therefore in this case, according to the Ombudsperson, their dismissal by a simple majority can have a direct impact on the independent functioning of the IMC. Establishing the manner of dismissal of the chairperson or member of the IMC, with a higher majority than the simple majority, according to him, would bring greater security to the chairperson or member of the IMC, in the exercise of their functions. In this regard, the Ombudsperson considers that the vote to dismiss the chairperson and members of IMC, with a 2/3 majority, would be a safer solution for the independent functioning of IMC.

II. Regarding the circumstances for the dismissal of the chairperson and member of the IMC, according to paragraph 3 of Article 18.3 of the contested Law.

75. After analyzing the content of paragraph 3, of Article 18 of the contested Law, the Ombudsperson emphasizes that the failure to determine the circumstances for which the Chairperson of IMC may be dismissed, and the determination of the circumstances under which the member of the IMC may be dismissed, raises issues of unequal treatment between the Chairperson and the members of the IMC according to Article 24 of the Constitution, and this failure, according to him, may result in the possibility of abuse of the duty of the Chairperson, because with the contested Law, except for subparagraph 3.1 (professional incompetence) the contested Law has not provided other circumstances for the dismissal of the Chairperson of the IMC. The Ombudsperson emphasizes that there must be the determinability of the norm for each independent institution, in order to require the dismissal of the leaders or members, because such determinations increase the responsibility of the same, in the performance of the duties and responsibilities provided by the Constitution and law, in the independent constitutional institutions. The Ombudsperson emphasizes that the wording of paragraph 3, *"The dismissal of the IMC member is as a result of these circumstances:"*, in practical implementation brings ambiguity and inaccuracy, because this paragraph refers to the dismissal of the IMC member, while in subparagraph 3.1, it expressly states: *"3.1 professional incompetence - if in a proven manner and continuously fails to fulfill the duties of the Chairperson and the IMC member"*. The Ombudsperson emphasizes that such a wording presents legal uncertainty for the position of the IMC chairperson because it becomes incomprehensible whether paragraph 3, subparagraph 3.1 also applies to the chairperson, or only to the IMC member. According to the Ombudsperson, the legal uncertainty of IMC members also results in the fact that the norm has not clarified which institution or body assesses the professional incompetence in which the IMC members fail to perform. Given the fact that the parliamentary committee makes the request for dismissal, it is dangerous to leave the assessment of professional incompetence to the discretion of the parliamentary committee, because such a norm would increase the risk of political influence on the independent functioning of the IMC.

76. Furthermore, the Ombudsperson considers that leaving to the discretion of the parliamentary committee to supervise the work of IMC, namely (i) assessment of professional incompetence, failure to perform duties for an uninterrupted period of more than three (3) months, without approval from IMC, (ii) participation in a decision-making process that is contrary to the interests of IMC, the public, or one of the social groups that by this law the IMC should provide support or protection, or (iii) the loss of trust by the oversight body due to violation of integrity, biased attitudes in favor of a licensed or registered party in the IMC, puts the chairperson and members of the IMC in a situation of legal uncertainty, because the general legal determinations do not clarify in which cases the fulfillment of any of the circumstances listed in Article 18, paragraph 3 can be considered, the provision contradicts the principle of independence and non-interference in the decision-making of the IMC, which is one of the prerequisites for such institutions provided for in Chapter 12 of the Constitution.

77. In conclusion, the Ombudsperson considers that the circumstances for which the chairperson or member of IMC may be dismissed should be explicitly listed, so that the legal certainty and the determinability of the norm are not compromised for the chairperson and members of IMC, as well as to avoid the possibilities of any political or other interference, which may negatively affect the independent functioning of IMC. The

Ombudsperson considers it very important for the Court to assess whether Article 18, paragraph 2 and 3 is in compliance with Article 7 [Values], Article 24 [Equality Before the Law], Article 141 [Independent Media Commission] of the Constitution.

Comments from the AJK

78. The AJK, also, in the capacity of the interested party, has submitted comments regarding the contested Law, considering that it is unconstitutional, both in terms of the procedure followed for its approval and its content. More precisely, AJK points out that Articles 1, 3.1.1.3, 4.2.21, 14.1, 14.6, 15, 17.1, 17.2, 18.2.1 and 18.3.5 of the contested Law are contrary to Articles 7, 32, 40, 42, 99 and 141 of the Constitution.

79. The AJK, in the introduction of the comments, emphasizes that the contested Law is a vital law for media freedom and freedom of expression in the Republic of Kosovo. The serious procedural flaws and omissions during the drafting of this law and the extremely disturbing content of some specific articles has aroused numerous reactions and discussions in the public and has aroused the interest of various local and international organizations, including that of AJK. The latter emphasizes that among those who have reacted against the contested Law and considered it to be contrary to international and European standards on media freedom are: the Council of Europe; the Council of Europe Commissioner for Human Rights; various ambassadors of European countries; various civil society organizations in Kosovo; and various international organizations such as Article 19 Europe, ECPMF, OSCE, etc. The AJK further refers to the findings of the Council of Europe Commissioner for Human Rights, who seems to have pointed out that the adoption of the contested Law does not include some key recommendations made by the Council of Europe in the legal opinions of this organization and if adopted as such, the contested Law risks undermining freedom of expression and freedom of the media. In this regard, AJK considers that the Court should look at this law in the context of the disturbing developments of media freedom in Kosovo and use its constitutional jurisdiction to prevent further deterioration of media freedom in the country. The AJK, announces that it does not challenge in any way the constitutional integrity of the Assembly for regulating specific issues related to the IMC, through a special law. According to it, it is the Constitution itself that provides that certain aspects for the IMC will be determined by law. However, AJK recalls the general constitutional principle, referring to cases KO72/20 and KO79/23, where it is noted that the Assembly is obliged *"to respect the law-making procedures and to vote laws that are in compliance with the Constitution and the values proclaimed therein"*.

80. On this basis, the AJK proposes to the Court to assess: (i) whether the constitutional norms for legislating in the procedural aspect of the drafting of the contested Law have been respected; and (ii) whether the constitutional norms in the substantive aspect have been respected through the legal amendments that appear in the contested Law, finally stating that the contested Law, taking into account the procedure followed, is declared in its entirety as unconstitutional and to pave the way for a new process for amending the current Law in force, in accordance with the Constitution and international standards, respectively those of the Council of Europe.

I. Regarding the procedure followed

81. Regarding the procedure followed, the AJK emphasizes that the preparation phase of the Draft Law on IMC was followed by a lack of transparency, genuine public consultations and ongoing legal irregularities. In this regard, the AJK refers to Article 99 [Procedures]

of the Constitution, which stipulates: *"The methods of work and decision making procedures of the Government shall be regulated by law and regulations"*. The AJK recalls that on 7 September 2011 the Government issued Regulation No. 09/2011 of Rules of Procedure of the Government of the Republic of Kosovo, which in Article 32, regulates the issue of public consultations as follows: *"1. In relation to any proposal for which a concept document is required, in addition to consulting other ministries and public administration bodies as required by article 7 of this regulation, the originating ministry shall publish the substance of its proposal for public comment and shall specifically seek the comments of any non-Governmental organization that would be substantially affected by the proposal. 2. In conducting this consultation, the originating body shall provide sufficient information in a publicly understandable form to permit the public to understand the nature and consequences of the proposal. The originating body shall also publicly announce the beginning of the consultation exercise, and shall permit sufficient time for the public and non-Governmental organizations to consider the recommendations and offer a considered response. 3. The results of such consultations shall be reported to the Government meeting or Ministerial Committee as part of the concept document or explanatory memorandum required by articles 29 and 30. 4. The consultation process shall be conducted in accordance with an instruction to be issued by the Secretary proposed by the Legal Office. 5. In addition to the requirements of paragraph 1, the Prime Minister, the Government meeting or a Ministerial Committee may require a Minister to undertake public consultation on any other issue"*.

82. In this line, the AJK emphasizes that the Government has opened public consultations regarding the contested Law, on 15 November 2021 and the deadline for concluding consultations on this Law was foreseen to be 3 December 2021. However, on the following documentation page, in addition to the Draft Law on IMC, which preceded the contested Law and a document named as "*Additional Documentation*", which contains the forms for interested parties used to submit their comments, there is no other information regarding the submitted contributions. This lack of contribution from the interested parties regarding the contested Law, according to AJK, raises doubts about procedural irregularities in this process. This suspicion, according to AJK, is further reinforced by the Annual Report for 2021, issued in May 2022, by the Office for Good Governance that functions within the Office of the Prime Minister, where on page 28 of the Report, the assessment for the process of consultations on the contested Law is negative. Furthermore, the AJK states that the document of the Draft Law on IMC, submitted for public consultation differs substantially from the version that the Government later sent to the Assembly for review and approval. For example, according to the same, the 2021 version does not contain the provisions contested by the Applicants KO152/24 and KO158/24, such as those related to the competencies of the IMC, for the manner of electing the IMC chairperson. This fact shows that for the most problematic provisions of the contested Law there were no genuine public consultations or proper explanations in the preparatory documents.

83. Another aspect that raises doubts about the regularity of the process, according to AJK, is the one related to the obligation deriving from Article 7 of the Government's Rules of Procedure, which states: *"1. Before the originating body or a government body submits a concept document, explanatory memorandum, draft law or sub-legal act, strategic plan of a ministry or sectorial strategy for deliberation by the Government, the body preparing the material (the 'originating body') is responsible for ensuring that all the highest bodies of the state administration, central bodies of the state administration,*

independent bodies of the state administration and other relevant bodies which the Government is obligated to consult in accordance with the Constitution or whose work might be affected by the concerned proposal (draft law, sub-legal act or policy) have the opportunity to comment upon it. In particular, the originating body must consult: 1.1 The Ministry responsible for Finance, to ensure adequate consideration of any direct or indirect impact of the proposal on public expenditure or on the economy; 1.2 The Ministry responsible for European Integration to ensure that the proposed policy is in harmony with EU integration priorities and that it complies with EU requirements and the acquis communautaire. (...)". Based on the doubts raised about the process, AJK states that the Court would have to request from the Government and the Assembly the submission of full preparatory documentation regarding the contested Law to prove whether there has been a violation of Article 99 of the Constitution in this particular case.

II. Regarding the content of the provisions of the contested Law

i. Allegation of violation of Article 141 [Independent Media Commission] of the Constitution through Articles 14.1, 15, 17.1, 17.2, 18.2.1 and 18.3.5 of the contested Law (Issues related to the number of members of the IMC, mandate, dismissal of members and election of the Chairperson of the IMC)

84. The AJK, following its comments, emphasizes that one of the main constitutional issues that this case entails is whether the independence of the IMC has been violated, through the legal amendments provided by the contested Law, adding that there are some key articles of the contested Law which have a substantial impact on the independence of the IMC and drastically lower the standard established so far regarding the organizational and functional independence of the IMC. More specifically, the content of Articles 14.1, 15, 17.1, 17.2, 18.2.1, 18.3.5 of the contested Law, which relate to the number of members of the IMC, the mandate, dismissal and election of the Chairperson of the IMC, according to the AJK, violate the independence of the IMC, to the extent that Article 141 of the Constitution is violated. The AJK in this context: refers to (i) the practice of the Constitutional Court, regarding the functional and organizational independence of independent institutions, foreseen in Chapter XII of the Constitution; (ii) the regulations made by the Law of 2012, and the amendments made to the contested Law; (iii) the reports and legal opinions provided by the Council of Europe. In relation to the independence of the IMC, the AJK refers specifically to the case KO79/23, where the Court, among other things, had emphasized: *"The Constitution has recognized a special and important status and role in the smooth running of public state duties also to the Independent Institutions referred to in Chapter XII of the Constitution, which have been singled out as such not without reason and which include [...]"*. Further, the AJK refers to the Legal Opinion regarding the contested Law of the Division for Cooperation in Freedom of Expression of the Council of Europe of 24 May 2024, drafted with the financial support of the European Union and the Council of Europe (hereinafter: the Opinion of the Council of Europe), stressing that the latter on pages 33-36 has emphasized that the "*Independence and autonomy*" of the National Regulatory Authorities, such as in this case the IMC, are not terms that are simply confirmed through a legal provision, but that an independence/autonomy should be visible in terms of the functioning of these regulatory authorities, their financial resources, methods of appointment, discharge and management of these bodies and in terms of practical implementation of the legal framework. Pursuant to the above principles, the AJK considers that the contested Law: (i) creates a unconstitutional *"interference"* in the independence of the IMC; creates a "*dependency"* and "*subordination*" of the IMC to the

Assembly; that during the adoption process, the legislator has not taken into account the constitutional guarantee of the IMC to be treated as an independent body; that the contested Law, except that it does not correctly apply the relevant articles of the Constitution; ignores in entirety the case law of the Court and fails to "*embody*" it in this legal initiative.

ii. Regarding the election of the Chairperson and the number of IMC members

85. The AJK, in this sense, emphasizes that with the Law in force on the IMC of 2012, it was foreseen that the Chairperson of the IMC is elected by his own members, while with the already contested Article 15 of the Law it is foreseen that the Chairperson of the IMC will be elected by the Assembly, by a simple majority of votes. While the members of the IMC have so far had the right to select their Chairperson, the contested Law delegates this right to the Assembly, thus interfering with the organizational independence of the IMC, contrary to Article 141 of the Constitution. According to the AJK, the imposition of a Chairperson could be seen as a tendency of the executive and legislative powers to control an independent body, such as the IMC, depriving its members of the right to independently manage the organizational and functional aspects of this Institution. In this regard, the AJK refers to the Opinion no. 798/2015, of 22 June 2015, of the Venice Commission, which was called to analyze, review and provide legal opinion on two laws in the field of media, adopted by the Hungarian Parliament. This opinion, emphasizes AJK, among other things, stipulates: *"In normal circumstances, the purpose of imposing an obligation for a qualified majority is to ensure cross-party support for significant measures or personalities. However, where the super-majority requirement is introduced at the initiative of a political group having that supermajority, this rule, instead of ensuring pluralism and political detachment of the regulatory body, in fact "cements" the influence of this particular group within the regulatory body and protects this influence against changing political winds*". In the circumstances of the present case, the AJK, referring to the Legal Opinion of the Council of Europe, seems to have emphasized: "*that the new practice of appointing the Chairperson of the IMC by the Assembly can increase the political influence in the IMC, especially given that all appointments for the IMC are made by the Assembly exclusively"*. According to the AJK, this practice is not in line with European standards and regional standards, as the process of appointing the IMC Chairperson should be independent. Further, the AJK points out that the Law in force on the IMC of 2012 provided that the IMC consists of seven (7) members, Article 14.1 of the contested Law provides for the composition of eleven (11) members. Always referring to the Legal Opinion of the Council of Europe, regarding the increase of the number of IMC members from 7 to 11, it is emphasized that the determination of a four-year mandate is not unusual, but longer mandates (with the possibility of extension after the expiration of the mandate) can pose problems related to the independence of the IMC, especially taking into account the fact that all appointments are made by the Assembly and the participation of civil society in the nomination/appointment process is completely excluded. Consequently, the AJK proposes to the Court to declare Articles 14.1 and 15 of the contested Law as incompatible with Article 141 of the Constitution.

iii. Regarding the mandate of the IMC members

86. The AJK, in this regard, reiterates that the Law in force on the IMC of 2012, through Article 13, regulated the issue of the mandate so that it entailed a serious effort: (i) to prevent the appointment of all IMC members by a single legislature; and (ii) to prevent

the extension of the mandate of IMC members, beyond the regular mandate, for an unlimited period of time. The real/practical possibility for the mandate of a member to be extended indefinitely, beyond the regular mandate of 8 years is undoubtedly a legal regulation that contradicts the constitutional principles of limiting a mandate to public office. The AJK emphasizes that the Assembly has not foreseen any limit on how many days, months or years a member or the Chairperson of the IMC may stay in office after the expiration of the regular mandate. This means that while the Assembly according to the legislation in force was obliged to start and end the process of appointing members of the IMC in a rotating manner (in different legislatures) with the contested Law, the Assembly can extend the mandate of the IMC members indefinitely. This legal change, according to AJK, is dangerous, taking into account the high number of failures that the Assembly has noted in the selection of IMC members. Consequently, the AJK considers that the substantive change of the rules for the mandate of the members of the IMC and not limiting the mandate, represents a legal regulation which can create "*dependence*" and "*subordination*" between the nominee for the position in the IMC, to the deputies and political parties that appoint the persons in question. Therefore, on this basis, the AJK proposes that Articles 17.1 and 17.2 of the contested Law be declared incompatible with Article 141 of the Constitution.

iv. Regarding the dismissal of the Chairperson and members of the IMC

87. The AJK recalls that on the issue of shortening the mandate and dismissal of the Chairperson and members of the IMC, the Legal Opinion of the Council of Europe, among other things, emphasizes that: "*(i) The manner of seeking accountability" from regulatory authorities such as the IMC should be clearly defined in the law; (ii) Appointments of members to regulatory authorities such as the IMC should be made for a specific mandate and "such mandate can only be shortened based on clear legal reasons and circumstances"; (iii) The contested law creates an "arbitrary mechanism under which the Assembly can remove and replace all members of the IMC based on broad and indefinite criteria – which is not in line with European standards*". According to the AJK, the Law in force on the IMC of 2012 regulated the dismissal procedure, thus giving much more independence and power to the members of the IMC to freely manage the institution of the IMC in organizational and leadership terms. The AJK points out that Article 14 of the Law in force on the IMC provided that the dismissal of a member of the IMC can be done by the Assembly only if *"the proposal for dismissal came from the IMC"* or *"any other external initiative"*. Unlike the current system of dismissal, the contested Law does not recognize at all the right of the IMC membership to propose the dismissal of a member of the IMC or of the President, but only of the Assembly, namely of the parliamentary committee responsible for media. In practical terms, according to AJK, this means that even if 10 of the 11 future members of the IMC consider that a member of this body, or its chairperson does not fulfill his duties, or for other reasons should be dismissed, they will not propose dismissal, because the Assembly has transferred this right to itself.

88. Further, in the comments of AJK, it is emphasized that the contested Law, unlike the Law in force on the IMC, sets a highly problematic criterion for the independence of the IMC by the very fact that the Assembly can dismiss the Chairperson or members of the IMC, if "*trust is lost by the supervisory body*". According to the AJK, this provision of the contested Law creates a unconstitutional "*interference*" with the independence of the IMC resulting in a "*dependence*" and "*subordination*" of the IMC to the Assembly, which consequently violates Article 141 of the Constitution. This is due to the fact, that according

to it, the legislative power has enabled itself to dismiss by a simple majority all members of the IMC and its Chairperson, whenever it considers that "*trust has been lost*". Moreover, the criterion of loss of confidence, according to the AJK, represents a direct interference with the decision-making of the IMC and is a subjective criterion, because through the contested Law, the previous practice is completely changed so that the right to review the positions of the IMC members is transferred to the deputies of the ruling party who will enjoy the right to provide political assessments of the positions of the IMC members. Also, according to the AJK, there are flaws and ambiguities in terms of what "*loss of trust"* means, what are the criteria for such measurement, how the IMC members are protected and how the independence of the IMC is guaranteed from possible arbitrariness that may follow pursuant to this article.

89. The AJK, by analyzing Article 18 of the contested Law on procedures of dismissal of members of the IMC, and by comparing the dismissal procedure that is currently in force, as well as by analyzing the European standards set in the Legal Opinion of the Council of Europe on this issue, is of the opinion that the independence of the IMC, guaranteed by Article 141 of the Constitution, has been violated. Consequently, the AJK proposes that Articles 18.2.1 and 18.3.5 of the contested Law be declared incompatible with Article 141 of the Constitution.

v. Regarding Article 1 and Article 4 of the contested Law

90. According to the AJK, the principle of rule of law constitutes one of the main pillars of the functioning of the constitutional order, in function of which are the principles of clarity and foreseeability of legal norms. In this regard, the AJK refers to the case law of the Court, in dealing with the principle of foreseeability of legal norms, where the Court, among other things*, had emphasized: "Predictability first of all requires that the legal norm be formulated with sufficient precision and clarity, so as to enable individuals and legal entities to regulate their behavior in accordance with it. Individuals and other legal entities need to know exactly how and to what extent they are affected by a particular legal norm and how a new legal norm changes their previous status or status provided by another legal norm. Public authorities, when drafting laws, should take into account these basic principles of the rule of law - as important parts of the constitutional system of the Republic of Kosovo".* Here, the AJK mentions the document no. 34 of 12 September 2011, of the United Nations Human Rights Committee, which, in relation to freedom of thought and expression, among other things, states: *"a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly53 and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution",* recalling that a line with this interpretation was also the ECtHR, when it had decided on *cases Steel & Morris v. the United Kingdom* and *Nasrulloyev v. Russia*, stressing that the notion of "*legality*" requires that the test of legal certainty and quality of the law must be met, which requires that all laws be public and sufficiently precise to be reasonable in all circumstances, and to foresee the consequences that may follow as a result of a certain action, in order to avoid all risks of arbitrariness. In the case of the contested Law, the AJK considers that in terms of clarity and foreseeability, Article 1 (Purpose) and Article 4 (Competencies) appear extremely problematic, adding that Article 1 of the contested Law states that the purpose of this Law is to define the competencies *of the IMC "in order to promote the development of an audiovisual services market that serves all citizens"*. However, according to AJK, when analyzing in detail the entire content of the contested Law, it is

clear that the legislator in Article 1 should clearly emphasize that the purpose of this law is to regulate the audiovisual media sector, clearly elaborating the rights and responsibilities of audiovisual media and video distribution platforms.

91. Furthermore, the AJK considers that Article 4, which regulates the competencies of the IMC, is even more problematic, in terms of the clarity, accuracy and predictability of the issues that it regulates with this provision of the contested Law. According to AJK, the lawmaker has failed to provide sufficient clarity and predictability of the norm in question, and that this fact makes this norm of the law to be contrary to the principle of legal certainty, proclaimed as one of the fundamental values of the constitutional order in the Republic of Kosovo. Further, AJK states that in subparagraph 2.1 of the contested Law, the IMC *"regulates the rights, obligations and responsibilities of natural and legal persons providing audio, audiovisual media services including those provided online, video exchange platform services, distribution operators and other operators who, despite the technology used, distribute audiovisual media service providers"*. This inclusion under the umbrella of the IMC, according to the AJK, increases the level of ambiguity and brings even more legal uncertainty in the regulation of the media market in Kosovo. Further, AJK adds that in subparagraph 2.2 of this article it is stated that the IMC issues permits to audio, audiovisual service providers, video distribution platforms, distribution operators, network operators and multiplex operators, while in subsequent subparagraph 2.3 it is stated that the IMC maintains and updates the register of online audiovisual media services according to subparagraph 1.1.2. of Article 3 of this law. While the contested Law (AJK points out) elaborates in detail on the issue of licensing, namely permits for broadcasting (see, Articles 25-39), including permits and their renewal, applications for permits, types of permits, permits for analogue and digital services, etc., the issue of registration and register of online audiovisual media services remains entirely unclear. Further, in the comments of AJK, it is emphasized that the contested Law does not contain any additional provisions that would bring any clarity in this regard.

92. Based on the above, the AJK is seriously concerned about the expressed lack of clarity in the wording of this provision of the contested Law, and that such lack of clarity, accuracy and predictability, offers significant uncertainty to the subjects regulated by the IMC on the one hand, and offers a very wide scope for arbitrariness by the IMC, in relation to audiovisual media in the Republic of Kosovo. Consequently, AJK proposes that Articles 1 and 4 of the contested Law, because they do not provide clarity, accuracy and predictability of the legal norm, be declared incompatible with Article 7 of the Constitution, because in particular they violate the principle of legal certainty as one of the fundamental values of the constitutional order in the Republic of Kosovo.

vi. Regarding gender equality as regards the composition of the IMC

93. The AJK, regarding this claim, stresses that while paragraph 2 of Article 15 (Election of IMC members) of the contested Law provides that *"Election of the chairperson and members of the IMC reflects the principles of gender equality according to the relevant legislation on gender equality"*, on the other hand paragraph 5 of Article 10 (Composition of the IMC) of the Law in force for the IMC, of 2012, stipulated that: *"The composition of the members of the IMC shall reflect the multiethnic and diverse gender character of Kosovo. At least two (2) members of the IMC, ... shall be of female sex"*. Further, the AJK refers to the Law on Gender Equality of 2012, which provides that: *"1. Public institutions shall take temporary special measures in order to accelerate the realization of actual equality between women and men in areas where inequities exist. (...) 7. Legislative,*

executive, judicial bodies at all levels and other public institutions shall be obliged to adopt and implement special measures to increase representation of underrepresented gender, until equal representation of women and men according to this Law is achieved. 8. Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies". In this context, the AJK considers that the contested Law has justified a drastic reduction of the current standard for gender equality, completely eliminating the mandatory representation of at least two (2) women within the IMC, while the Law in force on the IMC of 2012 had imposed a special measure according to which at least two (2) of the seven (7) members of the IMC should be women, on the other hand the contested Law eliminates this legal obligation, using a universal formula that invokes the general reflection of the principle of gender equality, not containing a legal obligation for minimum representation of women in the IMC. Consequently, the legal guarantee that obliged the Assembly and enabled the participation of women in the highest organ of the IMC has been eliminated. In practical terms, according to AJK, this legal amendment violates Article 7 of the Constitution and Article 6 of the Law on Gender Equality, since the contested Law risks that the IMC will not have any female members, while the Law in force on the IMC legally disabled such a scenario because it provided for a legal obligation for at least two (2) of the seven (7) members of the IMC to be women.

94. The contested law, according to the AJK, now legally makes it possible for eleven (11) members of the IMC to be all men and no women, unlike the Law in force on the IMC, which obliged the Assembly to have at least 28.5% of the IMC members to be women. In this regard, the AJK considers that, for unknown and unsupported reasons with proper preliminary analysis, the contested Law embraces a public policy that is contrary to Article 7 of the Constitution and Article 6 of the Law on Gender Equality. On the other hand, the AJK proposes that Article 15.2 of the contested Law be declared incompatible with Article 7 of the Constitution.

vii. Regarding Article 3.1.1.2 of the contested Law related to the issues and definition of online audiovisual media services

95. In this regard, the AJK points out that the two most important constitutional provisions in relation to the activity and responsibilities of AJK are those related to *"freedom of expression" and "freedom of the media"*, adding that the framing of some highly problematic definitions in Article 3 (Definitions) of the contested Law is contrary to the constitutional rights enshrined in Article 40.1 and Article 42.1 of the Constitution. In this regard, the AJK sees the framing of a definition for *"online audiovisual media services"* as a very dangerous step that will negatively affect the deterioration of freedom of expression and media freedom, and the pluralism of the media market in the Republic of Kosovo. The AJK recalls that the issue of regulation of online media continues to be a topic of debate in the democratic world and there is still not a full consensus in the countries of Europe and the entire democratic world regarding how the media that base their activity exclusively through their websites should be defined and regulated. At European Union level, the main document in force in the field of audiovisual media services is the ASDM Directive). This instrument, according to AJK, has introduced a change in the way online media are regulated, requiring that those who publish videos undergo an additional regulation, obliging all EU Member States to adopt or change their legal framework in the field of audiovisual media regulation, in full compliance with the principles contained in the Directive, which leaves room for Member States to continue to leave the regulation of

online media as a competence to the media industry itself, through self-regulation and this self-regulation is strongly promoted by the Council of Europe.

96. The AJK further considers that the contested Law substantially changes the regulation of the media in Kosovo, in such a way that online media containing videos, which have so far been regulated by the KMSHK, are transferred as a competence of the IMC. This was achieved by the legislator by expanding the definition of audiovisual media services through the inclusion of a new definition for online media, which does not exist in European law. Referring to the wording of subparagraph 1.1 of Article 3 of the contested Law on IMC, according to the comments, the AJK expresses concern about the lack of clarity in the definition of these provisions, as such a vague wording creates uncertainty among the media that publish online videos and which can be interpreted in different forms by the IMC, which has no experience with the regulation of online media. Consequently, the legal possibility for the IMC to interpret online media at will, based on a definition that does not exist in the AMSD Directive, may cause uncertainty. In this context, the AJK refers to the Legal Opinion of the Council of Europe, which states that the inclusion of the definition for "online audiovisual media services" changes the meaning of audiovisual media services, in EU law, and represents a framing of a new type of media, adding that such a definition is unnecessary, as it creates ambiguity and confusion. The AJK further emphasizes that the media market in Kosovo has recently been based on the provision of services through the Internet and that technological developments have enabled the survival of media that in the past have functioned as print newspapers. The AJK considers it vital to preserve media pluralism in Kosovo, in order to eliminate the ambiguities as above. The AJK hereby refers to Opinion 980/202 of 19 June 2020 of the Venice Commission, regarding amendments to the Law on Audiovisual Media Services of Albania, where this Opinion, among others, states: *"(...) To address the problem of malicious or irresponsible media behaviour on the internet, the Venice Commission encourages the Albanian authorities to support the setting-up of an effectively functioning and independent self-regulatory body involving all relevant stakeholders of the media community and capable of ensuring an effective and respected system of media accountability in the online media field through self-regulation. [...].* In the context of Kosovo, according to the AJK, the implementation of the above Opinion of the Venice Commission would mean that the legislator should have foreseen this in the contested Law or in other laws which would in fact empower the self-regulatory body of the KMSHK. In addition, the Venice Commission, as well as the EU AMSD Directive itself (AJK stresses), requires member states to promote self-regulation through codes of conduct. AJK is of the opinion that the introduction of this definition in the contested Law, in addition to restrain freedom of expression and irreparably damaging media pluralism in the country, at the same time would represent an expansion of IMC authorizations, through the erroneous interpretation and transposition of the AMSD Directive.

97. As a summary of the above, the AJK points out: *"The freedom of the media is directly violated also by Articles 14.1, 15, 17.1, 17.2 and 18 dealt with above. The first paragraph of Article 42 provides that freedom and pluralism of the media are guaranteed. The pluralism of the media depends on the decisions of the IMC on licensing and revocation of licenses for media entities. If the IMC has a professional composition which is able to operate completely independent of the government, then licensing and revocation of licenses is done on the basis of clear legal criteria. Consequently, a media scene is created that contains a variety of subjects that offer diverse content and practically enables media pluralism. However, if the composition of the IMC functions in relation to*

dependence on power through the Assembly, decisions on licensing and potential revocation of licenses of media subjects will not be made based on legal criteria but on political preferences. For these reasons, Articles 14.1, 15, 17.1, 17.2 and 18 are contrary to Article 42 of the Constitution which guarantees media pluralism. 92. Consequently, AJK respectfully proposes to the Court that the sub-paragraph 1.1.2. of Article 3 of the contested Law be declared incompatible with Article 40.1 and Article 42.1 of the Constitution".

viii. Regarding the issues related to the replacement of the Appeals Board with the Appeals Council

98. Regarding this claim, the AJK refers to the principle of two-instance and emphasizes that this principle is an integral part of the right to effective legal remedies, which implies that every person against whom a decision is issued, including administrative measures, has the constitutional right to file an appeal against that decision or measure. In this regard, according to the AJK, the Law in force on the IMC contains an entire chapter [Chapter VI – Complaints Council], in 9 articles that regulate in detail the issues related to complaints against IMC decisions, such as Article 36 [Responsibilities], Article 37 [Composition of the Complaints Council], Article 38 [Election of the Complaints Council members], Article 39 [Incompatibility to be a member of the Complaints Council], Article 40 [Mandate of the Complaints Council Members], Article 41 [Removal from the Complaints Council and Member Conduct], Article 42 [Complaints Board Procedures], Article 43 [Submission of Complaint] and Article 44 [Complaints Council Decisions]. On the other hand, the contested Law does not mention the complaints board at all, completely eliminating this internal corrective mechanism, which enabled the IMC to review its decisions, in accordance with constitutional standards. Furthermore, the contested Law in paragraph 2 of Article 4, which regulates the competencies of the IMC, among others states: "*2. IMC, in addition to the competencies defined in the Constitution of Kosovo, exercises the following competencies: (...) 2.21. establishes the Complaints Council that handles the complaints of the parties in relation to the licensed and registered parties in accordance with this law and sub-legal acts and drafts and approves the rules of operation of this Council".* In this context, the AJK emphasizes that legal protection has been degraded for entities that fall under the regulatory competence of the IMC, because according to the purpose of the double-instance principle, according to the current law in force, it is to enable the administrative review of IMC decisions by the Board of Appeals independently of the IMC. With the amendments made to the contested Law (AJK), the decisions of the IMC will be subject to administrative review by a body appointed by the IMC itself and which by nature has a subordinate function to the IMC, therefore in this context, the Appeals Council (Board) cannot be considered as an effective legal tool to check the legality of IMC decisions.

99. The AJK, always referring to the Legal Opinion of the Council of Europe, emphasizes that the EC has assessed the change of the legal framework for the exercise of complaints against IMC decisions as a negative development in this area. Further, the AJK points out that paragraph 2.21 of Article 4 of the contested Law, in addition to being highly ambiguous and contrary to the principle of predictability of the legal norm, also constitutes a flagrant violation of Article 32 of the Constitution, which expressly states that the right to legal remedies is guaranteed also in relation to administrative decisions, and that their use against these decisions is regulated by law. Whereas, the relevant provision of the contested Law stipulates that this issue will be regulated in the future by

a sub-legal act issued by the IMC. Therefore, the AJK proposes that Article 4.2 of the contested Law be declared incompatible with Article 32 of the Constitution.

100. In conclusion, the AJK states: "*AJK, with respect to the final decision of the Court, considers that the contested Law is unconstitutional both in terms of the procedure followed for its adoptions and in terms of its content. The AJK considers that Articles 1, 3.1.1.3, 4.2.21, 14.1, 14.6, 15, 17.1, 17.2, 18.2.1 and 18.3.5 of the contested Law are contrary to Articles 7, 32, 40, 42, 99 and 141 of the Constitution. Given that it is impossible for the contested Law to survive after the repeal of these provisions and taking into account the substantial procedural violations, the AJK proposes to the Court to declare it in its entirety as unconstitutional*".

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 3
[Equality Before the Law]

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

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

Article 7
[Values]

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

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

Article 10
[Economy]

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

Article 24
[Equality Before the Law]

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

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

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

Article 32
[Right to Legal Remedies]

"Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law."

Article 40
[Freedom of Expression]

1. "Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.

2. The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion."

Article 42
[Freedom of Media]

1. "Freedom and pluralism of media is guaranteed.

2. Censorship is forbidden. No one shall prevent the dissemination of information or ideas through media, except if it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.

3. Everyone has the right to correct untrue, incomplete and inaccurate published information, if it violates her/his rights and interests in accordance with the law."

Article 54
[Judicial Protection of Rights]

"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."

Article 65

[Competencies of the Assembly]

"The Assembly of the Republic of Kosovo:

(1) adopts laws, resolutions and other general acts;

[...]
(9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law;"
[...]

Article 99
[Procedures]

"The methods of work and decision making procedures of the Government shall be regulated by law and regulations."

Article 119
[General Principles]

1. "The Republic of Kosovo shall ensure a favorable legal environment for a market economy, freedom of economic activity and safeguards for private and public property.

2. The Republic of Kosovo shall ensure equal legal rights for all domestic and foreign investors and enterprises.

3. Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law.

4. The Republic of Kosovo promotes the welfare of all of its citizens by fostering sustainable economic development.

5. The Republic of Kosovo shall establish independent market regulators where the market alone cannot sufficiently protect the public interest.

6. A foreign investor is guaranteed the right to freely transfer profit and invested capital outside the country in accordance with the law.

7. Consumer protection is guaranteed in accordance with the law.

8. Every person is required to pay taxes and other contributions as provided by law.

9. The Republic of Kosovo shall exercise its ownership function over any enterprise it controls consistently with the public interest, with a view to maximizing the long-term value of the enterprise.

10. Public service obligation may be imposed on such enterprises in accordance with the law, which shall also provide for a fair compensation."

Article 141
[Independent Media Commission]

1. "The Independent Media Commission is an independent body, which regulates the Range of Broadcasting Frequencies in the Republic of Kosovo, issues licenses to public and private broadcasters, establishes and implements broadcasting policies and exercises other competencies as set forth by law.

2. The members of the Independent Media Commission shall be elected in a transparent process in accordance with the law."

European Convention on Human Rights

Article 10
(Freedom of Expression)

1. "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 14
(Prohibition of discrimination)

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

Protocol No. 12 to the European Convention on Human Rights

Article 1
(General prohibition of discrimination)

1. "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

Law No. 08/L-289 on the Independent Media Commission (Contested Law)

Article 1
Purpose

1. "This law aims to determine the competences of the Independent Media Commission (hereinafter: IMC) with the purpose of promoting the development of an audiovisual market that serves all citizens.

2. This law is partially harmonised with Directive (EU) 2010/13/EU on Audiovisual Media Services and Directive (EU) 2018/1808."

Article 2
Scope

"The provisions of this law are binding for the IMC and all subjects that provide audio and audiovisual services in the Republic of Kosovo, licensed and registered by the IMC."

Article 3
Definitions

1. "The terms used in this Law shall have the following meaning:

1.1. Audiovisual media service means:

1.1.1. the service under the editorial responsibility of a media service provider, whose principal purpose is the provision of programmes with the aim of informing, entertaining or educating the general public through electronic communications networks in accordance with the relevant Law on Electronic Communications. An audiovisual media service is a television broadcast according to sub-paragraph 1.21 of this Article or an on-demand audiovisual media service as defined in sub-paragraph 1.29 of this Article and audiovisual commercial communications as defined in sub-paragraph 1.24 of this Article;

1.1.2. Online audiovisual media services – services whose principal purpose is the provision of programmes with the aim of informing, entertaining and educating. The principal purpose is also fulfilled when the service provider offers audiovisual content which is separate from the principal activity of the service provider, such as independent parts of electronic newspapers that present audiovisual programmes or user-generated videos, which may be considered separate from their principal activity, including:

1.1.2.1. A service from sub-sub-paragraph 1.1.2 of this Article is considered an inseparable part of the principal activity as a result of the links between the provision of the audiovisual media service and the principal activity such as the provision of written news.

1.1.2.2. Channels or any other audiovisual service under the editorial responsibility of a provider may constitute audiovisual media services in themselves, even if they are offered on video-sharing platforms or on social media for which editorial responsibility is lacking."

[...]

Article 4
Competencies of the IMC

1. "IMC is an independent body, responsible for the regulation, management and supervision of the broadcasting frequency spectrum.

2. In addition to the competences determined in the Constitution of Kosovo, the IMC exercises these competences:

2.1. regulates the rights, obligations and responsibilities of natural and legal persons providing audio, audiovisual media services including those provided online, video exchange platform services, distribution operators and other operators who, despite the technology used, distribute audiovisual media service providers;

2.2. issues permits to audio, audiovisual service providers, video distribution platforms, distribution operators, network operators and multiplex operators;

2.3. maintains and updates the register of online audiovisual media services according to subparagraph 1.1.2. of Article 3 of this law.

2.4. IMC reviews and approves any change of ownership for all licensed/registered parties as defined in sub-paragraph 2.2 of this Article.

2.5. IMC in case of approval of the change of ownership provides the licensed or registered entity with a certificate to allow the change of ownership also in the register of businesses at the respective business registration agency.

2.6. imposes sanctions upon licensed and registered subjects that violate the provisions of this law, the sub-legal acts and the conditions of the licencse;

2.7. ICM obliges operators (internet service providers) to undertake all technical measures for the interruption of domestic or foreign platforms, channels or harmful content which endanger public security and the constitutional order in the Republic of Kosovo;

2.8. periodically reviews the broadcasting frequency plan, makes the necessary changes and notifies the relevant authority with regard to any change of the frequency plan;

2.9. prepares and submits to the Government for approval the Strategy for switchover to digital broadcasting in the Republic of Kosovo, as well as other strategic documents for the performance of its functions;

2.10. carries out the market analysis for the licensees of the IMC;

2.11. for the purpose of sub-paragraph 2.9 of this Article, the IMC obliges operators to allow the installation of meters in electronic devices intended for receiving encoded or non-encoded signals by the IMC or any subject authorised by the IMC;

2.12. approves the licensing conditions and decides on applications for licence and for re-licensing, as well as the granting of the right to use frequencies according to the Broadcasting Frequency Spectrum Plan;

2.13. collects fees from the licensed subjects;

2.14. issues sub-legal acts to regulate audio service providers, audiovisual media services including those provided online, video-sharing platforms, distribution operators, network operators and multiplex operators, which are necessary for the performance of functions in accordance with international standards;

2.15. reviews and approves the proposal for the annual budget of the IMC and, through the relevant Ministry of Finance, submits it to the Assembly for its final approval;

2.16. submits to the Assembly of the Republic of Kosovo, by 31 March of the following year, an annual report for the previous year, including complete data concerning the determination and implementation of broadcasting policy, the granting of licenses and the review of complaints, the sanctions applied and the decisions related thereto, financial activities, other broadcasting activities as well as the objectives for the next year. The annual report is published after approval by the Assembly of the Republic of Kosovo;

2.17. appoints the Chief Executive Officer in accordance with Article 21 of this law;

2.18. issues the Code of Ethics for the members of the IMC;

2.19. issues the Rules of Procedure which determine the manner of work and the decision-making procedures in accordance with this law;

2.20. issues the regulation on internal organisation and systematisation of job positions and other organisational matters in accordance with this law;

2.21. establishes the Complaints Council that handles the complaints of the parties in relation to the licensed and registered parties in accordance with this law and sub-legal acts and drafts and approves the rules of operation of this Council."

Article 7
Independence of the IMC

1. "IMC enjoys organizational, administrative, functional and financial independence in the exercise of its duties and responsibilities.

2. Members of the IMC and staff of the IMC, in the exercise of their function, do not seek or receive instructions from governmental bodies, any other public or private person or entity. The independence of the IMC is respected at all times and no person, other public or private entity is allowed to influence the members and staff of the IMC in the performance of their duties.

3. The IMC has its annual budget."

Article 8
Media pluralism

"The IMC establishes a special fund in accordance with the applicable legislation for the support of media programmes and the media licensed or registered in accordance with the principles of this law in the field of education, democracy, arts, sports and economy."

Article 10
Media education

4. "IMC prepares textual materials, animations, videos and other forms of communication to promote media education

5. RTK is obliged to broadcast the media education materials at least once a week during prime time according to the recommendations of the IMC with a duration from three (3) to seven (7) minutes and free of charge.

6. All generalist channels are obliged to broadcast the media education materials at least once a month with a duration from three (3) to seven (7) minutes and free of charge.

7. RTK and the other generalist channels are obliged to show programmes or debates in the function of media education at least once in three (3) months."

Article 12
Broadcasting policy

1. "Broadcasting policy determined by the IMC is obliged to comply with the legislation in force and the accepted international standards of broadcasting and human rights.

2. The broadcasting policy, determined by the IMC, protects and supports:

2.1. the production of domestic creators;

2.2. qualitative, diverse services including geographical coverage in the best possible manner to serve all communities in Kosovo;

2.3. supports qualitative educational programmes;

2.4. ensures the creation of conditions for the technical quality of broadcasting in Kosovo;

2.5. the use of new technology and ensures the right of the public to know and to be informed, through the promotion of accurate and informative programmes.

3. The broadcasting policy promotes the broadcasting of domestic programmes of an educational, instructional and cultural character, especially for children and youth.

4. The IMC ensures that the programmes contain and reflect equality among citizens of all communities living in Kosovo.

5. The broadcasting policy promotes works originating from the Member States of the European Union as well as productions originating from third European States included in the Council of Europe's European Convention on Transfrontier Television.

6. The IMC undertakes the necessary measures to ensure the appropriate importance of audiovisual media services of general interest.

7. The IMC ensures, where possible and with the appropriate means, that broadcasters reserve at least ten per cent (10 %) of their transmission time, excluding the time allotted for news, sports events, games, advertising, teletext services and teleshopping, or alternately, at least ten per cent (10 %) of their programming budget for European works created by producers who are independent of the broadcasters. This proportion, having regard to the informational, educational, cultural and entertainment responsibilities of the broadcaster towards its viewing public, shall be achieved progressively, on the basis of suitable criteria. This is achieved by earmarking an appropriate proportion for recent works, namely works transmitted within five (5) years of their production.

8. The obligation under paragraph 7 of this Article does not apply to audiovisual media service providers with local and regional terrestrial coverage and providers of thematic audiovisual media services.

[...]

12. The manner of financial support of audiovisual media service providers is determined by a sub-legal act issued by the IMC."

[...]

Article 14
Composition of IMC

1. "The IMC is composed of eleven (11) members.

2. The members of the IMC shall be distinguished personalities from various fields such as: culture, art, justice, cinematography, journalism, finance, economy, management, public relations, international relations, media, information technology, telecommunications, public policy, artificial intelligence, engineering and other related fields.

3. The members of the IMC shall be individuals of proven integrity and high professional authority. In the performance of their duties, the members of the IMC shall be fully dedicated, objective and impartial.

4. The composition of the Commission shall include at least one (1) member from the field of justice, one (1) member from the field of finance, one (1) member from the field of telecommunications engineering and one (1) member from the field of journalism.

5. The members of the IMC are appointed and act in their personal capacity and do not represent any interest outside the IMC. They are not permitted to seek or receive any instruction regarding the activities of the IMC from any person or entity outside the institution.

6. The composition of the IMC members reflects the multi-ethnic and gender character of Kosovo. At least three (3) members of the IMC are appointed from among the non-majority communities.

7. The members of the IMC are prohibited from misusing their position for personal or family gain, for the benefit of any party or other entity; before any decision-making process each member shall, in writing and under oath, in accordance with the relevant law on conflict of interest, declare any potential conflicts."

Article 15
Election of IMC Members

1. "The members and the Chairperson of the IMC are elected by the Assembly of Kosovo on the basis of open and transparent procedures, as follows:

1.1. within ninety (90) days before the expiry of the mandate of the Chairperson and the members of the IMC or after the announcement of a vacancy for other reasons, the IMC issues the public announcement, for a period not shorter than the deadline determined by law;

1.2. the applications received for Chairperson and those for members are examined by the relevant Media Committee of the Assembly of Kosovo;

1.3. within ten (10) days after the expiry of the application deadline, the relevant Media Committee, after interviewing, recommends two (2) candidates for each vacant position of Chairperson and member of the IMC whom it considers the most suitable on the basis of competence, professional preparation, integrity and their commitment to the scope of the IMC;

1.4. the Assembly elects one of the recommended candidates by a majority of the votes of its deputies who are present and who vote, based on the Rules of Procedure of the Assembly.

2. Election of the chairperson and members of the IMC reflects the principles of gender equality according to the relevant legislation on gender equality."

Article 17
Mandate of the Chairperson and members of the IMC

1. The chairperson and the members of the IMC are elected for a four (4) year term, with the possibility of re-election for another term.

2. After the expiry of the term, if the new Chairperson and members have not been elected according to the procedures set out in this law, the Chairperson and the members of the IMC whose term has expired shall continue to perform their duties and responsibilities until the election of the new Chairperson and members by the Assembly.

2.1. Paragraph 2 of this Article does not apply in the case of dismissal or resignation of the Chairperson or a member of the IMC.

3. The Deputy Chairperson of the IMC is elected by the members of the IMC by simple majority, for a term of four (4) years, with the possibility of re-election for one additional term, and is of the opposite gender from the Chairperson.

4. The Chairperson and the members of the IMC are engaged according to the duties and responsibilities determined by this law and on the basis of the sessions and meetings of the IMC.

5. The specific duties of the Chairperson, the Deputy Chairperson and the members are determined by a sub-legal act adopted by the IMC."

Article 18
Dismissal of the Chairperson and member of the IMC

1. "The Chairperson and member of the IMC shall be dismissed from office when it is established that there is any ground for dismissal under paragraph 3 of this Article

2. The dismissal of the Chairperson and a member of the IMC is carried out according to the following procedure:

2.1. the proposal for dismissal comes from the Parliamentary Committee responsible for media;

2.2. the Assembly of Kosovo decides by simple majority on the dismissal or not of the Chairperson and the member of the IMC.

3. The dismissal of the IMC member is as a result of these circumstances:

3.1 professional incompetence - if in a proven manner and continuously fails to fulfill the duties of the Chairperson and the IMC member;

3.2. mental or physical incapacity to perform the duties of a member;

3.3. failure to perform duties for an uninterrupted period of more than three (3) months, without approval by the IMC

3.4. participation in a decision-making process that is contrary to the interests of the IMC, the public, or one of the social groups that by this law, the IMC should provide support or protection;

3.5. loss of trust by the supervisory body due to violation of integrity, biased attitudes in favor of a party licensed or registered with the IMC;

3.6. sentence for a criminal offense which is punishable with over six (6) months of effective imprisonment;

3.7. non-fulfillment of conditions under sub-paragraphs 1.3 and 1.5. of paragraph 1 of article 16 of the contested Law;

3.8. absence from work over fifteen (15) days without cause;

3.9. active participation in political activities after appointment as a member of the IMC.

4. IMC members may resign by notifying the IMC in writing at least three (3) months in advance."

Article 25
Broadcasting license and their renewal

"1. The IMC issues licences for the exercise of activity in the field of broadcasting and distribution of audio and audiovisual media services in the Republic of Kosovo, under the conditions determined by this law.

2. The licences issued by the IMC are valid for ten (10) years

3. The licences may in no circumstance be used without prior written approval issued by the IMC.

4. The licences may in no circumstance be transferred without prior written approval issued by the IMC.

5. The continued use of a licence may take place only after the change of ownership has been approved in writing by the IMC.

6. The licensees are obliged to act in accordance with this Law and other relevant legislation, best international practices and in accordance with the broadcasting policies determined by the IMC.

7. A licence from the IMC is issued after official certification by the relevant agency for business registration and the relevant tax agency that the registered business *entity has no punitive measures or outstanding obligations, whereas for entities functioning as NGOs an official certificate of their registration with the relevant ministry is required.*

8. The IMC issues the licence after receiving a sworn declaration from the entity that it has no financial obligation or punitive measure from any other institution that issues permits and licences.

9. The IMC requires the declaration of funding sources and the beneficial owners of the entity that has applied for a licence or registration.

10. The IMC verifies the accuracy of the data submitted by the applicant in official form with the relevant institutions."

Article 39
Violation of the conditions of the licence

1. "The IMC monitors the licensees and may initiate and receive complaints regarding non-compliance with the conditions of the licence, the Code of Ethics and other acts issued in accordance with this law.

2. The IMC examines complaints alleging violation of the conditions of the licence, the Code of Ethics and other acts issued in accordance with this law.

3. The IMC, through the Executive Office, notifies in writing the broadcasting entity of any allegation related to violation of the conditions of the licence, the Code of Ethics and other legal acts in accordance with this law, and ensures that the broadcasting entity has an effective opportunity to present its statements.

4. Upon completion of the investigation, the IMC issues a decision based on the facts and circumstances of the relevant case.

5. The licensees of the IMC have the right of appeal to the competent court, regarding the licence, within thirty (30) days from the date of receipt of the decision."

Article 42
Ownership and concentration of media

1. "With the purpose of determining the standards related to media pluralism and diversity and transparency in media ownership, determining the rules for concentration of media ownership, preventing monopoly in the media market, prohibiting domination and pressure by the media, developing and promoting freedom of expression, while preserving editorial independence and the right to objective information in accordance with national legislation and best European practices, the licensees are subject to the rules determined by the IMC for the prevention of media concentration.

2. All generalist television channels, as well as local channels that have a frequency-use licence, are subject to the 'must-carry' rule by cable and digital distribution operators. In the event of overload with such channels, the IMC reserves the right to set commercial access rules."

Article 43
Regulation of ownership of the licensed/registered parties

1. "Each licensed/registered party is obliged to notify the IMC in writing for any change of ownership and/or shares.

2. Each licensed/registered party is obliged for any change of ownership over the value of ten percent (10%) of the shares to receive prior written approval from the IMC.

3. No licensed/registered party may broadcast more than thirty per cent (30 %) of the total market value of audiovisual commercial communications.

4. A licensed/registered party may not own more than ten percent (10%) of the shares in another licensee/registered party.

5. Ownership in media is allowed only for companies or organisations that are legally registered in the Republic of Kosovo, in accordance with the applicable legislation.

6. In the service of media pluralism and for preventing the use of the financial system for money-laundering purposes or for financing terrorism, the beneficial owners must provide all necessary information on the origin of the assets upon registration and annual financial reporting.

7. IMC based on the results and needs resulting from the media market analysis, by sub-legal act lays down specific rules for media ownership, concentration, pluralism, diversity, and transparency."

CHAPTER VIII
SANCTIONS

Article 60
Sanctions with fines

1. "For violation of the provisions of this law, the IMC undertakes punitive measures as follows:

1.1. imposes a fine from five hundred (500) to four thousand (4 000) euros on a natural person when operating without a licence from the IMC;

1.2. imposes a fine from five hundred (500) to twenty thousand (20 000) euros on a legal person in cases where:

1.2.1. it does not comply with the obligations arising from this law;

1.2.2. it does not submit the annual report to the IMC within the stipulated time limit;

1.2.3. it does not observe the retention period of the transmission archive, according to the general terms and conditions of the licence and the relevant regulation for media service providers;

1.2.4. it does not comply with the scheduled transmission time, according to the general terms and conditions of the licence and the relevant regulation for media service providers;

1.2.5. it does not comply with the provisions of Article 41 of this law on the broadcasting of commercial communications and the relevant regulation on audiovisual commercial communications;

1.2.6. it does not comply with the conditions of the licence regarding domestically produced programmes and European works;

1.2.7. it does not notify of changes that have occurred in the data presented in the licence for which approval from the IMC is not required, within fifteen (15) calendar days from the date of the changes;

1.2.8. it prevents the entry of IMC officials into the premises where the audio and audiovisual equipment of the licensee is installed or does not provide the requested data;

1.2.9. it causes interference to another entity as a result of non-compliance with technical conditions in broadcasting;

1.2.10. it carries out transmissions on another unauthorised frequency;

1.2.11. it carries out transmissions with higher radiated power than authorised;

1.2.12. it transmits from locations other than those specified in the licence

1.2.13. it transmits or carries out activity in audio and/or on-demand audiovisual services without the authorisation of the IMC;

1.2.14. it does not comply with, in transmission, the territorial limits specified in the licence conditions;

1.2.15. it installs television or radio equipment for terrestrial transmission or through distribution operators with audio or audiovisual signal without the IMC's licence;

1.2.16. it transmits, retransmits or distributes audio and audiovisual media services in an unauthorised manner;

1.2.17. it installs equipment for the distribution of audio and audiovisual media services;

1.2.18. it installs equipment for video distribution without the IMC's licence;

1.2.19. it does not comply with the right of reply under Article 52 of this law;

1.2.20. it produces, imports, distributes, sells, leases or possesses, for commercial purposes, prohibited equipment;

1.2.21. it installs, maintains or replaces, for commercial purposes, prohibited equipment;

1.2.22. it uses commercial communications for the promotion of prohibited equipment;

1.2.23. it does not comply with the conditions of the licence under this law;

1.2.24. It does not comply with other obligations under this Law.

1.3. The IMC may double the sanction with fine from sub-paragraph 1.2 of this Article in cases where the legal person:

1.3.1. repeatedly causes harmful interference to another entity;

1.3.2. repeat the violations set out in subparagrapf 1.2. of this article;

1.3.3. transmits, retransmits, or disseminates programming content that provoke hatred, violence, and disorder;

1.3.4. transmits, retransmits, or distributes content that violates public order and security;

1.3.5. transmits, retransmits or carries out illegal distribution of programme content;

1.3.6. does not submit within the deadline the annual report to the IMC.

2. When imposing sanctions with fine under this Article, the IMC takes into account:

2.1. the level of damage caused by the violation;

2.2. the duration of the violation;

2.3. the mitigating or aggravating circumstances of the natural or legal person;

2.4. the financial stability of the entity."

Admissibility of Referrals

101. The Court must first examine whether the referrals submitted to the Court have met the admissibility criteria established in the Constitution and further specified in the Law and the Rules of Procedure.

102. In this regard, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulates that: *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*

103. The Court notes that the Applicants submitted their referrals under paragraph 5 of Article 113 of the Constitution, which establishes:

> *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".*

104. Therefore, based on the above, a referral submitted to the Court under paragraph 5 of Article 113 of the Constitution, must (i) be submitted by at least by 10 (ten) deputies of the Assembly; (ii) who contest the constitutionality of a law or decision adopted by the Assembly, regarding the content and/or procedure followed; and (iii) the referral must be submitted within a period of 8 (eight) days from the day of adoption of the contested act.

105. The Court, in assessing the fulfillment of the first criterion, namely the number of deputies of the Assembly required to submit the respective referrals, notes that the referrals were submitted by ten (10) deputies each, a number that meets the criteria set forth in the first sentence of paragraph 5 of Article 113 of the Constitution to set the Court in motion.

106. The Court, also in assessing the fulfillment of the second criterion, notes that the Applicants challenge the Law no. 08/L-289 on the Independent Media Commission, adopted in the Assembly on 11 July 2024. As for the third criterion, namely the time limit within which the respective referral/referrals must be submitted to the Court, the latter notes that the Referral KO152/24 was submitted to the Court on 18 July 2024, while the Referral KO158/24 on 19 July 2024, while the contested Law was adopted by the Assembly on 11 July 2024, which means that the referrals were submitted within the deadline set by paragraph 5 of Article 113 of the Constitution.

107. Therefore, the Court considers that the Applicants are legitimized as an authorized party within the meaning of paragraph 5 of Article 113 of the Constitution to challenge the constitutionality of the contested act before the Court, both in terms of content and the procedure followed, since in the present case, the Applicants, all of whom are deputies of the VIII Legislature of the Assembly, are therefore considered authorized parties and consequently, have the right to challenge the constitutionality of the contested Law adopted by the Assembly on 11 July 2024.

108. In addition to the above constitutional criteria, the Court also takes into account Article 42 (Accuracy of the Referral) of the Law, which specifies the submission of the Referral under paragraph 5 of Article 113 of the Constitution, which stipulates as follows:

Article 42
(Accuracy of the Referral)

> *"1. In a referral made pursuant to Article 113, Paragraph 5 of the Constitution the following information shall, inter alia, be submitted:*
>
> > *1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;*

1.2. provisions of the Constitution or other act or legislation relevant to this referral; and
1.3. presentation of evidence that supports the contest."

109. The Court also refers to Rule 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) of the Rules of Procedure, which provides:

Rule 72
(Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law)

"[...]
(3) A referral filed under this Rule must, inter alia, contain: the following information:

(a) Names and signatures of all the members of the Assembly challenging the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;
(b) Provisions of the Constitution or other act or legislation relevant to . this referral; and
(c) Presentation of evidence that supports the contest.
(4) The applicants shall attach to the referral a copy of the law or the challenged decision adopted by the Assembly, the register and personal signatures of the members of the Assembly submitting the referral and the authorization of the person representing them before the Court.

110. In the context of the two above-mentioned provisions, the Court notes that the Applicants (i) noted their names and signatures in their respective referrals; (ii) specified the contested Law of the Assembly; (iii) referred to specific articles of the Constitution, which they claim that the provisions of the contested Law are not in compliance with; and (iv) submitted arguments to support their claims.

111. Therefore, taking into account the fulfillment of the constitutional and legal criteria regarding the admissibility of the respective referrals, the Court declares the referrals of the applicants admissible and will further examine their merits.

Merits of the referral

Introduction

112. The Court recalls that the Applicants, namely twenty (20) deputies of the Assembly of the Republic of Kosovo, through two (2) separate referrals, based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, request the constitutional review of the challenged Law which they claim is contrary to Articles 7 [Values], 24 [Equality Before the Law], 32 [Right to Legal Remedies], 42 [Freedom of Media], 54 [Judicial Protection of Rights], 119 [General Principles] and 141 [Independent Media Commission] of the Constitution. Their allegations, in essence and according to the explanations given in the part related to the allegations and responses of interested parties before the Court, are supported in principle by the Ombudsperson and AJK, while they are challenged by the Prime Minister, on behalf of the Government.

113. The Court, as far as is relevant, will further summarize the essence of (i) Law no. 04/L-44 on the Independent Media Commission of 2012, currently in force; (ii) Progress reports/country related to the functioning of the IMC and provisions of European Union legislation relating to audiovisual media including online media; and (iii) the contested Law and claims of the parties. In this section, the Court will also summarize the EU standards for the regulation of audiovisual media.

Law on the IMC of 2012

114. The Court initially recalls that the contested Law in Article 64 (Repeal) stipulates that with the entry into force of this law, Law no. 04/L-44 on the Independent Media Commission, in force since 2012, and which currently regulates the competences of the IMC and the audiovisual media services market in Kosovo is repealed.

115. In this regard, the current Law in force of 2012 based on (i) Article 3 (Powers of the IMC) defines the powers of the IMC, including licensing of the public and private broadcaster and renewal of licenses; imposition of sanctions for licensed entities; review of the broadcasting frequency plan; approval of the licensing conditions; and its competence to issue "*sub-legal acts that are necessary for its implementation*". The same also stipulates in (ii) Article 6 (Independence of the IMC) that "*Members and staff of the IMC shall not receive instructions by any person or other entity, including the governmental entities"*; whereas in (iii) Articles 10 (Composition of the IMC), 11 (Selection of Members of the IMC), 13 (Term of Office of Members of the IMC) and 14 (Removal from the IMC and Conduct of Members) it stipulates that the IMC has seven (7) members who elected "*with majority of votes of the Assembly deputies being present and voting*", upon the recommendation of an "*ad-hoc committee*" of the Assembly, and that the latter may be re-elected only for another term; and that the dismissal of the IMC members is done by the Assembly "*by* a *simple majority*" of votes for the reasons set forth in the IMC Law. Furthermore, (iv) the 2012 Law on Chapter VI (Appeals Board) has defined the Appeals Board as an independent body appointed by the Assembly which, among other things, reviews the appeals of the parties against the decisions of the IMC; (v) in Chapter IV defines the Licensing of Audiovisual Media Service Providers, which in fact are licenses to exercise broadcasting in Kosovo, distinguishing between radio broadcasting and audiovisual media services and for network operators for the provision of media services with audiovisual content; and (vi) Article 30 (Sanctions) defines sanctions for violations of the terms of the license, the code of conduct and other legal acts, including fines of up to one hundred thousand (100,000.00) euro.

Progress reports/country related to the functioning of the IMC

116. The Court notes that, as it results from the European Commission Progress/Country Reports on Kosovo over the years, and as will be elaborated hereafter, the need to amend the 2012 IMC Law has been highlighted, *inter alia*, to determine (i) the expansion of the powers of the IMC to monitor online media as well; (ii) rules regarding transparency, concentration and media ownership; (iii) approximation with relevant EU directives; (iv) appropriate rules regarding sanctions; and (v) other aspects of the functioning of the IMC. However, as explained below, the European Commission 2024 Kosovo Report on the contested Law stresses, *inter alia*, that (i) the amendments of the Assembly have failed to reflect most of the recommendations of the EU and international partners; (ii) concerns remain regarding the independence, competencies and funding of the IMC; and

(iii) there is a lack of clarity and proportionality of the contested Law. The findings of the reports on Kosovo over the years will be summarized below, starting from 2016 onwards.

117. The European Commission's 2016 Kosovo Report and the 2018 Report point out, among other things, that: *"Freedom of expression online is not monitored by either the Independent Media Commission or the Press Council of Kosovo. Although this creates an unhindered environment for online media, it also undermines the privacy of individuals, leading to many cases of alleged hate speech, libel and defamation"* (see 2016 Report on Kosovo, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2016 Communication on EU Enlargement Policy*, SWD(2016)363 final, of 9 November 2016, page 25; and 2018 Report on Kosovo, 2018 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2018 Communication on EU Enlargement Policy,* SWD(2018)156 final, of 17 April 2018, page 23).

118. The European Commission's 2019 Kosovo report states, among other things, that: "*Newspapers and broadcasters who switched to the online world are no longer monitored. The Press Council follows the online press by reacting to complaints, but it does not have the necessary resources to carry out investigations or market analyses. The Independent Media Commission does not have the power to license and monitor audio-visual media services online (e.g. video on demand, catch-up TV and WebTV), which were already covered by the Audiovisual Media Services Directive adopted in 2010. Although this creates an unhindered environment for online media, it also undermines the privacy of individuals, leading to cases of alleged hate speech, libel and defamation.*" Furthermore, the same Report states that *"The Law on the Independent Media Commission led to the creation of an independent regulator and authorities have provided it with sufficient regulatory, monitoring and enforcement powers to ensure that internal and external media pluralism is safeguarded*"; therefore, the 2019 European Commission Report recommends that the Law on the IMC be reviewed "in *order to update its competences, including regarding the online audio-visual media services covered by the 2010 Audiovisual Media Services Directive*" (see, 2019 Report on Kosovo, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Communication on EU Enlargement Policy 2019,* SWD(2019)216 final, of 25 May 2019, page 26).

119. The European Commission's 2020 Kosovo report states that: *"[...] partly due to a lack of information on media ownership and the distribution of advertising funds, the IMC does not impose effective sanctions on broadcasters. The IMC needs adequate staffing and funding to exercise its existing powers independently, but its powers should also be extended to online audio-visual media (e.g. Catch up TV, video on demand and web TV)."* The same Report also recommends the revision of the Law on IMC *"so as to increase the availability of data on the audio-visual sector and extend the regulator's regulatory, monitoring and enforcement powers"* (see, the 2020 Report on Kosovo, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Communication on EU Enlargement Policy 2020* SWD(2020)356 final, of 25 May 2019, page 100-101).

120. The 2021 report on Kosovo of the European Commission also emphasizes the need to have "*Greater transparency on media ownership and possible illegal media concentration is needed*". Also, the same Report highlights the fact that the IMC "*does not yet have the powers to license and monitor online audio-visual media services [...]"*emphasizing thereby *the* fact that the IMC monitors content during election campaigns. Also, the same Report states that Kosovo should revise the Law on IMC to "*update its competences, including regarding audio-visual media in line with Audio-visual Media Services Directive"* (see 2021 Report on Kosovo, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Communication on EU Enlargement Policy 2021* SWD(2021) 292 final/1, of 19 October 2021, pages 30, 31, 32).

121. The European Commission's 2022 report on Kosovo also highlights the need to revise the Law on IMC, reiterating that IMC (i) does not yet have the power to license and monitor online audiovisual media services, although these were covered by the Audiovisual Media Services Directive; (ii) currently, the IMC lacks adequate staffing and resources to exercise its powers independently; (iii) the number of online media that are not registered with the Media Council has continued to grow and that the sustainability of the financial stability of the Council is crucial for effective functioning; (iv) due in part to the lack of information on media ownership and distribution of funds for advertising, the IMC does not impose effective sanctions on broadcasters; (v) the current Law in force on the IMC broadly provides sufficient regulatory, implementing and monitoring powers to ensure pluralism and competition in the market, however, (vi) the amendment of the Law on the IMC, which is currently in process, should further harmonize the Law with the Audiovisual Media Service Directive for extending its competences in online audiovisual media (see 2022 Report on Kosovo, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Communication on EU Enlargement Policy 2022* SWD(2022) 334 final, of 12 October 2022, pages 33, 34 and 94).

122. The 2023 report on Kosovo of the European Commission focuses on the fact that (i) there was no progress in amending the Law on IMC to align with the aforementioned EU Directive and that the draft law on the IMC, harmonized with the 2018 EU Audiovisual Media Directive, is still awaiting approval in the Assembly, requesting that the same be further harmonized with the relevant Directive to expand the powers of the IMC in terms of online audiovisual media; (ii) Kosovo should increase the availability of audiovisual market data, especially in terms of media ownership; (iii) the process should be transparent and inclusive, including media and civil society; (iv); the IMC during the reporting period has been largely non-functional due to the lack of a quorum, as the Assembly has failed to elect a new member by March 2023; and that the Report also points out that (v) the lack of audiovisual market data, especially in terms of ownership of media, concerns remain (see 2023 Report on Kosovo, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Communication on EU Enlargement Policy 2023* SWD(2023) 692 final, of 9 November 2023, pages 32, 33 and 97).

123. Finally, the 2024 Report on Kosovo of the European Commission, issued after the adoption of the contested Law, emphasizes, *inter alia*, the fact that: (i) the contested Law has been adopted in the Assembly and it contributes to improving the regulation of the media and the performance of the IMC; however, according to the above-mentioned Report (ii) the amendments of the Assembly have failed to reflect most of the

recommendations of the EU and international partners. More specifically, it specifies that (iii) concerns remain regarding the independence, competencies and funding of the IMC and regarding the lack of clarity and proportionality of the law. This report has recommended ensuring the implementation of the contested Law by ensuring alignment with the EU *Acquis* and European standards (see 2024 Report on Kosovo, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Communication on EU Enlargement Policy 2024* SWD(2024) 692 final, of 10 October 2014, page 33).

Legislation of the European Union relating to audiovisual media including *online* media

124. The Court recalls that at European Union level the issue of audiovisual media is regulated, update its competences, including regarding audio-visual media in line with Audio-visual Media Services Directive, by AMSD Directive 2010/13 as amended by Directive 2018/1808 of 14 November 2018 (hereinafter: AMSD Directive) and Regulation (EU) 2024/1083 establishing a common framework for media services in the internal market and amending Directive 2010/11/EU. In this context, the AVMs Directive 2010/13 establishes basic rules regarding media services by defining, *inter alia*, definitions for audiovisual media services, on-demand audiovisual media services, and media service providers.

125. Whereas, Directive 2018/1808, amends and updates the AMSD Basic Directive 2010/13, in order to expand the applicability of some of the rules of video distribution platforms also with regard to the audiovisual content that is distributed in some social media services. In this context, point 1 of Directive 2018/1808, stipulates that *"However, new types of content, such as video clips or user-generated content, have gained an increasing importance and new players, including providers of video-on-demand services and video-sharing platforms, are now well-established. This convergence of media requires an updated legal framework in order to reflect developments in the market and to achieve a balance between access to online content services, consumer protection and competitiveness"*.

126. The Court notes that while the contested Law was in drafting procedures, the EU Regulation 2024/1083 of 11 April 2024 was also issued at European Union level. The same sets out more detailed rules regarding, among other things, online media as well as media ownership and concentration. More specifically, EU Regulation 2024/1083 states that (i) media services are increasingly available either online or across borders, but are not subject to the same rules and the same degree of protection in different Member States (point 1); (ii) in the digital media space, citizens and businesses access and consume media content and services, which are readily available on their personal devices, in a cross-border setting. That is the case for audiovisual media services, radio and the press, which are easily accessible through the internet, for example via podcasts or online news portals (point 3); (iii) in In response to challenges to media pluralism and media freedom online, some Member States have taken regulatory measures and other Member States are likely to do so. That risks furthering the divergence in national approaches and restrictions to free movement in the internal market. Therefore, it is necessary to harmonise certain aspects of national rules related to media pluralism and editorial independence, thereby guaranteeing high standards in that area (point 7); (iv) the definition of media service should be limited to services as defined by the TFEU and,

therefore, should cover any form of economic activity. The definition of media service should cover, in particular, television or radio broadcasts, on-demand audiovisual media services, audio podcasts or press publications. It should exclude user-generated content uploaded to an online platform unless it constitutes a professional activity normally provided for consideration, be it of a financial or other nature. It should also exclude purely private correspondence, such as e-mails, and all services that do not have the provision of programmes or press publications as their principal purpose, meaning where the content is merely incidental to the service and not its principal purpose, such as advertisements or information related to a product or a service provided by websites that do not offer media services. Corporate communication and distribution of informational or promotional materials for public or private entities should be excluded from the scope of the definition. Furthermore, since the operation of media service providers in the internal market can take different forms, the definition of media service provider should cover a wide spectrum of professional media actors falling within the scope of the definition of media service, including freelancers (point 9); (v) In the digital media market, video-sharing platform providers or providers of very large online platforms could fall under the definition of media service provider. In general, such providers play a key role in the organisation of content, including by automated means or by means of algorithms, but do not exercise editorial responsibility over the content to which they provide access. However, in the increasingly convergent media environment, some video-sharing platform providers or providers of very large online platforms have started to exercise editorial control over a section or sections of their services. Therefore, where such providers exercise editorial control over a section or sections of their services, they could be qualified as both a video-sharing platform provider or a provider of a very large online platform and a media service provider; (vi) very large online platforms act for many users as a gateway for providing access to media content and media services. Media service providers that exercise editorial responsibility over their content play a key role in the distribution of information and in the exercise of the right to receive and impart information online. When exercising such editorial responsibility, media service providers are expected to act diligently and provide information that is trustworthy and respectful of fundamental rights, in line with the regulatory requirements or co-regulatory or self-regulatory mechanisms to which they are subject in the Member States. Therefore, also in view of users' right to receive and impart information, where a provider of a very large online platform considers that content provided by such media service providers is incompatible with its terms and conditions, it should duly consider media freedom and media pluralism, in accordance with Regulation (EU) 2022/2065, and provide, as early as possible, the necessary explanations to media service providers in a statement of reasons as referred to in Article 4(1) of Regulation (EU) 2019/1150; (vii) it is justified, in view of an expected positive impact on the freedom to provide services and the freedom of expression, that where media service providers comply with certain regulatory, co-regulatory or self-regulatory standards, their complaints against decisions of providers of very large online platforms be treated with priority and without undue delay (point 52).

127. The Court also notes that Article 18 (Content of media service providers on very large online platforms) stipulates that:

> *"1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to:*
>
> *(a) declare that they are media service providers;*
>
> *(b) declare that they comply with Article 6(1);*

(c) declare that they are editorially independent from Member States, political parties, third countries and entities controlled or financed by third countries;
(d) declare that they are subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States and to oversight by a competent national regulatory authority or body or that they adhere to a co-regulatory or self-regulatory mechanism governing editorial standards that is widely recognised by and accepted in the relevant media sector in one or more Member States;
(e) declare that they do not provide content generated by artificial intelligence systems without subjecting it to human review or editorial control;
(f) provide their legal name and contact details, including an email address, through which the provider of the very large online platform can communicate quickly and directly with them; and
(g) provide the contact details of the relevant national regulatory authorities or bodies or representatives of the co-regulatory or self-regulatory mechanisms referred to in point (d).
Where there is reasonable doubt concerning the media service provider's compliance with point (d) of the first subparagraph, the provider of a very large online platform shall seek confirmation on the matter from the relevant national regulatory authority or body or the relevant co-regulatory or self-regulatory mechanism

2. Providers of very large online platforms shall ensure that the information declared under paragraph 1, with the exception of the information set out in paragraph 1, first subparagraph, point (f), is made publicly available in an easily accessible manner on their online interface.
3. Providers of very large online platforms shall acknowledge receipt of declarations submitted pursuant to paragraph 1 and provide their contact details, including an email address, through which the media service provider can communicate directly and quickly with them.
[...]"

Constitutional and ECHR Principles Concerning Freedom of Media

128. Regarding the freedom of the media, and in connection with the independence of the institutions that supervise the media, the Court emphasizes that Article 42 of the Constitution contains 3 paragraphs. Paragraph 1 of this Article (i) guarantees the freedom and pluralism of the media, while paragraph 2 of this Article (ii) stipulates that censorship is prohibited and that no one may prevent the dissemination of information or ideas through media except if it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.

129. The Court notes that Article 42 of the Constitution is also related to Article 40 [Freedom of Expression], which in paragraph 1 states that "*Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment*." While paragraph 2 of the same stipulates the possible restrictions by specifically stressing that "*The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.*"

130. Also, according to the ECtHR but also the case law of the Court, exercising freedom of expression in an effective and meaningful way is not only conditioned by the obligation not to intervene by the state, but also by the positive obligation of the state to ensure positive protection measures, through law and practice. Therefore, the ECtHR emphasizes that, given the importance of what is protected through Article 10 of the ECHR, the state should be the ultimate guarantor of pluralism (see the case of ECHR *Manole and others v. Moldova*, no. 13936/02, Judgment of 17 September 2009, paragraph 99; and the case of the Court KO134/21, Applicant *Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo,* Judgment of 1 August 2023, paragraph 133). The Court and the ECtHR have further emphasized that the ways of achieving these goals depend largely on local circumstances, therefore States enjoy a wide margin of appreciation in this respect (see *Manole and others v. Moldova*, cited above, paragraph 100; and Court case KO134/21, cited above, paragraph 134).

131. The Court refers once again to *the Compilation of Opinions of the Venice Commission Concerning Freedom of Expression and Media*, CDL-PI (2020)008, according to which (i) media pluralism can be considered as an aspect of freedom of expression and the same is achieved when there is a multiplicity of autonomous and independent media at the national, regional and local levels, ensuring a variety of media content reflecting different political and cultural views; (ii) the state is the ultimate guarantor of pluralism, especially in relation to audio-visual media, whose programmes are often broadcast very widely; (iii) development in the area of new communication services may lead to the creation of dominant market positions. In respect of digital broadcasting, states are called upon to introduce rules on fair, transparent and non-discriminatory access to systems and services; (iv) the measure of concentration based on share of channels or programme output cannot [...] be useful for assessing the position of a company in the national radio and television markets. *Compilation of Opinions of the Venice Commission on Freedom of Expression and the Media*, CDL-PI(2020)008, pages 7, 18, 19 and 20.)

132. Furthermore, the Court once again recalls its Judgment in case KO134/21, which "*emphasizes the importance of the independence of the public broadcaster, but also the positive obligations of the state, namely the Republic of Kosovo, to protect and guarantee the freedom and pluralism of the media and all the guarantees stemming from the constitutional rights defined in the context of freedom of expression and the media, including as interpreted by the case law of the European Court of Human Rights and stipulated by applicable international instruments in the constitutional order of the Republic of Kosovo."* (see the Court case KO134/21, cited above, paragraph 177).

The Scope of the contested Law

133. The Court recalls that the contested Law (i) aims at defining the competencies of the IMC in order to promote the development of an audiovisual services market, serving all citizens; (ii) among the competencies of the IMC defined in Article 4 (Competencies of the IMC) are (a) the issuance of permits to audio, audiovisual service providers, video distribution platforms, distribution operators, network operators and multiplex operators, defined under Article 3 (Definitions) of the contested Law; (b) the maintenance and updating of the Register of online audiovisual media services; (c) the appointment of the Chief Executive Officer; (d) the issuance of the regulation on internal organization and systematization of working places; (e) the establishment of the Complaints Council dealing with complaints of parties in relation to licensed and registered parties; and (f) the imposition of sanctions. The contested Law also (iii) defines in Article 7

(Independence of the IMC), the IMC as an institution that enjoys organizational, administrative, functional and financial independence in the exercise of its duties and responsibilities. In Article 10 (Media Education), the contested Law stipulates that (iv) the IMC prepares textual materials, animations, videos and other forms of communication to promote media education, forcing the public broadcaster and other generalist channels to broadcast media education materials and to display broadcasts and debates in the function of media education at certain intervals. In addition, Article 12 (Broadcasting Policy) of the contested Law contains provisions according to which, *inter alia*, where possible and by appropriate means, broadcasters reserve at least ten percent (10%) of their broadcast time, excluding the time allotted for news, sporting events, games, advertising, teletext services and teleshopping, or in turn, at least ten percent (10%) of their programming budget for European works created by producers who are independent of the broadcasters. Furthermore, according to Articles 14 (Composition of IMC), 15 (Election of IMC members), 17 (Mandate of Chairperson and IMC members) and 18 (Dismissal of IMC members) of the contested Law, (vi) IMC consists of eleven (11) members; (vii) composition of IMC members reflects the multiethnic and gender character of Kosovo, while the election of the IMC chairperson and members reflects the principles of gender equality according to the relevant legislation on gender equality; (viii) The members and the chairperson of the IMC are elected by the Assembly of Kosovo with the majority of the votes of its deputies, who are present and voting, upon the recommendation of the relevant Media Committee of the Assembly; (ix) The chairperson and the members of the IMC are elected for a four (4) year term, with the possibility of re-election for another term, but except if the chairperson and the new members have not been elected according to the procedures established by this law, the chairperson and the members of the IMC whose mandate has expired continue to exercise their duties and responsibilities until the election of the President and new members from the Assembly; (x) The chairperson and member of the IMC is dismissed from office by a simple majority of votes when it is established that there is any ground for dismissal, following the proposal for dismissal by the Parliamentary Committee responsible for media; (xi) grounds for dismissal, *inter alia*, include participation in a decision-making process that is contrary to the interests of the IMC, the public, or one of the social groups that by this law the IMC should provide support or protection, and the loss of trust by the supervisory body due to violation of integrity, biased attitudes in favor of a party licensed or registered in the IMC. Whereas, (xii) Article 43 (Regulation of the ownership of licensed/registered parties) obliges licensed/registered parties to obtain prior written approval from the IMC for the change of ownership over the value of ten percent (10%) of the shares, and that a licensee/registrant cannot own more than ten percent (10%) of the shares in another licensed/registered party; and (xiii) Article 60 (Sanctions and fines) determines the actions that impose sanctions and the amount of fines for natural and legal persons by determining the lower and upper limit of fines and the conditions under which fines can be doubled.

The allegations of the Applicants and the arguments/counter-arguments of the interested parties

134. The Court emphasizes that the essence of the Applicants' allegations is related to public consultations regarding the contested Law, violation of the constitutional independence of the IMC, violation of media freedom, violation of the right to legal remedy against IMC decisions, and collision of the same with other laws, because the contested Law, according to the Applicants, among others: (i) was approved in the absence of public consultations and inclusiveness during the drafting process, thus violating the fundamental constitutional principles of transparency and democracy; (ii) violates the right to legal

remedies against the decisions of the IMC established by Articles 32 and 54 of the Constitution, as by transferring the power of election of the Board of Appeals from the Assembly, as it was with the current Law, to the IMC itself as defined, according to them, in paragraph 2.21 of Article 4 of the contested Law, has raised doubts regarding the independence and bias of the Board of Appeals, and furthermore it does not expressly determine that against the decisions of the Board of Appeals judicial protection is allowed; (iii) contrary to the freedom of media guaranteed by Article 42 of the Constitution, the contested Law through by 10 and 12 obliges the public broadcaster and all generalist channels to broadcast media education materials and to reserve a percentage of the broadcasting time and a percentage of their budget for "*European works created by producers who are independent of the broadcaster*"; (iv) the election, mandate, composition and manner of dismissal of IMC members determined through Articles 14, 15, 17 and 18 of the contested Law violate the independence of the IMC guaranteed by Article 141 of the Constitution, the principle of gender equality guaranteed by Article 24 of the Constitution, and the principle of rule of law guaranteed by Article 7 of the Constitution; (v) Article 43 of the contested Law regulating the ownership of registered entities and the manner of transfer of ownership requires the approval of the IMC if the change of ownership exceeds ten percent (10%) of the value of the shares and prohibits another licensed entity to own more than ten percent (10%) of the shares, in another licensed entity, thus violating the freedom of the media guaranteed by Article 42 of the Constitution and the right to economic activity guaranteed by Article 119 of the Constitution; and (vi) Article 60 of the contested Law that defines sanctions and fines in relation to the violation of the provisions of the contested Law, is in collision with Article 29 (Minor offence sanctioned by fines) of the Law on Minor Offenses.

135. The Court recalls that the Applicants in Case KO152/24 request the Court to declare Articles 4, 10, 12, 15, 17, 18, 43 and 60 of the contested Law contrary to the Constitution, while the Applicants in Case KO158/24 request the repeal of the contested Law in its entirety, but presenting concrete arguments regarding the procedure followed for the adoption of the Law and regarding Articles 4, 15, 17 and 18 of the contested Law. The above allegations are also supported by the Ombudsperson and AJK, while they are opposed by the Government.

136. The Court also recalls that regarding the contested Law during the drafting process, various organizations including international organizations submitted their comments. In this context, the documentation submitted to the Court also contains a Legal Opinion regarding the contested Law of the Cooperation Division of the Council of Europe, of 24 May 2024, drafted with the financial support of the European Union and the Council of Europe. The above-mentioned opinion, which also contains references to the comments of other organizations such as the OSCE Mission in Kosovo, and the European Union Office in Kosovo, regarding the contested Law, among others, states that (i) The Draft Law is generally in line with the European Union Audiovisual Media Directive. However, it raises several issues regarding (ii) clarification of the purpose of the Law; (iii) clarification of the obligation of audiovisual media services to protect children and provide accessible content for persons with special needs; (iv) elimination of the definition of "*online audiovisual media services*" for the sake of clarity; (v) imposition of proportional sanctions, especially regarding the clarity of the sanction for "*violations defined by this Law*"; (vi) clarification of the competencies of the IMC and strengthening of independence; (vii) strengthening transparency in terms of media ownership; (viii) addressing the issue of disinformation and promoting media education; and (ix) promoting self-regulation and co-regulation.

137. Having said this, (i) taking into account the respective claims and arguments of the Applicants as well as the responses of the interested parties; and (ii) the interrelationship of the respective articles with each other, the Court will, in the circumstances of the present case, assess (i) the Applicants' allegations regarding the procedure followed for the adoption of the contested Law; as well as articles of the contested Law as follows: (ii) Articles 14, 15, 17 and 18 according to which (a) the Assembly elects the members of the IMC by a majority of simple votes, based on the recommendation of the relevant Media Committee of the Assembly; (b) the election of the chairperson and members of the IMC *"reflects the principles of gender equality according to the relevant legislation on gender equality";* (c) the contested law has created the possibility to extend the mandate until the election of new members despite the mandate of the IMC members is four (4) years with the possibility of re-election for another term; (d) the members of the IMC are dismissed by a majority of votes, among others, due to the loss of trust, including based on the criterion of "*violated integrity*"; (iii) Article 4 (Powers of the IMC), respectively paragraph 2.21 of this article that stipulates that the IMC establishes the Complaints Council that handles complaints in accordance with the contested Law and sub-legal acts; (iv) Articles 10 (Media Education) and 12 (Broadcasting Policy) that stipulate that the Public Broadcaster and generalist channels are obliged to broadcast a few minutes a week, respectively in a month the media materials prepared by the IMC, as well as for broadcasters to reserve a percentage of the transmission and budget for European works created by producers independent of broadcasters; (v) Article 43 (Regulation of ownership of licensed/registered parties) of the contested Law obliging licensed/registered parties to obtain prior written approval from the IMC for the change of ownership over the value of ten percent (10%) of the shares, and stipulating that licensed/registered parties may not own more than ten percent (10%) of the shares in another licensed/registered entity; and (vi) Article 60 (Sanctions and fine) of the contested Law punitive measures for natural and legal persons in case of violation of the law, including the possibility of doubling the sanction if certain conditions are met. The Court shall also assess the arguments and counter-arguments of the parties in so far as they relate to the claims of the Applicants as authorized parties based on paragraph 5 of Article 113 of the Constitution. Consequently, the latter through current referrals is not authorized to assess the claims of interested parties regarding the constitutionality of the provisions of the contested Law that have not been contested by the authorized parties under paragraph 5 of Article 113 of the Constitution.

138. The Court further emphasizes that in order to assess the constitutionality of the contested provisions of the contested Law, the latter for each claim, insofar as they are relevant, will summarize: (i) the claims of the Applicants and the counter-arguments of the parties; (ii) the general principles as specified by the Constitution and further clarified through its case law and that of the ECtHR as well as the general international principles and practice of other countries where this is relevant; and (iii) will apply the same in the present case.

I. Constitutional review of the procedure for the adoption of the contested Law

139. The Court recalls that the Applicants contest the procedure followed for the adoption of the law, emphasizing that during the drafting of the contested Law there were not enough public consultations to include the media, journalists, citizens and interest groups directly affected by the contested Law. Moreover, they claim that regarding the contested Law, the functional Committee of the Assembly on Public Administration, Local Government,

Media and Regional Development "*organized public consultations for only 3 days*", respectively from 21 March 2024 to 25 March 2024, where two (2) of these days were weekend days. In this regard, they do not specify any article of the Constitution which may have been violated as a result of this, but point out that "*transparency and democracy as fundamental constitutional principles in decision-making on issues of public interest" have been seriously* violated. These allegations are supported by AJK, according to which, *inter alia*, (i) although the public consultation within the Government regarding the contested Law was open from 15 November 2021 until 3 December 2021, the following documentation page *"has no other information regarding the submitted contributions*" while for the other draft laws the same ones appear; (ii) the draft law submitted for public consultation differs profoundly from the version adopted in the Government including the provisions that are contested by the Applicants, including those related to the election of the Chairperson of the IMC, and it is not clear for which version the Legal Opinion on Compliance with EU legislation was issued. These allegations are contradicted by the Government, on the grounds that (i) after the public consultations held from 15 November 2021 to 3 December 2021, the public discussion procedure was held on 25 November 2021 and on September 6 and 7, 2022, a roundtable with European Union experts and stakeholders; while (ii) at the level of the Assembly, regarding the contested Law, the responsible Committee of the Assembly has also organized public discussions in seven (7) key regions of the country, and the same has held a public hearing.

140. In this regard, the Court emphasizes that Article 3 [Equality Before the Law] of the Constitution stipulates that: *"1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions";* while paragraph 1 of Article 4 [Form of Government and Separation of Power], stipulates that "*Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution."*

141. In addition, paragraph of article 7 [Values] of the Constitution stipulates that: *"The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy."*

142. With regard to the constitutional provisions governing the issue of law-making in the Assembly, the Court notes the constitutional provisions, namely, (i) Article 76 [Rules of Procedure] of the Constitution, which stipulates that: *"The Rules of Procedure of the Assembly are adopted by two thirds (2/3) vote of all its deputies and shall determine the internal organization and method of work for the Assembly"*; and (ii) Article 77 [Committees] of the Constitution, which stipulates that: "*1. The Assembly of Kosovo appoints permanent committees, operational committees and ad hoc committees reflecting the political composition of the Assembly [...] 4. Competencies and procedures of the committees are defined in the Rules of Procedure of the Assembly*", as well as (iii) Article 78 [Committee on Rights and Interests of Communities] of the Constitution, which stipulates that: "*1. The Committee on Rights and Interests of Communities is a permanent committee of the Assembly [...] 2. At the request of any member of the Presidency of the Assembly, any proposed law shall be submitted to the Committee on Rights and Interests of Communities. The Committee, by a majority vote of its members,*

shall decide whether to make recommendations regarding the proposed law within two weeks."

143. The Court first highlights the fact that the exercise of legislative power is the most essential function of the Assembly of the Republic of Kosovo as established in Articles 4 [Form of Government and Separation of Power], 63 [General Principles] and 65 [Competencies of the Assembly] of the Constitution. This function, and insofar as it is relevant for the circumstances of the present case, is exercised in the manner established in Article 79 [Legislative Initiative] and Article 80 [Adoption of Laws] of the Constitution, while the deputies exercise their function in the best interest of the Republic of Kosovo and in accordance with the Constitution, laws and rules of procedure of the Assembly, as specified in Article 74 [Exercise of Function] of the Constitution. Moreover, the Constitution establishes a special role for the Assembly Committees, with emphasis on the law-making process. More precisely, and in this context, the latter in its Article 77 [Committees] establishes the categories of committees, classifying them as permanent, operational and *ad hoc*, emphasizing the importance of their composition, including the role of non-majority communities and delegating the relevant role and procedures at the level of the Rules of Procedure of the Assembly.

144. The Court notes out that based on Article 99 [Procedures] of the Constitution, which stipulates that "*The methods of work and decision making procedures of the Government shall be regulated by law and regulations.*" In the context of the latter and related to the specific allegations of the Applicants, the Court regarding the smooth running of the consultation process, notes that paragraph 1 of Article 7 [Prior Consultation] of the Regulation 09/2011 of Rules and Procedure of the Government (applicable at the time when the contested Law was under consideration in the Government), stipulated that *"Before the originating body or a government body submits a concept document, explanatory memorandum, draft law or sub-legal act, strategic plan of a ministry or sectorial strategy for deliberation by the Government, the body preparing the material (the 'originating body') is responsible for ensuring that all the highest bodies of the state administration, central bodies of the state administration, independent bodies of the state administration and other relevant bodies which the Government is obligated to consult in accordance with the Constitution or whose work might be affected by the concerned proposal (draft law, sub-legal act or policy) have the opportunity to comment upon it.*
[...]"

145. The Court also refers to paragraph 1 of Article 32 (Public Consultation) of the above-mentioned Regulation, according to which, *"In relation to any proposal for which a concept document is required, in addition to consulting other ministries and public administration bodies as required by article 7 of this regulation, the originating ministry shall publish the substance of its proposal for public comment and shall specifically seek the comments of any non-Governmental organization that would be substantially affected by the proposal."*

146. Whereas, as regards the legislative process in the Assembly, the Court refers to Article 39 (Public legislative hearing) of the Rules of Procedure of the Assembly that regulates the issue of public hearings within the parliamentary committees, where *inter alia* it is determined that (i) the legislative public hearing is organized for the gathering of information, remarks and recommendations on draft laws, and other matters that are in the consideration procedure by the committee.; (ii) the public hearing is organized

between the first and the second reading, to enable the general public, including members of civil society, the business community, the academic world and other interest groups, to present to the committee, the issues of interest for them and the groups they represent within the scope of the relevant draft law; and (iii) the public hearing is held in the premises of the Assembly headquarters, or even in other premises outside the Assembly headquarters, if it is estimated that it enables wider public participation.

147. In this regard, the Court stresses that based on the above-mentioned rules but also the relevant principles of lawmaking, legislation should be subject to public consultations and that during the legislative process the possibility should be created for stakeholders to present their views regarding the legislation in question. Furthermore, the Court stresses that this does not only require the completion of formal aspects for public consultations but that consultations should include substantive debate concerning all aspects of a legal initiative. Such an obligation is also evidenced in the 2023 Report on Kosovo of the European Commission, which emphasizes that the process for drafting the IMC Law should be transparent and inclusive, including the media and civil society. The Venice Commission also emphasizes the external contribution to the legislative process, pointing out that this can be done, *inter alia*, through public consultations through which the public can address written proposals and comments or other ways (see the *Venice Commission's Compilation of Opinions and Reports on Legislative Procedures and the Quality of Law*, CDL-PI (2021)003, approved at the 126th plenary session of the Venice Commission, 19-20 March 2021, pp. 16-17).

148. Consequently, the Court emphasizes that the Constitution has established the procedures for the adoption of laws in the Assembly, including the issue of the functioning of parliamentary committees, but delegating the issues of further organization of legislative procedures, including the issue of public consultations, that are not regulated by the Constitution at the level of other acts, including the Rules of Procedure of the Government and that of the Assembly, respectively.

149. However, insofar as paragraph 5 of Article 113 of the Constitution stipulates that ten (10) or more deputies of the Assembly of Kosovo have the right to challenge the constitutionality of any law on both the content and the procedure followed, the Court is authorized to assess compliance with the procedure for adopting a law as defined in the Constitution. Such an attitude of assessing the legislative procedure based on constitutional norms has also been followed by the Court in its previous case law (see cases of the Court, Applicant: for Referral KO216/22 - *Isak Shabani and 10 (ten) other deputies*, and for KO220/22 *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Articles 9, 12, 46 and 99 of Law no. 08/L-197 on Public Officials, Judgment of 2 August 2023, paragraphs 201-214). Insofar as the arguments presented by the parties do not argue the violation of the procedures established by the Constitution, the Court, according to its case law, has not promulgated contested laws, contrary to the Constitution in procedural aspect.

150. However, based on the materials received by the Assembly, it results that the contested Law has passed parliamentary procedures, being reviewed in the relevant committees of the Assembly. This is because, on 11 January 2024, the Draft Law on IMC, together with the accompanying letters, including the Explanatory Memorandum and the list of comments from public administration institutions and civil society organizations regarding the Draft Law of IMC, was processed in the Assembly for parliamentary review. On 15 January 2024, the President of the Assembly assigned the Functional Committee to

review the Draft Law on IMC and present to the Assembly the Report with recommendations. On 7 February 2024, the Functional Committee, after the first review of the Draft Law on IMC, recommended to the Assembly the adoption of the same in principle. On 7 March 2024, the Assembly, after the first review, adopted in principle the Draft Law on IMC. The Assembly tasked the Standing Committees to review the Draft Law on IMC and to submit the reports with their recommendations to the Assembly. Between 5 June 2024 and 19 June 2024, the standing committees submitted their reports regarding the Draft Law on IMC. On 21 June 2024, the Functional Committee, after reviewing the Draft Law on IMC, approved the Report with recommendations. The final report of the Functional Committee, together with the proposed amendments, was distributed to all deputies of the Assembly, with the recommendation that the Draft Law on IMC, together with the proposed amendments, be adopted. On 11 July 2024, the Assembly, after the second review, adopted the contested Law.

151. Furthermore, the Court notes that during the review procedure of the contested Law, comments regarding the draft of the contested Law have been submitted, among others, by the European Union Office, the OSCE, the IMC, and other organizations. Also, according to the comments received by the Government, public discussions regarding the draft of the contested Law have been organized in seven (7) main regions of the country in April 2024, and a public hearing organized by the Assembly on 25 March 2024. Regarding the public discussion organized in Pristina, it is emphasized that it was not held due to the lack of participation of citizens and civil society.

152. Therefore, based on the aforementioned constitutional principles, the Court considers that the procedure followed for the adoption of the contested Law is not contrary to Articles 77 [Committees] 78 [Committee on the Rights and Interests of Communities] and 80 [Adoption of Laws] of the Constitution of the Republic of Kosovo.

II. Constitutional review of Articles 14, 15, 17 and 18 of the contested Law regarding the election of the chairperson and members of the IMC, the composition and gender representation, as well as their mandate and dismissal

153. The Court initially notes that based on Articles 14 (Composition of the IMC), 15 (Election of IMC members), 17 (Mandate of the Chairperson and members of the IMC) and 18 (Dismissal of the Chairperson and members of the IMC) of the contested Law (i) the IMC consists of eleven (11) members; (ii) the composition of the IMC members reflects the multi-ethnic and gender character of the Republic of Kosovo while the selection of the Chairperson and members of the IMC reflects the principles of gender equality according to the relevant legislation on gender equality; (iii) The Chairperson and members of the IMC are elected and dismissed by the Assembly by a majority vote upon recommendation from the relevant Media Committee of the Assembly; (iv) the Chairperson and members of the IMC are elected for a four (4) year mandate, with the possibility of re-election for another term and exceptionally, under the conditions set out in the contested Law, they may exercise their duties and responsibilities, until the election of new members; and (v) members of the IMC may be dismissed, among others, if they have participated in a "*decision-making process that is contrary with the interests of the IMC, the public, or one of the social groups that by this law the IMC should provide support or protection*"; or for "*loss of trust by the supervisory body due to violation of integrity, biased attitudes in favor of a party licensed or registered with the IMC*".

A. The allegations and counter-arguments of the parties

154. The Court notes that the Applicants claim that the election, mandate, composition and manner of dismissal of the IMC members defined by Articles 14, 15, 17 and 18 of the contested Law violate the independence of the IMC guaranteed by Article 141 of the Constitution, the principle of gender equality guaranteed by Article 24 [Equality Before the Law] of the Constitution, and the principle of the rule of law guaranteed by Article 7 [Values] of the Constitution. This is due to the fact that, according to them, (a) the Assembly elects members of the IMC by a simple majority of votes, creating direct control of the IMC by the parliamentary majority, including the fact that the Chairperson is directly elected by the Assembly; (b) the election of the Chairperson and members of the IMC undermines gender representation as it does not determine gender quotas, as defined by the current Law in force of the IMC, but the contested Law only makes reference *to the "relevant legislation on gender equality";* (c) despite the mandate of the IMC members is four (4) years with the possibility of re-election for another mandate, the contested Law has created the possibility to extend the mandate until the election of new members in complete disparity with the concept of a limited time mandate defined by the contested Law and the constitutional standards of independent institutions; (d) the members of the IMC are dismissed by a simple majority of votes and moreover, in the contested Law the criteria for dismissal of the Chairperson of the IMC are not defined, while the members, among other things, can are dismissed due to loss of trust and based on the criterion of "*violated integrity*".

155. The allegations of the Applicants regarding the dismissal of the IMC members are supported by the Ombudsperson who, among other things, emphasizes that (i) the dismissal by a simple majority of the IMC members may have a direct impact on the independent functioning of the latter; (ii) the contested Law constitutes unequal treatment between the Chairperson and the IMC members because it does not clearly define the criteria on the basis of which the Chairperson of the IMC is dismissed and makes the Chairperson not responsible for his actions; (iii) the conditions for dismissal of the IMC members are unclear because it does not define the body that assesses professional incompetence and that the criteria set for dismissal may place in legal uncertainty the members of the IMC and enable political interference. The Applicants' comments are also supported by AJK, pointing out that the provisions of the contested Law regarding the number of members, mandate, dismissal of the Chairperson of the IMC violate the constitutional independence of the IMC guaranteed by Article 141 of the Constitution, because, among other things, (i) unlike the current Law in force on the IMC, the Chairperson of the IMC is elected by the Assembly itself, depriving the members of the IMC to manage the organization and functioning of this institution; (ii) the contested Law increases the number of members from seven (7) there are currently, to eleven (11) members and the reasons for this are not clear; (iii) the possibility of extending the mandate of the Chairperson and members of the IMC, beyond the four (4) year term if the new chairperson/members cannot be elected contradicts the principle of limited mandate for public office, and according to this regulation, the IMC members can continue the mandate indefinitely, creating *"dependence" and "subordination*" in relation to the Assembly; (iv) the contested Law does not recognize the right of the IMC to propose the dismissal of the members of the IMC, but exclusively of the relevant committee of the Assembly, while the criterion for dismissal if the Chairperson or member of the IMC "*loses confidence from the supervisory body*" creates unconstitutional "*interference*" in the independence of the IMC resulting in "*dependence" and "subordination"* of the IMC to the Assembly, as well as creates direct interference in the decision-making of the IMC, is a subjective criterion, and furthermore lacks clarity and predictability; and (v) the

contested Law has completely eliminated the mandatory representation of at least two (2) women in the composition of the IMC, as defined by the current Law, as the contested Law only refers to "*relevant legislation on gender equality"* without defining specific quotas, thus violating Article 7 of the Constitution.

156. On the other hand, the allegations of the Applicants are rejected by the Government, on the grounds that (i) the Chairperson of the IMC is equal to the members of the IMC, his election by the Assembly is not prohibited by the Constitution and is in line with the practice of other institutions such as the Procurement Review Body or the Competition Authority; (ii) the possibility of extending the mandate of the IMC members until the election of other members is done to avoid the gaps that may result in the event that circumstances prevent the selection of new members in a timely manner; (iii) except in cases where a higher majority of the election of public officials such as the Ombudsperson, the President of the Republic, the judges of the Constitutional Court, the election of the members of the IMC is regulated by law and as the appointment is made, the same majority is dismissed; (iv) the Chairperson of the IMC is equal to the other members and any rule that applies to the members of the IMC is also applied to the Chairperson, including dismissal; (v) the issue of Integrity cannot be defined through quantity, but it is subject to the assessment of the Parliamentary Oversight Committee and despite this, a member of the IMC can be dismissed only if a majority of the deputies of the Assembly vote on it.

157. Following the Applicants' allegations, the Court will proceed with the elaboration and assessment of the above allegations, which are essentially related to the independence of the IMC and media freedom, elaborating and assessing whether, (i) the manner of election and dismissal of IMC members by the Assembly violates the independence of the IMC guaranteed by the Constitution; (ii) the composition of the IMC members reflects the gender character of Kosovo; (iiii) the Chairperson and members of the IMC whose mandate has expired may exercise their duties and responsibilities, until the election of new members; and if (iv) the IMC members may be dismissed, for the reasons set out in the contested Law, including "*loss of trust by the supervisory body*".

1. Regarding the manner of election and dismissal of IMC members

A. General principles related to the independence of independent constitutional institutions in Chapter XII of the Constitution

158. The Court initially recalls the relevant constitutional provisions regarding the principle of separation of powers, namely Article 4 [Form of Government and Separation of Power] of the Constitution, while as regards the independence of the independent constitutional institutions, the Court refers to the constitutional provisions for the expressly independent institutions listed in Chapter XII [Independent Institutions], namely Articles 132-135 [Role and Competencies of the Ombudsperson], 136-138 [Auditor-General of Kosovo], 139 [Central Election Commission], 140 [Central Bank of Kosovo] and 141 [Independent Media Commission], as well as regarding the Court as defined in Chapter VIII [Constitutional Court] of the Constitution.

159. The Court, in its case-law, has clarified that: *"[...] Article 4 of the Constitution, which determines the form of government and separation of power, among others, specifies that Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution, principles*

according to which, (i) the Assembly exercises legislative power; (ii) the President is the legitimate representative of the country internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution and representing the unity of the people according to the latter; (iii) The Government is responsible for implementation of laws and state policies and is subject to parliamentarian control; (iv) the judicial power is unique, independent and is exercised by courts; and (v) the Constitutional Court is an independent organ for the protection of constitutionality and makes the final interpretation of the Constitution [...]" (see Court cases KO100/22 and KO101/22, cited above, paragraph 154; and case KO216/22 and KO220/22, cited above, paragraph 240).

160. More precisely, the Court has elaborated the principles regarding the separation and balancing of powers and the independence of independent constitutional institutions, by Judgments that include but are not limited to (i) the Judgment of the Court in case KO73/16, with the Applicant the *Ombudsperson*, in which the Court assessed the constitutionality of the Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo; (ii) Judgment of the Court in case KO171/18, with the Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Law no.06/L-048 on the Independent Oversight Board for Civil Service of Kosovo; (iii) The Court's Judgment in case KO203/19, with Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Law no. 06/L-114 on Public Officials (hereinafter: Judgment in caseKO203/19); (iv) Judgment in case KO219/19, with Applicant *the Ombudsperson*, in which the Court assessed the constitutionality of Law no. 06/L-111 on Salaries in Public Sector (hereinafter: Judgment in caseKO219/19); and (v) Judgment in case KO127/21, with Applicant *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*, regarding the constitutional review of Decision no. 08-V-29 of the Assembly of the Republic of Kosovo of 30 June 2021, for the dismissal of five (5) members of the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: Judgment in caseKO127/21) and (vi) The Court's Judgment in case KO100/22 and KO101/22,with Applicant*KO100/22, Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo; and of Referral KO101/22, Arben Gashi and 10 other deputies of the Assembly of the Republic of Kosovo*, regarding constitutional review of Law No.08/L-136 on Amending and Supplementing Law no.06/L-056 on Prosecutorial Council of Kosovo (hereinafter: Judgment in case KO100/22 and KO101/22).

161. From the aforementioned judgments it results that : (i)) among the basic values embodied in the Constitution, on which the constitutional order of the Republic of Kosovo is based, is also "*separation of powers*"; (ii) the functioning of the democratic state of the Republic of Kosovo is based on the constitutional principle of the separation of powers and checks and balances among them; (iii) the three independent powers defined by the Constitution constitute the classic triangle of separation of powers and that the relationship between them is based on the principle of separation of powers and control checks and balances among them; (iv) each of the powers, including the independent institutions, are regulated in separate constitutional chapters and each of these chapters establishes the general principles as well as the duties and responsibilities of each power, including the check and balance mechanisms between them, which constitute the essence of how these powers should check and balance each other, without creating any unconstitutional "*interference*", "*dependence*" or "*subordination*" between them, which could potentially affect the independence of one or the other power; (v) in addition to the three classical powers, the Constitutional Court has a special place in the system of

separation of powers, as an institution responsible for the final guarantee of constitutionality at the country level, the President, as a representative of the unity of the people and guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as well as the independent institutions referred to in Chapter XII of the Constitution; and finally, (vi) the separation of powers as a fundamental principle of the highest constitutional level, is embodied in the spirit of the country's Constitution and, as such, is non-negotiable (see case of the Court, KO100/22 and KO101/22,cited above, paragraph 158; and KO216/22 and KO220/22, cited above, paragraph 243).

162. The Court notes that the IMC is included in Chapter XII of the Constitution, together with other institutions, namely the Ombudsperson; the Auditor General; the Central Election Commission; and the Central Bank of Kosovo.

163. With regard to the IMC, the Court refers to Article 141 [Independent Media Commission] of the Constitution in its paragraph 1 that stipulates that the Independent Media Commission is an independent body; mandating it with (i) regulating the Range of Broadcasting Frequencies in the Republic of Kosovo; (ii) issuing licenses to public and private broadcasters; (iii) determining and implementing broadcasting policies; as well as (iv) exercising additional competencies as set forth by law.

164. The Court also refers to paragraph 2 of Article 141 of the Constitution, which stipulates that the members of the Independent Media Commission are elected in accordance with the law, on the basis of a transparent process.

165. Consequently, the Court reiterates that the above-mentioned Article of the Constitution (i) defines the IMC as an independent body; (ii) that regulates the range of Broadcasting Frequencies in the Republic of Kosovo; (iii) issues licenses to public and private broadcasters;(iv) establishes and implements broadcasting policies. While Article 141 of the Constitution defines the regulation at law level of other competencies of the IMC and the election of members of the IMC, provided that the process for their election is transparent. Article 141 of the Constitution also does not specify either the issue of the election of the chairperson and the mandate of the members of the IMC or the manner of their dismissal, leaving this issue to be regulated at the level of law, however, with the condition of maintaining the independence of this institution determined by the Constitution.

B. Principles of the Council of Europe and those of the Venice Commission relating to the media commission

166. As regards international standards concerning media regulatory bodies, the Court refers to Recommendation Rec(2000)23 of the Council of Ministers of the Member States concerning *the Functioning of the Broadcasting Regulatory Authorities* of the Council of Europe of 20 December 2000.

167. Based on point 1 of Chapter I (General Legal Framework), namely paragraph 1 of the above Recommendation, Member states should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence. Similarly, based on paragraph 2 of the abovementioned Recommendation of the Council of Europe, the duties and powers of regulatory

authorities for the broadcasting sector, as well as the ways of making them accountable, the procedures for appointment of their members and the means of their funding should be clearly defined in law.

168. Specifically, this Recommendation contains a separate chapter, namely Chapter II (Appointment, composition and functioning) regarding the selection, composition and functioning of these regulators. In this context, paragraph 4 of Recommendation Rec (2000)23 stipulates that specific rules should be defined with regard to incompatibilities, so as to avoid regulatory authorities being under the influence of political power, members of regulatory authorities holding functions or interests in other enterprises or organizations in the media or related sector, which could lead to a conflict of interest with regard to the membership of regulatory authorities. Furthermore, paragraph 5 of this Recommendation stipulates that the rules should ensure that members of those authorities (i) are appointed in a democratic and transparent manner; (ii) may not take instructions from any individual or body; and (iii) do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

169. According to the Clarifying Memorandum of Recommendation (2000)23 of the Council of Europe, respectively in point 16 of this Memorandum, *"clear rules should be defined that members of regulatory bodies do not receive a mandate or instruction from persons or bodies and do not make any statement or action that may prejudice the independence of their function and do not take advantage of the latter for political purposes."*

170. Furthermore, the Explanatory Memorandum as regards Recommendation Rec(2000)23 of the Council of Ministers of the Member States concerning the *Functioning of the Broadcasting Sector Regulatory Authorities* of the Council of Europe of 20 December 2000, respectively, point 33 of this Memorandum stipulates that *"It is recommended that, within the framework of the law, the regulatory authorities should have regulatory authorities should, within the framework of the law, have the power to adopt internal rules in order to define their organization and decision-making in greater detail, in accordance with its administrative autonomy powers of regulation which enable them to respond flexibly and adequately to questions that may be unforeseen and are often complex, not all of which can be resolved, or even anticipated, by the legislative framework. In effect, it is considered that regulatory authorities are better placed to define the « rules of the game » in detail, since they have very good knowledge of the broadcasting sector. Furthermore, regulatory authorities should, within the legal framework, have the competencies to issue internal acts to define their organization and decision-making in more detail, in accordance with their administrative autonomy."*

171. Paragraph 6 of the above Recommendation also lays down precise rules regarding the dismissal of members of regulatory authorities in order to avoid that the dismissal be used as a means of political pressure.

172. According to paragraph 7 of the above Recommendation, in particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court.

173. Finally, based on paragraph 8 of the above Recommendation, given the broadcasting sector's specific nature and the peculiarities of their missions, regulatory authorities should include experts in the areas which fall within their competence.

174. In this respect, the Court also refers to the ECtHR case, which in relation to the independence of regulatory institutions refers to Recommendation Rec(2000)23 of the Council of Europe of 20 December 2000, stressing *"[...] the importance for States to adopt detailed rules involving membership and the function of such regulatory bodies to protect against political interference and influence* *(see ECtHR case Manole and others v. Moldova*, no. 13936/02, Judgment of 17 September 2009, paragraph 102).

175. Furthermore, the Court also refers to Opinion No. 980/2020 of the Venice Commission CDL-AD(2020)013, of 19 June 2020, concerning the Draft Amendments to the Law No.97/2013 on Audiovisual Media Services of Albania. The opinion referred to in paragraph 34 states that "*although there is no single European model of organisation of the media regulatory authorities, the overarching principle is that an institution overseeing the media should be independent and impartial:19 this should be reflected especially in the way how their members are appointed*"; whereas in paragraph 39 regarding media regulatory bodies this Opinion states that *"it is necessary to ensure that those bodies have a pluralistic composition, enjoy sufficient independence from the political parties and big businesses, follow appropriate procedures and are professionally apt to perform new duties*". In this context, in the case of Albania, the Venice Commission raised the issue of the independence of the regulatory body despite the fact that in this case, out of the seven (7) members of this body, three (3) members should have the support of the majority while three (3) represented the opposition.

176. Whereas in the Opinion of the Venice Commission No. 798/2015 on the Media Legislation in Hungary CDL-Ad (2015)015, of 22 June 2015, the Venice Commission regarding the majority necessary to elect the members of the media regulatory bodies, in paragraph 64 of this Opinion, regarding the qualified majority to elect the members of the media council that was determined through the proposed law, has emphasized that "*in normal circumstances, the purpose of imposing an obligation for a qualified majority is to ensure cross-party support for significant measures or personalities. However, where the super-majority requirement is introduced at the initiative of a political group having that supermajority, this rule, instead of ensuring pluralism and political detachment of the regulatory body, in fact "cements" the influence of this particular group within the regulatory body and protects this influence against changing political winds"*. In the case of Hungary, the Venice Commission pointed out that there are various ways to reduce, if not completely remove, the risk of politicization. In this regard, through paragraphs 69 and 70 of the above-mentioned Report, among others, it was stated that it would be ideal for all members to be elected in a way that is separate from the political process; but if this is not possible other mechanisms could be implemented, such as, (i) reflecting political diversity; (ii) delegating members from the media community and media industry; and (iii) involving civil society groups in the process.

177. Based on the above constitutional provisions, the standards for broadcasting sector regulators, including the opinions of the Venice Commission, it results that:

(i) within the legal framework, the regulatory authority should have the competence to make arrangements which enable them to act flexibly and

adequately in matters which may be unpredictable and which are often complex, including issuing internal acts to define the organization and decision-making in more detail, in accordance with their organizational autonomy;

(ii) the rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and defend their independence;

(iii) the procedures for the appointment of members and the manner of financing should also be clearly defined by law;

(iv) the composition of these bodies:

(a) should avoid politicization and ensure pluralism; and

(b) must include experts in the fields falling within their competences;

(v) members of these authorities:

(a) are appointed in a democratic and transparent manner, ensuring political neutrality;

(b) may not receive instructions from any individual or body; and

(c) they do not make any declaration or take any action that may prejudice the independence of their function and do not take any advantage of them;

(vi) dismissal should only be possible in the event of non-compliance with clear rules which they must respect.

B. Court's assessment

178. The Court recalls that the Applicants emphasize that the Assembly elects the members of the IMC by a simple majority of votes, creating direct control of the IMC by the parliamentary majority, including the fact that the Chairperson of the IMC is not elected by the IMC but directly by the Assembly, according to them making the position of the Chairperson dependent on the Assembly and not on the members of the IMC. In this regard, the Court recalls that Article 141 of the Constitution defines the IMC as an independent institution, mandating it to (i) regulate the range of Broadcasting Frequencies in the Republic of Kosovo (ii) issues licenses to public and private broadcasters; (iii) define and implement the broadcasting policy; and (iv) exercise other competencies defined by law.

179. Having said that, and within the meaning of the stipulation of paragraph 2 of Article 141 of the Constitution that the composition and election of members is determined at the level of law, the Court considers that such a law should ensure that through the adjustment of composition, manner of election, reporting, dismissal, the independence of the IMC guaranteed by Article 141 of the Constitution is not violated.

180. In this context, the Court notes that unlike other institutions independent of Chapter XII of the Constitution, which are mainly and in principle mandated by the Constitution to implement the legislation in force on issues related to their mandate or having powers of control (see, the powers of the Central Bank of Kosovo under Article 140 of the Constitution; powers of the Central Election Commission under Article 139 of the Constitution and the Auditor General of Kosovo under Article 137 of the Constitution), the IMC is an independent institution in this chapter of the Constitution that has a regulatory role and function. Namely, the Constitution itself has defined to IMC a regulatory role in paragraph 1 of its Article 141, regarding the spectrum of Broadcasting Frequencies in the

Republic of Kosovo; and defining and implementing broadcasting policies, while other competencies are left to be regulated at the level of the law.

181. Likewise, with regard to the other independent institutions defined in Chapter XII of the Constitution, the Court notes that the Constitution or laws have defined the manner of their functioning, including the manner of (i) proposing; and (ii) electing the governing bodies/heads of these institutions, based on the characteristics of each institution. In this context, as regards (i) the Ombudsperson, the Court refers to paragraph 1 of Article 134 [Qualification, Election and Dismissal of the Ombudsperson] of the Constitution which stipulates that "the *Ombudsperson is elected by the Assembly of Kosovo, by a majority vote of all its deputies",* while Article 8 (Proposal Procedure for Ombudsperson Election) of the Law on Ombudsperson stipulates that the Ombudsperson's proposal is made by the Commission Competent for Human Rights of the Assembly but based on the narrow list prepared by the Selection Panel appointed by the competent Committee on Human Rights. As regards, (ii) the Auditor General, based on paragraph 3 of Article 136 [Auditor-General of Kosovo] of the Constitution, the Auditor General "*is elected and dismissed by the Assembly by a majority vote of all its deputies on the proposal of the President of the Republic of Kosovo"*. As regards (iii) the Central Election Commission, based on Article 139 (Central Election Commission) of the Constitution (a) the Chairperson is appointed by the President of the Republic of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction; while (b) the other members are appointed by parliamentary groups and by Assembly deputies holding guaranteed seats for the Serb community and other communities. With respect to (iv) the Central Bank of Kosovo, based on Article 38 (Appointments) of the Law on the Central Bank, regarding the position of the Governor or non-executive members of the Central Bank Board, a panel is set up composed of the other members of the Board and the Governor, where no one requests reappointment, which sends to the Assembly the list of applicants who meet the criteria for the respective positions, when the Assembly elects one individual for each vacant position, and after the Assembly makes the selection, the proposals are approved by the President of the Republic.

182. In the context of the contested Law, the Court refers to Article 7 (Independence of the IMC) of the contested Law, which in paragraph 1 stipulates that: *"IMC enjoys organizational, administrative, functional and financial independence in the exercise of its duties and responsibilities*", while paragraph 2 of this Article stipulates that "*Members of the IMC and staff of the IMC, in the exercise of their function, do not seek or receive instructions from governmental bodies, any other public or private person or entity. The independence of the IMC is respected at all times and no person, other public or private entity is allowed to influence the members and staff of the IMC in the performance of their duties"*.

183. The Court notes that the IMC based on Article 14 (Composition of the IMC) of the contested Law consists of eleven (11) members, whose composition according to paragraph 4 of this Article includes: at least one (1) member from the field of justice; one (1) member from the field of finance; one (1) member from the field of telecommunications engineering; and one (1) member from the field of journalism. Furthermore, according to paragraph 5 of this article, "*IMC members are appointed and act in their personal capacity and do not represent any interest outside the IMC. They are not allowed to request or receive any instructions regarding the activities of the IMC from any person or entity outside the institution*".

184. Based on the elaboration of the above provisions, except for the fact that the composition of the IMC is regulated by the contested Law, the latter through paragraph 5 of Article 14 thereof, specifically determines the institutional independence of the IMC itself and its members, who act in their personal capacity and do not seek or receive instructions from government bodies, any person or other public or private entity, and do not represent any interest outside the IMC.

185. In relation to the election of the President of the IMC directly by the Assembly, the Court notes that the Assembly follows the same procedure for the appointment of the President as for the appointment of the members of the IMC. The appointment of the IMC President is subject to the same rules as regards the mandate and the possibility of dismissal by the Assembly. In this regard, the Court considers that only the fact that the appointment of the President made directly by the Assembly, does not in itself, violate the independence of the IMC or that it imposes the same in relation to dependence on the Assembly and not on the members of the IMC. Moreover, the Chair of the IMC in relation to decision-making within the IMC has the same status as all other members of the IMC and that the members of the IMC do not owe to the Chair regarding their decision-making within the IMC.

186. In addition, as regards the election of members, based on Article 15 (Election of members of the IMC), respectively paragraph 1, the members and the Chairperson of the IMC are elected by the Assembly on the basis of open and transparent procedures, while based on sub-paragraphs 1.3. and 1.4, of Article 15 of the contested Law, two (2) candidates for a position are recommended by the respective commission, while the Assembly elects one of the two (2) candidates recommended by a majority vote of its deputies, who are present and voting. Having said that, the Court recalls that before it is contested the manner of selection of the Chairperson and members of the IMC, including their election by a simple majority by the Assembly.

187. Regarding this, the Court in its case-law has already emphasized that in reviewing the constitutionality of a Law, it never assesses whether a law based on good public policies or not, but only if it may have violated the provisions of the Constitution of the Republic of Kosovo (see, Court cases KO73/16, Applicant *Ombudsperson*, Judgment of 16 November 2016, paragraph 52; case KO72/20, cited above, paragraph 357; KO12/18, Applicant *Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 29 May 2018, paragraph 117; KO219/19, cited above, paragraph 259; and KO216/22 and KO220/22, Applicant: for Referral KO216/22 - *Isak Shabani and 10 (ten) other deputies*, and for KO220/22 *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Articles 9, 46, 12, 99 and 99 of Law no.08/L-197 on Public Officials, Judgment of 2 August 2023, paragraph 312).

188. Subsequently, and in the sense of election by simple majority, the Court in its case law related to the majority necessary to elect the holders of various institutions, has emphasized that: "*The Court recalls paragraph 1 of Article 80 of the Constitution, based on which laws, decisions, and other acts are approved by the Assembly by the majority of the votes of the deputies present and voting, except in cases where it is otherwise specified by this Constitution. These exceptions, the Constitution specifies them specifically, dividing them into two (2) categories, namely (i) cases requiring a majority different from the simple majority; and (ii) cases where decision-making is conditioned also with the specified majority of non-majority communities represented in the Assembly of the Republic of Kosovo, and which are elaborated in detail in the Court's*

Judgment in cases KO100/22 and KO101/22" (see, Court cases KO100/22 and KO101/22, cited above, paragraphs 275-277; and KO46/23, Applicant *Abelard Tahiri and 9 (nine) other deputies of the Assembly of the Republic of Kosovo,* Constitutional Review of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, Judgment of 20 June 2024, paragraph 447). Having said this, the Court, in case KO46/23, had found that "*Considering that the Constitution has not specified otherwise, the election of the Director-General of the State Bureau falls within the scope of Article 80 of the Constitution, namely the election by the majority of the deputies present and voting. Consequently, and considering (i) paragraph 1 of Article 80 of the Constitution, according to which, the Assembly decides by the majority of the votes of the deputies present and voting, except in cases where it is otherwise specified by this Constitution; and (ii) the fact that this is not the case in relation to the establishment and functioning of Independent Agencies according to Article 142 of the Constitution, the election of the Director-General by the majority of the votes of the deputies present and voting in the first two rounds of voting and before delegating this competence to the Oversight Committee in case of failure to elect by the Assembly, is not in contradiction with the above-mentioned articles"*.

189. Therefore, even in the present case, taking into account paragraph 1 of Article 80 of the Constitution, according to which, the Assembly decides by a majority vote of the deputies present and voting, except in cases when otherwise provided by the Constitution, the majority necessary for voting the members of the IMC, established by the contested Law, is not in itself in contradiction with the above provision.

190. However, the Court reiterates that notwithstanding in the present case, taking into account (i) paragraph 1 of Article 80 of the Constitution, according to which, the Assembly decides by a majority vote of the deputies present and voting, except in cases where it is otherwise defined by the Constitution; and (ii) the fact that this is not the case in relation to the IMC under Article 141 of the Constitution, and as such the majority necessary for the voting of the members of the IMC is in accordance with Article 80 of the Constitution, the Court emphasizes that the manner of voting of the members of the IMC, including its Chairperson, is only one element that relates to the independence of an independent institution such as the IMC. In this context, based on the general principles established above, the appointment of members of the IMC should also be seen in the context of other important elements that guarantee the independence of an institution, such as (i) the manner of proposing members of the IMC; (ii) their relationship with other institutions, namely governmental bodies or the electoral body in terms of guidelines that can receive or dependence that exists in relation to the activities of the IMC; (iii) the duration of the mandate; and (iv) the manner of dismissal and reporting, which will be dealt with in the framework of other claims of the applicants.

191. In this regard, the Court emphasizes the issue of the proposal and selection of candidates for members of the IMC. Based on sub-paragraph 1.2 and sub-paragraph 1.3 of paragraph 1 of Article 15 (Election of members of the IMC), (i) the applications received for Chairperson and those for members are examined by the relevant Media Committee of the Assembly of Kosovo; while (ii) the relevant media commission, after the interview, recommends two (2) candidates for each vacant position of chairperson and member of the IMC, whom it considers to be the most suitable based on their competencies, professional background, integrity and commitment to the scope of the IMC.

192. Therefore, the Court notes that while it is the parliamentary majority that finally approves or elects, with a simple majority of votes, the members of the IMC, and according to the clarifications given above, this majority is in accordance with Article 80 of the Constitution, according to the contested Law it is also the parliamentary majority most represented in the relevant committee of the Assembly that made the proposals for the Chairperson and members of the IMC.

193. In this regard, the Court notes that while each independent institution of Chapter XII of the Constitution, which includes the IMC, based on their specifics elects the leading members/bodies in different ways, their common denominator is that through the Constitution itself or the relevant law, (i) there is a higher majority for their selection in the Assembly, as is the case of the Ombudsperson and the Auditor General where a majority of "*all*" deputies of the Assembly is required for his/her appointment (see paragraph 1 of Article 134 of the Constitution and paragraph 3 of Article 136 of the Constitution); or (ii) the representation of parliamentary groups or representatives of communities is provided, as is the case with the Central Election Commission, while the chairperson of this body is elected by the President (see Article 139 of the Constitution); or/and (iii) as long as a simple majority of votes or of all deputies is determined for decision-making in the Assembly, the proposal of candidates for such positions is determined to be made by an unrelated body/institution with the parliamentary majority in the Assembly, as is the case with the Auditor General proposed by the President (see paragraph 3 of Article 136 of the Constitution), and the Governor or non-executive members of the Board of the Central Bank, proposed through the internal system of the Central Bank, stipulating thereby the role of the President of the Republic (see Article 38 of the Law on the Central Bank of Kosovo). Based on the elaboration of these definitions by the Constitution, it results that in all independent institutions of Chapter XII of the Constitution, it does not result that the members of the governing bodies (i) are proposed by bodies within the Assembly that are dominated by the parliamentary majority; and at the same time (ii) the proposed ones are elected by a simple majority of votes by the Assembly, with no role whatsoever played by other institutions.

194. Therefore, the Court considers that in the specific context of the manner of selection of members of the IMC, as an independent constitutional body under Chapter XII of the Constitution, it is necessary to take into account (i) the independence guaranteed to the IMC through Article 141 of the Constitution; (ii) the existing constitutional principles regarding the proposal/selection of governing bodies of independent constitutional institutions part of Chapter XII of the Constitution; but also (iii) the standard set through the recommendations of the Council of Europe, and the opinions of the Venice Commission, which relate to the independence of an independent regulatory body of the media.

195. Having said this, taking into account the limitations resulting from Article 80 of the Constitution regarding the majority necessary to approve the decisions of the Assembly, the Court considers that in the circumstances of the IMC a balance should be ensured between (i) the proposal; and (ii) the appointment of the IMC members by the Assembly, so that the elected composition of the IMC reflects institutional and professional independence, as well as the constitutional and legal provisions regarding the members/governing bodies of independent institutions of Chapter XII of the Constitution.

196. In this regard, the Court considers that the proposal of the IMC members by the relevant Committee of the Assembly, which is dominated by the parliamentary majority, and the election by simple majority of votes taken together, does not provide the appropriate balance of the independence of the composition of the IMC, (i) according to the constitutional standards mentioned above; (ii) Article 141 of the Constitution; and (iii) the manner of electing the bodies of other independent institutions included in Chapter XII of the Constitution.

197. Therefore, the Court considers that the proposal of the members from the Parliamentary Committee dominated by the parliamentary majority, viewed together with the majority necessary to elect the members of the IMC, does not ensure the independence of the IMC defined in Article 141 of the Constitution.

198. Following this assessment, the Court also considers that the guarantee of an independent IMC, as specified in Article 141 of the Constitution, takes on even greater importance based on the extended powers conferred on the IMC through the contested Law, including the supervision of online media.

199. Further, and in the specific context of the contested Law, the Court refers also to the reports of the Venice Commission, elaborated above, through which in principle it was emphasized that it would be ideal for all members to be elected in a way that is separate from the political process, but if this is not possible, other mechanisms could be implemented, such as delegation of members from the media community and the media industry; and participation of civil society groups in the process. In this connection, the Court places emphasis on Opinion No. 980/2020 of the Venice Commission CDL-AD(2020)013, of 19 June 2020, concerning the Draft Amendments to the Law No. 97/2013 on Audiovisual Media Services of Albania, through which it is specifically emphasized that the independence and impartiality of a media regulatory authority is reflected by the manner of appointing its members (see, paragraph 34 of Opinion No. 980/2020 of the Venice Commission CDL-AD(2020)013 of the Venice Commission).

200. In this context, the Court considers that (i) a more inclusive body including representatives of other independent institutions, civil society, representatives of the media sector itself or self-regulatory authorities, which reviews and selects candidates for members of the IMC who would subsequently recommend to the Assembly candidates who meet the legal conditions to be appointed Chairperson and/or members of the IMC; or (ii) the possibility that other institutions, including self-regulatory authorities can delegate a number of members directly or propose members of the IMC who would be voted on by the Assembly, insofar as the criteria of compliance with the function are met, could meet the standard for the IMC to be independent, as set out in the constitutional principles and the contested Law itself.

201. The Court notes that a similar way of appointing IMC members, as in the case of the contested Law, was determined by the current IMC Law of 2012, where the members of the IMC *are elected "by a majority vote of the deputies present and voting*", following the recommendation of an "*ad-hoc committee*" of the Assembly. However, the Court notes that the IMC Law of 2012 was not challenged before the Court.

202. Therefore, based on the above elaboration, taken into account (i) the constitutional principles of impartiality in relation to independent institutions, included in Chapter XII of the Constitution; (ii) the role of the IMC regulatory authority established by Article 141

of the Constitution: (iii) the constitutional principles and case law of the Court and the ECtHR related to media freedom, including the role of regulatory authorities and public broadcasters in media freedom; and (iv) the international standards regarding the principle of impartiality and independence that should reflect a regulatory authority for the media, the Court considers that the manner of proposing members specified through sub-paragraphs 1.2. and 1.3 of Article 15 of the contested Law does not meet the requirements established through the above constitutional principles and those established through international mechanisms.

203. Therefore, the Court finds that paragraphs 1.2 and 1.3 of paragraph 1 of Article 15 (Election of members of the IMC) of the contested Law are not compatible with Article 141 [Independent Media Commission] of the Constitution of the Republic of Kosovo.

2. Regarding gender representation in the composition of the IMC

A. General principles

204. Regarding gender equality, the Court reiterates that the Republic of Kosovo is determined for a constitutional order in which gender equality constitutes one of the fundamental values. Based on Article 7 of the Constitution, this value has a direct impact on the democratic development of society and the implementation of equal opportunities of women and men in political, economic, social, cultural and other areas of social life (see cases of the Court, KI45/20 and KI46/20 (joined cases), with the Applicant *Tinka Kurti and Drita Millaku*, Judgment of 26 March 2021, paragraph 73 and case KI195/22, Applicant: *Besim Morina,* Judgment of 29 January 2024, paragraph 36).

205. The need to create equal opportunities creates for the State positive obligations for the use of various instruments and measures, including legal norms, in order to eliminate "*factual inequalities*" between women and men (see cases KI45/20 and KI46/20, cited above, paragraph 75; and case KI195/22, cited above, paragraph 37).

206. According to the Constitution, expressly in paragraph 3 of Article 24 of the Constitution provides that the principles of equal protection do not prevent the imposition of the necessary measures for the protection and advancement of the rights of individuals and groups who are in an unequal position. Such special measures represent instruments by which the State, namely the Republic of Kosovo, develops a policy of equal opportunities, as well as mitigates or eliminates factual inequality (see cases KI45/20 and KI46/20, cited above, paragraph 75; and case KI195/22, cited above, paragraph 38).

207. Regarding the principle of legal certainty, the Court reiterates the general principles deriving from the case law of ECtHR, its case law and the Rule of Law Checklist of the Venice Commission, according to which the principle of legal certainty, which is embodied in the concept of the rule of law, guaranteed by Articles 3 and 7 of the Constitution, and in all articles of the ECHR, requires that the rights and obligations be "*prescribed by law*" (see, in this context, the cases of the ECtHR, *Beyeler v. Italy*, no. 33202/96, Judgment of 5 January 2000, paragraph 109; *Hentrich v. France,* no. 1361/88, Judgment of 22 September 1994, paragraph 42; and *Lithgow and others v. the United Kingdom*, no. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, Judgment of 8 July 1986, paragraph 110; and, *inter alia*, the case of the Court KO100/22 and KO101/22, the Applicants: *Abelard Tahiri and ten (10) other deputies, as well as Arben Gashi and ten (10) other deputies of the Assembly of the Republic of*

Kosovo regarding the constitutional review of Law no. 08/L-136 on Amending and Supplementing the Law no. 06/L-056 on Kosovo Prosecutorial Council, Judgment of 24 March 2023, paragraph 347).

208. In this context, "*prescribed by law*" requires that, in addition to the measure taken having a legal basis in state legislation, it also requires that the relevant provisions of the law be "*clear, accessible and foreseeable*". "*Foreseeability*", based on the aforementioned principles, requires that the law must be formulated with appropriate precision and clarity to enable legal entities to regulate their behavior (see, *inter alia*, Checklist of the Rule of Law of the Venice Commission, CDL-Ad(2016)007, Strasburg, 118 March 2016, paragraphs 58 and 59; and *inter alia*, case of the Court KO100/22 and KO101/22 cited above, paragraph 347).

B. Court's assessment

209. The Court notes that paragraph 2 of Article 15 of the contested Law stipulates that the election of the chairperson and members of the IMC "*reflects the principles of gender equality according to the relevant legislation on gender equality"*.

210. The Court recalls that with regard to gender representation in the IMC, the Applicants claim that the election of the chairperson and members of the IMC undermines the gender representation guaranteed by Article 7 and Article 24 of the Constitution, as it does not specify the number of IMC members, as defined by the current Law in force of the IMC, which provides that at least two (2) of the IMC members must be of the female gender, but only makes reference *to the "relevant legislation on gender equality",* which according to them, does not represent binding representation quotas, a claim that is also supported by the IMC and opposed by the Government.

211. In this regard, the Court has clarified the general principles that the Republic of Kosovo is determined for a constitutional order in which gender equality constitutes one of the fundamental values, as set out in Article 7 of the Constitution. Also, the need to create equal opportunities creates positive obligations for the state to use various instruments and measures, including legal provisions, with the aim of eliminating *de facto* inequalities between women and men. In this context, according to the Constitution, it is expressly provided in paragraph 3 of Article 24 of the Constitution that the principles of equal protection do not prevent the imposition of the necessary measures for the protection and advancement of the rights of individuals and groups who are in an unequal position. The Court has emphasized that such special assets represent instruments by which the state, respectively the Republic of Kosovo, develops the policy of equal opportunities, as well as mitigates or eliminates possible factual inequality. These measures can be applied until the achievement of the goal for which they have been set.

212. In this regard, the Court notes that the current applicable IMC Law of 2012, in paragraph 5 of Article 10 (Composition of the IMC), has stipulated that "*at least two (2) members shall be of the female sex"*.

213. Unlike this provision, paragraph 6 of Article 14 (Composition of IMC) of the contested Law stipulates that "*the composition of IMC members reflects the multiethnic and gender character of Kosovo*". Therefore, while the same as regards non-majority communities stipulates that at least three (3) members of the IMC are appointed from the ranks of non-majority communities, it does not specify gender-specific quotas.

214. On the other hand, the Court notes that paragraph 2 of Article 15 of the contested Law stipulates that the election of the chairperson and members of the IMC "*reflects the principles of gender equality according to the relevant legislation on gender equality"*.

215. In this regard, the Court refers to paragraph 8 of Article 6 of the Law on Gender Equality which provides that: "*Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies;*".

216. In this regard, as the Court has pointed out in its case law, the Assembly as a legislator has not formulated this percentage as a legally binding quota, but rather as a formula in the form of a constitutional, legal and factual ideal that a democratic society of the Republic of Kosovo should achieve, and it will only be achieved when equality and the truth of the facts are ensured. Thus, the fifty percent (50%) in paragraph 8 of Article 6 of the Law on Gender Equality is not a legal quota for mandatory representation (see Court cases KI45/20 and KI46/20, cited above, paragraph 142).

217. Although the constitutional ideal and spirit of the Constitution reflected in Article 7 aim at achieving 50% to 50% *de facto* equality between the two genders, the Constitutional Court is aware that it is not within its competence to set new public policies, nor to assess whether a public policy to date is good or appropriate. It is also not up to the Court to re-establish new legal quotas or increase the percentage of legal gender representation quotas in favor of either gender. Therefore, in the circumstances of case KI45/20 and KI46/20, which related to the quotas for representation in the Assembly, the Court emphasized that the legislators of the Republic of Kosovo are the ones who have set the 30% quota as the only applicable legal quota, which should be maintained in any circumstance until the competent authorities decide to make legal changes in this regard, if they deem it necessary. It is also the legislators who have set 50% as the constitutional ideal of equal gender representation, emphasizing that equal gender representation is achieved only when 50%-50% representation is provided for each gender (see Court cases KI45/20 and KI46/20, cited above, paragraph 143).

218. However, in the circumstances of the present case, the Court notes that the contested Law differs from the Law on Elections, which has set the quota for representation in the Assembly of thirty percent (30%) as a minimum of representation of each gender, and the Law of 2012, which in paragraph 5 of Article 10 (Composition of IMC), has stipulated that "*at least two (2) members must be of the female gender"*.

219. The Court notes, first of all, that paragraph 6 of Article 14 (Composition of IMC) of the contested Law clearly defines the obligation that the composition of the IMC members reflects the "*gender characteristic of Kosovo*", necessarily determining gender representation in the composition of the IMC.

220. Secondly, while paragraph 6 of Article 14 of the contested Law stipulates that the composition of the IMC members also reflects the gender character of Kosovo, paragraph 2 of Article 15 of the contested Law has made specific reference *to the legislation "on gender equality*", regarding the election of the chairperson and members of the IMC.

None of these provisions has defined gender-specific quotas in the composition of the IMC.

221. In this context, taking into account the above, the Court considers that notwithstanding the fifty percent (50%) quota in paragraph 8 of Article 6 of the Law on Gender Equality is not a legal quota for mandatory representation, as the Court has defined in its case-law, when the legislator through a specific Law refers to the "*relevant legislation on gender equality*" as regards the composition of a specific body, as defined in paragraph 2 of Article 15 (Election of members of the IMC) of the contested Law, this represents the will of the legislator to make such a quota mandatory in the circumstances of the present case. Moreover, paragraph 6 of Article 14 (Composition of IMC) of the contested Law clearly defines the obligation that the composition of the IMC members reflects the "*gender character of Kosovo*".

222. Consequently, the Court considers that (i) the reference in the relevant legislation on gender equality regarding the election of the chairperson and members of the IMC; in connection with (ii) the determination of the obligation for the composition of the IMC to reflect the gender character of Kosovo, results in the implementation of the Law on Gender Equality, including in the context of paragraph 8 of Article 6 of the Law on Gender Equality, which determines the quota of fifty percent (50%) of the representation in the IMC.

223. Therefore, in the context of the composition of the IMC, this means that out of the eleven (11) members that the IMC is foreseen to have, at least five (5) of them must be of the opposite sex, in order to meet the gender equality standard set out in paragraph 6 of Article 14 and paragraph 2 of Article 15 of the contested Law, in conjunction with the Law on Gender Equality.

224. Accordingly, the Court considers that the Applicants' allegation that the contested Law did not respect the gender quotas established by the current Law is not grounded, because the contested Law, referring specifically to the legislation on gender equality in the context of the composition of the IMC, reflects the will of the lawmaker that this quota be up to fifty percent (50%) of the representation of each gender.

225. Therefore, the Court finds that paragraph 2 of Article 15 of the contested Law is not contrary to Article 7 [Values] and Article 24 [Equality Before the Law] of the Constitution.

3. Regarding the extension of mandate of the IMC members until the election of new members

226. The Court notes that the Applicants claim that although the mandate of the members of the IMC based on paragraph 1 of Article 17 of the contested Law is four (4) years with the possibility of re-election for another mandate, the contested Law under paragraph 2 of Article 17, has determined the possibility of extending the mandate until the election of new members, this, according to the Applicants, is in complete disregard with the concept of a limited time mandate defined by the contested Law and with the constitutional standards of independent institutions and the principle of legal certainty as an integral part of the principle of the rule of law, established in Article 7 of the Constitution.

227. In this regard, the Court reiterates that Article 141 of the Constitution (i) determines the IMC as an independent body that regulates the spectrum of Broadcasting Frequencies in the Republic of Kosovo, issues licenses to public and private broadcasters, establishes and implements broadcasting policy, while the same determines the regulation at the law level of the election and the duration of the mandate of the members of the IMC, provided that the process for their election is transparent. The issue of the duration of the mandate of members of independent bodies such as the IMC and the possibility of re-election is also related to the independence of their members.

228. In this regard, according to paragraph 1 of Article 17 of the contested Law, the mandate of the chairperson and members is four (4) years with the possibility of re-election for another term.

229. Exceptionally, according to paragraph 2 of Article 17 of the contested Law, if after the end of the mandate, the chairperson and the new members could not be elected according to the established procedures, the chairperson and the members of the IMC whose mandate has expired continue to exercise their duties and responsibilities until the election of the chairperson, respectively the new members, by the Assembly. This is unless they have been dismissed or have resigned, as defined in paragraph 2, subparagraph 2.1 of this article.

230. The Court notes that such a practice is also applied in the case of the Ombudsperson institution, as an independent constitutional institution established by Chapter II [Independent Institutions] of the Constitution. In this context, based on paragraph 3 of Article 14 (End of the function of the Ombudsperson and his/her deputies) of the Law No. 05/L--019 on the Ombudsperson "*In case of expiration of the mandate, the Ombudsperson or his/her deputy shall exercise its function until the election of the new Ombudsperson, respectively of the new deputy*".

231. Therefore, the Court notes that the Law on the Ombudsperson foresees the possibility of extending the mandate of the Ombudsperson and his/her deputies, even after the end of their regular mandate. This is despite the fact that (i) based on paragraph 1 of Article 9 (Election of Ombudsperson) of the Law on the Ombudsperson, the Ombudsperson is elected by the Assembly for a term of five (5) years, without the right to re-election; while (ii) according to paragraph 6 of Article 10 (Procedure for election of Deputy Ombudspersons) of the Law on Ombudsperson, the deputies of Ombudsperson are elected by the Assembly for a three (3) year mandate with possibility of re-election.

232. Moreover, such a provision is also included in the Law no. 06/L-048 on the Independent Oversight Board of the Civil Service of Kosovo, which in paragraph 7 of Article 10 (Appointment procedures of the members of the Board) stipulates that "*In order to maintain the functionality of the institution, in case of termination of the regular mandate and inability to appoint a member of the Board due to exceptional circumstances, the Board member shall continue to exercise his/her function until the election of the new Board member*".

233. Moreover, such a practice of remaining in office until being replaced is also foreseen at the level of ECtHR judges, since according to paragraph 1 of Article 23 (Terms of office and dismissal) of the ECHR, it is foreseen that "*Judges shall be elected for a period of nine years and they cannot be re-elected*", paragraph 2 of the same article explicitly stipulates

that "*The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.*"

234. The Court notes that this regulation aims to avoid institutional vacuum within the IMC in case the Assembly is unable to elect new members of the IMC, given the importance of the issues considered by the IMC according to the Constitution and the law.

235. The Court also notes that the importance of the IMC being functional has also been evidenced by the European Commission. In this context, the European Commission 2023 Kosovo Report states that the IMC during the reporting period has been largely dysfunctional due to the lack of a quorum, because one member's mandate has passed while the Assembly has failed to elect a new member by March 2023 (see the European Commissions 2023 Kosovo Report, cited above, page 33).

236. Therefore, in this case, the Constitution does not specify the issue of the duration of the mandate of the members of the IMC specifically in Article 141 that relates to the mandate of the IMC. Therefore, while Article 141 of the Constitution delegates the issue of the term of office of members of the IMC at the level of law, the contested Law determines the independence of the IMC and members of the IMC, including the one who during the performance of their duties cannot receive external instructions.

237. The Court considers that in this case, the extension of the mandate of the President, namely the members of the IMC until the election of new members, serves the purpose of avoiding the institutional vacuum within the IMC in case the Assembly is unable to elect new members of the IMC.

238. Therefore, the Court considers that the Applicants have not proved that the legal definition for the extension of the mandate of the chairperson and members until the election of the chairperson, respectively the new members, defined in the contested Law, violates the independence of the IMC established by Article 141 of the Constitution.

239. Whereas, in the context of legal certainty, the Court stresses that the legal certainty regarding the fact that, on the one hand, Article 17 defines a limited four (4) year mandate, while on the other hand it enables its extension until the election of the chairperson respectively the new members of the IMC, the Court considers that the contested Law is clear and predictable in the sense that the four (4) year mandate ends, on the condition that the new members are elected, otherwise it can continue until the election of the new members, except in case of the dismissal or resignation of the chairperson or members of the IMC.

240. Finally, the Court notes that this legal determination does not exempt the Assembly from the responsibility to elect members of the IMC based on the procedure set out in Article 15, and that within the time limits set where, *inter alia*, it is determined in sub-paragraph 1.1 of paragraph 1 of this Article that the procedure begins within the ninety (90) day time limit before the term of office of the President or members of the IMC expires Therefore, the Assembly is obliged to fulfill the legal obligation to elect, and within the legal deadlines, the chairperson and members of the IMC, as defined by law.

241. Therefore, the Court, based on the above, finds that paragraph 2 of Article 17 of the contested Law is not contrary to Articles 141 [Independent Media Commission] and 7 [Values] of the Constitution.

4. Regarding the dismissal of the Chairperson and members of the IMC

242. In this regard, the Court refers to paragraph 1 of Article 18 of the contested Law, which stipulates that: "*The Chairperson and member of the IMC shall be dismissed from office when it is established that there is any ground for dismissal under paragraph 3 of this Article*".

243. Paragraph 2 of the same article defines the procedure for dismissal, specifying that (i) the proposal is made by the Parliamentary Committee responsible for the media; while, (ii) the Assembly by a simple majority decides on the dismissal of the Chair or member of the IMC.

244. In this regard, the Court notes that both the chairperson and the members can be dismissed from office on the proposal of the relevant Committee of the Assembly, but paragraph 1 of Article 18 of the contested Law, emphasizes that both the chairperson and the members of the IMC can be dismissed only based on the grounds for dismissal set out in paragraph 3 of the contested Law.

245. In this regard, the Court notes that the grounds for dismissal set out in paragraph 3 of Article 18 of the contested Law include, (i) professional incapacity; (ii) mental or physical inability to perform the duties of the member; (iii) failure to perform duties for an uninterrupted period of more than three (3) months, without approval by the IMC; (iv) participation in a decision-making process that is contrary to the interests of the IMC, the public, or one of the social groups that by this law, the IMC should provide support or protection; (v) loss of trust by the supervisory body due to violation of integrity, biased attitudes in favor of a party licensed or registered with the IMC; (vi) sentence for a criminal offense which is punishable with over six (6) months of effective imprisonment; (vii) non-fulfillment of conditions under sub-paragraphs 1.3 and 1.5. of paragraph 1 of article 16 of the contested Law; (viii) absence from work over fifteen (15) days without cause; and (ix) active participation in political activities after appointment as a member of the IMC.

246. The Court notes that in relation to the dismissal of the IMC members, the Applicants claim that (a) it has not set the criteria for dismissal of the chairperson of the IMC, but only of its members; while (b) the members can be dismissed by a simple majority of votes, including due to "*loss of trust*" by the Assembly and based on the criterion of "*violated integrity*".

247. The Court will then assess whether Article 18 of the contested Law (a) has set the criteria for dismissal of the chairperson of the IMC; and (b) dismissal of the chairperson and members of the IMC by a simple majority of votes, including due to "*loss of confidence*" by the Assembly and based on the criterion of "*violated integrity*".

(a) Regarding the allegation of non-determining the criteria for dismissal for the Chairperson, but only for the members of the IMC by the contested Law

248. Regarding the conditions for the dismissal of the chairperson of the IMC, and the claims of the parties that the same are not defined, the Court notes that based on paragraph 1 of Article 18 of the contested Law the dismissal of both the chairperson and the members took place on the grounds set out in paragraph 3 of Article 18 of the contested Law.

Therefore, despite the fact that paragraph 3 of Article 18 of the contested Law does not specify the position of the President when determining the conditions for dismissal, such a determination is regulated by paragraph 1 of Article 18 of the contested Law. Therefore, from the related reading of paragraphs 1 and 3 of Article 18 of the contested Law, the Court points out that both the chairperson and the members can be dismissed if the criteria set out in paragraph 3 of Article 18 of the contested Law are met.

249. In this regard, the Court recalls its case law where it emphasized that the Constitution and each of its norms should be interpreted in interdependence with each other and not isolated from each other, and always taking into account its principles and values. No norm of the Constitution can be interpreted separately and isolated from the principles and values proclaimed in the Constitution, including its Preamble. No constitutional norm can be taken out of context and interpreted mechanically and independently of the rest of the Constitution. This is due to the fact that the Constitution has an internal cohesion according to which each part has a connection with its other parts (see case KO72/20 of the Applicant *Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 28 May 2020, paragraph 346).

250. The Court notes that the same principles regarding the interrelationship of legal norms also apply to laws. Therefore, even in the present case, the Court points out that the allegation that the contested Law has defined the criteria according to which members of the IMC can be dismissed, but not its chairperson, are not based on the fact that, as it results from the related reading of paragraphs 1 and 3 of Article 18 of the contested Law, both for members and for the chairperson of the IMC, the conditions for dismissal set out in paragraph 3 of Article 18 of the contested Law apply.

(b) Regarding the dismissal of the members of the IMC by a simple majority of votes based on the criteria of the contested Law

251. The Applicants contest the possibility of dismissing the members of the IMC by a simple majority according to subparagraph 3.5 of paragraph 3 of Article 18 of the contested Law, based on the "*loss of trust of the supervisory body*", contesting the clarity of the criteria for dismissal due to "*violation of integrity*".

252. As the Court has explained above, the criteria for dismissal of members of independent institutions are an important element in determining whether such an institution enjoys the independence necessary to perform its functions.

253. Based on the case law of the Court, independent institutions are regulated in separate constitutional chapters, and each of these chapters establishes the general principles as well as the duties and responsibilities of each power, including the check and balance mechanisms between them, which constitute the essence of how these powers should check and balance each other, without creating any unconstitutional "interference", "dependence" or "subordination" between them, which could potentially affect the independence of one or the other power. In addition to the three classical powers, the Constitutional Court has a special place in the system of separation of powers, as an institution responsible for the final guarantee of constitutionality at the country level, the President, as a representative of the unity of the people and guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as well as the independent institutions referred to in Chapter XII of the Constitution; and finally (see cases of the Court, KO100/22 and KO101/22, cited above, paragraph 158; and KO216/22 and

KO220/22, cited above, paragraph 243). The Constitution has included the IMC as an independent institution in Chapter XII of the Constitution, as defined in Article 141 of the Constitution.

254. Given the independence enjoyed by the IMC as an independent constitutional institution, and as it results from the general principles set out above, including the Council of Europe Recommendation on the regulatory bodies of the broadcasting sector, the dismissal of its members should be possible only in the event of non-compliance with the rules of inappropriateness which they must comply with or the impossibility of exercising the prescribed function, without prejudice to the possibility for the person concerned to appeal to the court against his dismissal. Furthermore, dismissal based on reasons related or not to their function should be possible in serious cases clearly stipulated by law, subject to a final court decision.

255. In this regard, the Court emphasizes that based on the above-mentioned constitutional provisions, as well as standards for broadcasting regulatory sector, to ensure the independence of the IMC as it is established by the Constitution, (a) the dismissal procedures of the chairperson and members of the IMC should be clear; (b) dismissal should be possible in serious cases clearly defined by law; and (c) the decision to dismiss should be subject to a final court decision.

256. Therefore, the Court will then assess whether (i) the members of the IMC in case of dismissal have the opportunity to challenge the decision to dismiss them before the judicial institutions; and (ii) whether the criteria for dismissal set out in the contested Law are clearly defined.

257. Based on the above, regarding the possibility for a dismissed member to be offered judicial protection to challenge the reasons for dismissal, as it results from the case law of the Court (i) the chairperson/members of the IMC who are dismissed, may challenge the decision for dismissal in the court proceedings; and (ii) such decision-making may also be challenged before the Constitutional Court by authorized parties under the conditions set out in Article 113 of the Constitution. In this context, the Court notes that it has dealt with cases where decisions of the Assembly on the dismissal of members of independent institutions have been challenged before it, whereby the Court has found that (i) the legality of such decision-making may be challenged by authorized parties before the regular courts; and (ii) the constitutionality of those decisions may also be challenged in the Court by authorized parties, such as deputies of the Assembly under paragraph 5 of Article 113 of the Constitution.

258. These cases include cases (i) KO127/21, cited above, in which the Court had found that the Assembly by dismissing (5) five members of the Independent Oversight Board collectively and without elaboration of any facts and based on the law, but only on the ground that the Independent Oversight Board *"has not applied the laws applicable in decision-making",* respectively due to their decision-making in concrete cases, for which the members of the Independent Oversight Board enjoy independence and immunity from dismissal and which decision-making is subject to the control of the judicial and not the legislative power, it has exceeded the limits of the competence of supervising the work of public institutions, defined by paragraph 9 of Article 65 of the Constitution; (ii) KO134/21, cited above, where the Court found that upon the dismissal of all members of the Board of RTK, namely the collective dismissal of the board of the public broadcaster for "*professional incompetence*", ascertained through the review of RTK Annual Report

for 2020, the Assembly acted without legal basis in context of the dismissal of the Board in its entirety, as a result of the rejection of the respective annual report and consequently, contrary to the provisions of the Law on RTK; and (iii) KO157/23, the Applicants: *Vlora Dumoshi and 11 other deputies*, Judgment of 17 May 2024, where the Court found that neither the Government nor the Assembly have provided any justification regarding the alleged violation of the "*professional ethics*" of the member of the PRB, on the basis of which the proposal and its dismissal was made, and as a consequence had found a constitutional violation regarding the decision of the Assembly to dismiss her.

259. On the other hand, regarding the case KO139/21 the Applicants: *Fadil Nura and 9 other deputies,* Judgment of 5 April 2023, in the circumstances of the concrete case, taking into account the specifics of Law no. 04/L -063 on Kosovo Railways, the Court considered that the Assembly in the exercise of the supervisory function, by dismissing five (5) members of the Board of the Railway Regulatory Authority, had not exceeded the limits of its supervisory function according to paragraph 9 of Article 65 of the Constitution, respectively the limits set in the law itself adopted by the Assembly, namely Law no. 04/L -063 for Kosovo Railways. Similarly, the Court has assessed in the case KO283/23, Applicant: *Abelard Tahiri and 9 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 26 November 2024, where the Court had found that the Assembly had exercised its role in relation to the non-prosecutor members of the Prosecutorial Council, and dismissed a non-prosecutor member based on the procedure and grounds of dismissal according to the provisions of the Law on the Prosecutorial Council, including on the basis of a reasoning that does not turn out to be arbitrary.

260. Regarding the definition of dismissal criteria by the contested Law, the Court states that "*prescribed by law*", in addition to requiring that the measure taken should have a legal basis in the state legislation, also requires that the relevant provisions of the Law *be "clear, accessible and foreseeable*". "*Foreseeability*", based on the above principles, requires that the law be formulated with due precision and clarity to enable legal entities to regulate their conduct (see, *inter alia*, the Venice Commission Rule of Law Checklist, CDL-Ad (2016)007, adopted on 18 March 2016, paragraphs 58 and 59; and the Court cases KO100/22 and KO101/22, cited above, paragraph 347).

261. In relation to the present case, the Court notes that the procedure for dismissal established by the contested Law (i) is clearly prescribed by law, and in accordance with Article 80 of the Constitution, in which case the chairperson/member of the IMC can be dismissed upon the proposal of the Assembly Committee responsible for the media, and with a simple majority of votes in the Assembly.

262. Furthermore, (ii) the dismissal of the chairperson or member of the IMC may be done only for the reasons specified specifically by paragraph 3 of Article 18 of the contested Law.

263. In this connection, the Applicants challenge the clarity and foreseeability of the dismissal criterion set out in sub-paragraph 3.5 of paragraph 3 of Article 18 of the contested Law, namely as regards the loss of trust by the supervisory body due to a violation of integrity.

264. In this context, the issue of integrity, as a criterion for dismissal, and the wording used has been subject to review by the Court also in the sense of the constitutional amendments reviewed by the Court by referral KO55/23, Applicant the *President of the*

Assembly of the Republic of Kosovo, the assessment of the proposed constitutional amendments, referred by the President of the Assembly of the Republic of Kosovo on 2 March 2023, through letter no. 8/3509/Do/1493/1, Judgment of 22 December 2023, as regards judges and prosecutors. The Court, in case KO55/23, concluded that the wording "*has vulnerable integrity*", as a permanent basis for the dismissal of the judge and/or prosecutor, is characterized by the absence of a "*clear*" and "*predictable*" definition.

265. In this regard, the Court points out that based on the language used in this provision, sub-paragraph 3.5 of paragraph 3 of Article 18 uses the criterion for dismissal "*loss of trust*" in connection with "*violation of integrity*" or "*biased attitudes*" of the IMC member. In this regard, the Court considers that as such, these criteria, taken together, are characterized by a lack of clarity regarding their fulfillment so that a member of the IMC can be dismissed.

266. Therefore, sub-paragraph 3.5 of paragraph 3 of Article 18 of the contested Law lacks clarity regarding the "*violation of integrity*" but also the wording for "*biased attitudes in favor of a licensed party*", since they, in the absence of a clear wording, provide a subjective assessment in relation to the members of the IMC, without clearly defining by law which actions would result in such violations, and furthermore using the wording "*loss of trust by the supervisory body*". This brings legal uncertainty for IMC members, and affects their independence as IMC members.

267. In connection with the criterion for dismissal established in sub-paragraph 3.5 of paragraph 3 of Article 18 of the contested Law, the Court also refers to sub-paragraph 3.4 of paragraph 3 of Article 18 of the contested Law, according to which a member of the IMC may also be dismissed for "*participating in a decision-making process that is contrary to the interests of the IMC, the public, or one of the social groups that by this law the IMC should provide support or protection*".

268. The Court considers that even this criterion for dismissal lacks clarity and enables a subjective assessment in relation to the members of the IMC, without clearly defining by law, which actions would result in such violations. The Court, based on the case law referred to above, especially in the light of the cases of the Court KO127/21, KO134/21 and KO157/23, deems that the wording set forth in paragraph 3.4 of Article 18 of the contested Law brings into legal uncertainty the members of the IMC regarding the participation in a decision-making process that is contrary to the interests of the IMC, the public, or one of the social groups that by this law the IMC should provide support or protection.

269. Therefore, the Court considers that the criteria for dismissal set out in sub-paragraphs 3.4 and 3.5 of paragraph 3 of Article 18 of the contested Law (i) violate legal certainty within the principle of the rule of law guaranteed by Article 7 [Values] of the Constitution and the independence of the members and the IMC guaranteed by Article 141 [Independent Media Commission] of the Constitution.

270. The Court also notes that subparagraph 3.8 of paragraph 3 of Article 18 of the contested Law also foresees the possibility of dismissal in case a member of the IMC is absent "*at work for more than fifteen (15) days without a justification*". While such wording for absence of more than fifteen (15) days is clear, the Court points out that the wording "*without a justification"* should be assessed based on objective criteria including relevant evidence.

271. Therefore, based on the above, the Court finds that sub-paragraphs 3.4 and 3.5 of paragraph 3 of Article 18 of the contested Law are not compatible with Article 141 [Independent Media Commission] of the Constitution and Article 7 [Values] of the Constitution.

III. Constitutional review of sub-paragraph 2.21, paragraph 2, Article 4 (Competencies of the IMC) of the contested Law in relation to the Appeals Council

A. Allegations and counter-arguments of the parties

272. The Court initially clarifies that Article 4 of the contested Law stipulates in paragraph 1 that the IMC is an independent body, responsible for the regulation, management and supervision of the broadcasting frequency spectrum. Whereas paragraph 2 of this article defines the competencies of the IMC which, *inter alia*, include the competence defined by sub-paragraph 2.21 of paragraph 2 of this article, according to which the IMC establishes the Appeals Council that handles the complaints of the parties in relation to licensed and registered parties in accordance with this law and sub-legal acts, as well as drafts and approves the regulation of functioning of this council.

273. The Applicants essentially claim that the contested Law, by stipulating in sub-paragraph 2.21, paragraph 2, of Article 4, that the Appeals Council is established by the IMC itself, and by not defining the composition, duties and effects of the decision-making, has violated the right to legal remedies guaranteed by Article 32 of the Constitution, since the Appeals Council, as defined in the contested Law, cannot make an impartial assessment of the appeals against the decisions of the IMC and cannot be effective in terms of the right to legal remedies.

274. These allegations are supported by AJK, who point out that (i) the law in force on the IMC of 2012, which has determined the establishment of the Appeals Board, contains nine articles that regulate in detail the issue regarding appeals against decisions of the IMC, unlike the contested Law that does not contain the Board of Appeals at all, eliminating this internal corrective mechanism altogether; and furthermore (ii) based on paragraph 1, sub-paragraph 2.21 through the contested Law, it results that the decisions of the IMC will be subject to administrative review by a body appointed by the IMC itself and that has a subordinating function to the IMC, violating the right to guaranteed legal remedies under Article 32 of the Constitution. The Applicants' claims are challenged by the Government because according to them (i) Article 32 of the Constitution does not guarantee the right to appeal through the administrative procedure, as long as such a right is guaranteed by law before the courts; and (ii) the Board of Appeals against the decisions of the IMC is not a constitutional category and to challenge the decisions of the IMC a judicial process can be initiated in the courts and that such an approach is also defined as regards the decisions of other independent institutions.

B. Court's assessment

275. The Court notes that unlike the contested Law, the Law which is currently in force in relation to the IMC includes a special chapter, namely Chapter VI (Appeals Board) which defines its responsibilities, composition, manner of election of Board members, incompatibility of function, mandate, dismissal, procedure and decision-making. Based

on Article 36 (Responsibilities) of the Law of 2012, respectively paragraphs 1 and 2 of this Article, the Board of Appeals is independent in exercising its functions and that it reviews the appeals of the parties against the decisions of the IMC that are directly subject to the decision regarding, *inter alia*, broadcasting licenses, the imposition of sanctions and other issues that rely on secondary legislation. Therefore, unlike the 2012 Law, the contested Law has established another body that differs from the Appeals Board, namely (i) the Appeals Council, with the competence to (ii) handle the complaints of the parties in relation to licensed and registered parties, (iii) based on the regulation on the function of the Appeals Council issued by the IMC.

276. Consequently, based on the above, the contested Law does not establish an appeals board, appeals council or other body that handles the complaints of the parties against decisions directly subject to the IMC decision-making.

277. This is because, the Court notes that after reading paragraph 2, sub-paragraph 2.21 of Article 4 of the contested Law, it results that the Appeals Council set out in this provision is a body that (i) handles the complaints of the parties in relation to licensed and registered parties; (ii) in accordance with this law and sub-legal acts; while (iii) the regulation of functioning of this Council is adopted by the IMC itself.

278. Therefore, as it results from paragraph 2, sub-paragraph 2.21 of Article 4 of the contested Law, the Appeals Council is an internal body of the IMC that handles and assists the Council regarding the complaints of the parties against/in relation to the licensed and registered parties and the decision-making of the IMC regarding these complaints. The Appeals Council, according to paragraph 2, sub-paragraph 2.21 of Article 4 of the contested Law, is not a body that treats the legality of IMC decisions based on the complaints of licensed and registered parties.

279. In this regard, the Court reiterates that according to paragraph 33 of the Explanatory Memorandum to Recommendation (2000) 23 of the Council of Europe *"regulatory authorities should, within the framework of the law, have the power to adopt internal rules in order to define their organisation and decision-making in greater detail, in accordance with its administrative autonomy."*

280. As explained above, while the Law of 2012 has defined the Appeals Board, which reviews the appeals of the parties against the decisions of the IMC that are directly subject to the decision regarding, among other things, broadcasting licenses, the imposition of sanctions and other issues that are based on sub-legal acts, the contested Law has not defined any special body that reviews the appeals of the parties against the decisions of the IMC that are directly subject to the decision of the IMC, but has referred appeals against the IMC decision-making for the review of the competent courts.

281. In this context, the Court refers to Article 39 (Violations of license conditions) which, *inter alia*, stipulates in paragraphs 2, 3 and 4 that (i) the IMC reviews complaints alleging violation of license conditions, code of ethics and other acts; (ii) the IMC through the Executive Office, notifies the broadcasting entity in writing of any allegations regarding violation of license conditions, code of ethics and other legal acts in accordance with this law, and ensures that the broadcasting entity has effective opportunities to submit its statements; and (iii) the IMC issues a decision based on the facts and circumstances of the relevant case. In this regard, following the decision-making of the IMC, based on paragraph 5 of Article 39 of the contested Law, (iv) the licensees from the IMC have the

right to appeal to the competent court regarding the license, within thirty (30) days from the day of receipt of the IMC decision.

282. The Court also refers to paragraph 2 of Article 61 (Other sanctions) which stipulates that the IMC decision to impose one or more of the sanctions set out in this chapter is final in administrative procedure.

283. In this regard, the Court reiterates that based on the above-mentioned provisions, the contested Law has not established a body within the IMC that handles the appeals of licensed/registered parties against IMC decisions. However, the contested Law has stipulated the right for IMC decisions to be challenged before the competent courts regarding their legality, as it results from paragraph 5 of Article 39 of the contested Law and from paragraph 2 of Article 61 of the contested Law.

284. In the context of these determinations, the Court also refers to the Law No. 05/L-031 on General Administrative Procedure which in Article 13 (The principle of the right to legal remedies) stipulates that "*Except when explicitly excluded by law, any person has the right to use the legal administrative and judicial remedies, as provided by law against any administrative action or omission, which affects his subjective right or legitimate interests.*" The same law in paragraph 6 of Article 124 (Locus standi and grounds to an administrative remedy) stipulates that the exhaustion of the regular administrative remedy, is a preliminary requirement for any dispute before a competent court for administrative disputes. Direct access to the court without preceded administrative remedy is allowed, when, expressly provided by law. Consequently, based on the Law on Administrative Procedure, the special law, as in the circumstances of the present case, may stipulate that against an administrative body may be requested judicial protection directly in court.

285. The Court also recalls that Law no. 03/L-202 on Administrative Conflicts, in force at the time of the adoption of the contested Law (hereinafter: LAC no. 03/L-202) has established effective legal remedies for assessing the legality of administrative acts. As the Court has explained in its case law, the aim of the LAC as a law, as defined in Article 2 [Aim], is to ensure the judicial protection of the rights and interests of natural and legal persons and other parties whose rights and interests have been violated by: (i) individual acts; or (ii) actions of public administration bodies. Further, based on Article 3, paragraph 1.1 of the LAC no. 03/L-202, it is stipulated that that public administration bodies are central administration bodies, while paragraph 1.2 of the same article defines as an administrative act any decision of the administrative body issued after the administrative procedure in the exercise of public authorizations and which directly or indirectly violates the rights, freedoms or interests of legally recognized natural and legal persons. In addition to the provision whereby the purpose of the law is defined, more specifically, Article 10 of the LAC no. 03/L-202 provides, *inter alia*, for the possibility of initiating an administrative conflict against acts for which a natural or legal person considers that a legal right or interest has been violated. (see, *inter alia*, case of the Court KI214/21, with Applicant *Avni Kastrati*, Judgment of 7 December 2022, paragraphs 115 and 116).

286. Likewise, Law no. 08/L-182 on Administrative Disputes, which entered into force in January 2025 (hereinafter LAC no. 08/L-182), in Article 1 (Purpose) also stipulates that the purpose of this law is to "*provide judicial protection of the subjective rights and legitimate interests of the subjects of the law against acts or omissions committed unlawfully during the exercise of public authority as well as the lawfulness in the*

exercise of such an authority." The Court also refers to Article 17 (Exhaustion of ordinary administrative legal remedies) of the above Law, which in paragraph 1 stipulates that "*An action on annulment, an action for the issuance of an act as well as an action related to another administrative action, may be filed only after the exhaustion of the ordinary administrative legal remedies, according to the relevant Law on general administrative procedure."* Whereas, paragraph 2 stipulates that notwithstanding from paragraph 1 of this article, the action may be filed directly to the court, without the need to exhaust the administrative remedies, in cases when (i) the superior body does not exist in the administrative procedure; (ii) the rights or legal interests of the third party are violated by the administrative act resolving the appeal; (iii) it is expressly provided by law.

287. Therefore, the Court reiterates that the contested Law has not foreseen any special body that reviews the appeals of the parties against the IMC decisions or that are directly subject to the IMC decision. However, as it results from paragraph 5 of Article 39 of the contested Law, paragraph 2 of Article 61 of the contested Law, the Law on General Administrative Procedure and the legislation in force on administrative conflicts, any person who is directly affected by the decision-making of the IMC has the right to challenge the legality of the decision-making in question before the competent courts.

288. In addition, the Court will assess whether such a determination through the contested Law that the decision-making of the IMC may be subject to legality assessment before the regular courts, but which does not determine the complaint in administrative proceedings, violates constitutional provisions including the right to a legal remedy guaranteed by the Constitution.

289. In this respect, the Court initially refers to Article 141 [Independent Media Commission] of the Constitution, which stipulates in paragraph 1 that the Independent Media Commission is an independent body that regulates the range of Broadcasting Frequencies in the Republic of Kosovo, licenses public and private broadcasters, establishes and implements broadcasting policy, and exercises other competencies defined by law. The Court also refers to paragraph 2 of Article 141 of the Constitution, which stipulates that the members of the Independent Media Commission are elected according to law, through a transparent process.

290. Consequently, the Court notes that the above-mentioned article of the Constitution (i) defines the IMC as an independent body that regulates the spectrum of Broadcasting Frequencies in the Republic of Kosovo, licenses public and private broadcasters, establishes and implements broadcasting policy. While the same determines the regulation through law of (ii) other competencies of the IMC that were not mentioned above; and (iii) the election of members of the IMC, provided that the process for their election is transparent.

291. In other words, Article 141 of the Constitution obliges the establishment of the IMC as an independent body and defines the regulation through law of, among other things, the manner of election (provided that the process is transparent) and other competencies of the IMC. Furthermore, Article 141 of the Constitution is silent in relation to the manner of decision-making within the IMC, including the right to legal remedies in administrative proceedings. Therefore, it does not necessarily determine the establishment of any appeal body within the IMC, which deals with the legality of the IMC decision-making.

292. In this context, and referring to the Applicants' claims regarding the right to legal remedies, namely the allegation that the parties affected by IMC decisions have been deprived of the opportunity to effectively use legal remedies through an appeal within the IMC and through the courts, the Court recalls Article 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution. The first stipulates that: "*every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law*"; while the second, that "*everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated*".

293. As defined in the case law of the Court and based on the case-law of the ECtHR, in principle and in its entirety, Article 54 of the Constitution on the judicial protection of rights, Article 32 of the Constitution on the right to a legal remedy and Article 13 of the ECHR on the right to an effective remedy, guarantee: (i) the right to judicial protection in case of violation or denial of any right guaranteed by the Constitution or by law; (ii) the right to use legal remedy against judicial and administrative decisions which infringe on rights guaranteed in the manner prescribed by law; (iii) the right to effective legal remedies if it is found that a right has been infringed; and (iv) the right to an effective remedy at national level if a right guaranteed by the ECHR has been infringed (see, in this context and *inter alia*, the cases of the Court KI48/18, Applicant: *Arban Abrashi and the Democratic League of Kosovo,* Judgment of 23 January 2019, paragraph 198 and the Court cases KO100/22 and KO101/22, cited above, paragraph 346).

294. Therefore, according to the above, while judicial protection in relation to administrative decisions is provided, and as it results from the above constitutional and legal provisions, including the Law on General Administrative Procedure, which do not necessarily require the right of appeal against decisions of the IMC at the administrative level, if such a thing is prescribed by law, such as the present case, it cannot necessarily be required to provide the possibility of appeal at the administrative level.

295. In this regard, the Court notes that in the present case, despite the fact that the contested Law has not established legal remedies against the decisions of the IMC within the IMC itself, Article 141 of the Constitution does not specifically require such an appeal body to be an integral part of the IMC, since as it results from Article 39 and Article 61 of the contested Law, and the relevant provisions of the Law on General Administrative Procedure and the Law on Administrative Conflict, any decision of the IMC can be contested by the affected parties before the competent courts, to assess the legality of such decision-making.

296. Therefore, the Court finds that sub-paragraph 2.21 of paragraph 2 of Article 4 of the contested Law is not contrary to Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.

IV. Constitutional review of Article 10 (Media education) and Article 12 (Broadcasting policy) of the contested Law

A. The allegations and counter-arguments of the parties

297. The Court initially recalls that according to paragraph 1 of Article 10 (Media education) of the contested Law, (i) the IMC prepares textual materials, animations, videos and other forms of communication to promote media education, while paragraphs 2, 3 and 4 of this Article oblige (ii) the public broadcaster to transmit media education materials at least once a week in prime time according to the recommendations of the IMC of three (3) to seven (7) minutes and free of charge, and all generalist channels to transmit media education materials at least once a month of three (3) to seven (7) minutes and free of charge; (iii) the public broadcaster and other generalist channels to show broadcasts or debates in the function of media education at least once every three (3) months. Furthermore, paragraph 7 of Article 12 (Broadcasting policy) of the contested Law stipulates that the IMC ensures, where possible and by appropriate means, that (i) the broadcasters reserve at least ten percent (10%) of their broadcast time, excluding the time allotted for news, sporting events, games, advertising, teletext and teleshopping services, or in turn, (ii) at least ten percent (10%) of their programming budget for European works created by producers who are independent of the broadcasters.

298. Applicants regarding Article 10 (Media education) and Article 12 (Broadcasting policy) of the contested Law, which oblige (i) the public broadcaster – Radio Television of Kosovo and all generalist channels to broadcast media education materials, as well as to display broadcasts or debates in the function of media education; and (ii) broadcasters to reserve a percentage of the broadcasting time or a percentage of their budget for *"European works created by producers that are independent of the broadcaster",* claim that they are contrary to the media freedom guaranteed by Article 42 [Freedom of Media] of the Constitution. These allegations are opposed by the Government stating that the above provisions do not constitute an interference with editorial policies, but these provisions define the obligation for the IMC to promote media education and moreover, constitute a transposition of the EU Audiovisual Media Services Directive 2010/13, of 10 March 2010, as amended by Directive 2018/1808 of 14 November 2018, which requires broadcasters to orient a part of the budget towards European works created by producers independent of the broadcaster.

B. Court's assessment

299. The Court recalls that the Applicants claim that the abovementioned provisions of the contested Law violate the freedom of media set forth in Article 42 of the Constitution. In the context of this claim, the Court emphasizes that Article 42 of the Constitution contains 3 paragraphs. Paragraph 1 of this Article (i) guarantees the freedom and pluralism of the media. Paragraph 2 of this Article (ii) stipulates that censorship is prohibited and that no one may prevent the dissemination of information or ideas through the media unless this is necessary to prevent the encouragement and provocation of violence and hostility on grounds of racial, national, ethnic or religious hatred. While paragraph 3 of Article 42 of the Constitution stipulates that (iii) everyone has the right to correct untrue, incomplete or inaccurate published information, if it violates his/her rights or interests, in accordance with the law. Furthermore, the Court recalls that Article 42 of the Constitution is also related to Article 40 [Freedom of Expression] which stipulates in paragraph 1: "*Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.* " While paragraph 2 of the same stipulates the possible restrictions by specifically stressing that "*Freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion"*.

300. In the context of the aforementioned rights and in the light of the Applicants' allegations for the unconstitutionality of this Article, the Court also refers to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, which stipulates that:

> *"1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*
> *2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.*
> *3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*
> *4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.*
> *5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.*

301. Based on the above, the Court emphasizes that the test of Article 55 of the Constitution determines that the limitation of a right or freedom: (i) can only be done by "*law*"; (ii) there must be a "*legitimate purpose*"; (iii) it must be *"necessary and proportionate*"; and (iv) it must be "*necessary in a democratic society*". All of these criteria must be met cumulatively in order for a limitation to be justified. For interpretative purposes of these notions and concepts, the Court refers to the fact that the ECtHR also uses such tests to decide whether in a specific case there was a restriction and violation of human rights and freedoms guaranteed by the ECHR (see the case KO54/20, Applicant, *The President of the Republic of Kosovo*, Judgment of 31 March 2020, paragraph 198; See, *mutatis mutandis*, also the case of the Court KO93/21 Applicant, *Blerta Deliu-Kodra and 12 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 28 December 2021, paragraphs 287-299).

302. As regards the ECHR, the Court, as pointed out in the general principles, based also on the ECtHR case-law, in harmony with which the Court is obliged to interpret the human rights guaranteed by the Constitution under Article 53 of the Constitution, the issue of pluralism of audiovisual media is addressed within the freedom of expression guaranteed by Article 10 of the ECHR. In this sense, according to the practice of the ECtHR, there can be no democracy without pluralism (see the case of the ECtHR *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, n. 38433/09, Judgment of 7 June 2012, paragraph 129).

303. Also, according to the ECtHR but also the case law of the Court, exercising freedom of expression in an effective and meaningful way is not only conditioned by the obligation not to interfere by the state, but also by the positive obligation of the state to ensure positive protective measures, through law and practice. Therefore, the ECtHR emphasizes that, given the importance of what is protected through Article 10 of the ECHR, the state should be the ultimate guarantor of pluralism (see the case of ECHR *Manole and others v. Moldova*, no. 13936/02, Judgment of 17 September 2009, paragraph 99; and the case of the Court KO134/21, Applicant *Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo,* Judgment of 1 August 2023, paragraph 133).

304. The Court also refers to *Compilation of Opinions of the Venice Commission on Freedom of Expression and the Media*, CDL-PI (2020)008, of 7 July 2020, according to which (i) media pluralism can be considered as an aspect of freedom of expression and the same is achieved when there are a plurality of autonomous and independent media at national, regional and local level, ensuring varieties of content that reflect different political and cultural views (page 7); (ii) the state is the ultimate guarantor of pluralism, especially with regard to audiovisual media, whose programmes are usually widely broadcast (page 18); (iii) developments in the area of new communication services may lead to the creation of dominant market positions. In respect of digital broadcasting, states are called upon to introduce rules on fair, transparent and non-discriminatory access to systems and services (page 19); (iv) the measure of concentration based on share of channels or programme output cannot […] be useful for assessing the position of a company in the national radio and television markets (page 20).

305. The ECtHR stated that in order to ensure true pluralism in the audiovisual sector, it is not enough to have several channels or to have the theoretical opportunity for potential operators to access the audiovisual market. But in this respect, it is necessary to allow effective access to the market in order to guarantee overall diversity in programme content, reflecting as far as possible the variety of opinions encountered in the society to which the programme is directed (see case *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, cited above, paragraph 130).

306. Furthermore, and in relation to the promotion of content diversity, the Court also refers to Recommendation CM/Rec(2007)2 of the Committee of Ministers of the Council of Europe Member States, adopted on 31 January 2007, which in Chapter II (Measures promoting content diversity), point 1, inter alia, lays down that Member States should "*adopt the necessary measures to ensure that information of the appropriate variety, opinions and programmes is disseminated by the media and is accessible to the public*". Furthermore, paragraph 2.1 of this Chapter stipulates that, "*Member states should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and generations*".

307. The aim of the AVMS Directive 2010/13 is to establish and ensure the proper functioning of the European Union single market in audiovisual services, while contributing to the promotion of cultural differences, by creating an adequate level of protection for consumers and children. The same sets out rules regarding traditional television broadcasting and on-demand audiovisual media services.

308. The Court also notes that Article 17 of the AVMS Directive stipulates that: *"Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production".*

309. In the above context, the Court again refers to Article 10 (Media education) of the contested Law, which stipulates in paragraph 1 that (i) the IMC prepares textual materials, animations, videos and other forms of communication to promote media education, while in paragraphs 2 and 3 oblige (ii) the public broadcaster to transmit media education materials at least once a week according to the recommendations of the IMC with a duration of three (3) to seven (7) minutes and free of charge, emphasizing "*in prime time*"; (iii) all generalist channels to transmit media education materials at least once a month with a duration of three (3) to seven (7) minutes and free of charge; and through paragraph 4 of the above-mentioned article that (iv) the public broadcaster and other generalist channels to display shows or databases in the function of media education at least once every three (3) months.

310. Furthermore, Article 12 (Broadcasting policy) of the contested Law stipulates in paragraph 1 that the broadcasting policy determined by the IMC is obliged to comply with the legislation in force and the accepted international standards of broadcasting and human rights, while paragraphs 2, 3, and 4 of Article 12 of the contested Law define the broadcasting policies, including that the IMC ensures that the programs contain and reflect equality between citizens of all communities living in Kosovo. On the other hand, paragraph 7 of Article 12 of the contested Law, which is contested before the Court, stipulates that the IMC ensures, where possible and by appropriate means, that (i) broadcasters reserve at least ten percent (10%) of their broadcast time, excluding the time allotted for news, sports events, games, advertising, teletext and teleshopping services, or in turn, (ii) at least ten percent (10%) of their programming budget for European works created by producers who are independent of the broadcasters. According to the same provision, this proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing audience, should be achieved progressively, on the basis of appropriate criteria. According to this provision, this is achieved by assigning an appropriate proportion to recent works, such as works transmitted within five (5) years of their production. The Court also notes that according to paragraph 8 of Article 12 of the contested Law, the obligation under paragraph 7 of this Article does not apply to audiovisual media service providers with local and regional terrestrial coverage and providers of thematic audiovisual media services.

311. Therefore, the Court also notes that Article 12 of the contested Law stipulates the obligation for the IMC to ensure that (i) within a progressive period, and (ii) where possible and by appropriate means, that (iii) broadcasters reserve (a) at least ten percent (10%) of their broadcast time, excluding the time allotted for news, sporting events, games, advertising, teletext and teleshoping services, or in turn, (b) at least ten percent (10%) of their programming budget, for *"European works created by producers who are independent of broadcasters"*.

312. Based on the above, it results that, according to Articles 10 and 12 of the contested Law, (i) the public broadcaster and generalist channels are obliged to broadcast at least once a week, respectively once a month with a duration of three (3) to seven (7) minutes and free of charge, media education materials prepared by the IMC; as well as at least once every three (3) months to show broadcasts or debates in the function of media education; as well as (ii) the broadcasters reserve a percentage of their program or budget for European works created by producers that are independent of the broadcasters.

313. Therefore, in the present case, it should be assessed whether (i) the obligation for broadcasters to display educational materials prepared by the IMC as well as to show performances and debates in the function of media education; and (ii) the obligation that, within a certain period of time or through a budgetary reservation, broadcasters are obliged to display "*European works created by producers who are independent of broadcasters*", constitute a limitation of media pluralism or censorship in terms of dissemination of information or ideas contrary to paragraphs 1 and 2 of Article 42 of the Constitution.

314. In this regard, the Court points out that the measures taken, which are defined by Articles 10 and 12 of the contested Law, and which include the obligation that (i) the public broadcaster and the generalist channels at least once a week respectively once a month with a duration of three (3) to seven (7) minutes and free of charge to transmit media education materials prepared by the IMC, as well as to display broadcasts and debates in the function of media education at least once in three (3) months; as well as that (ii) the broadcasters reserve a part of their program or budget for European works created by producers who are independent of the broadcasters, are aimed at (i) media education through programs prepared by the IMC; as well as (ii) to ensure media pluralism in content, through the display of European works created by independent producers of the broadcaster.

315. Furthermore, the Court notes that the applicants regarding paragraph 7 of Article 12 of the contested Law do not contest the fact that such a determination is (i) "*prescribed by law*", nor that this determination has (ii) a "*legitimate aim*". However, the Applicants point out *that "although it may have a legitimate purpose, it constitutes a disproportionate interference with the guaranteed media freedom"*. Therefore, the Applicants claim that the restrictions for the broadcasters regarding broadcasting obligations under the contested articles of the contested Law are not in accordance with the principle of (iii) proportionality.

316. As it was clarified, based on Article 42 of the Constitution, Article 10 of the ECHR, the case law of the ECtHR and the standards set by the Council of Europe, as long as freedom of media is guaranteed, censorship is prohibited and in this sense no one can impede the dissemination of information or ideas through the media, the state has the obligation to take measures, including legal ones, to guarantee media pluralism, as well as content and programs.

317. In the circumstances of the present case, the Court notes that in terms of the transmission of the educational material, this material is prepared by the IMC itself, while the broadcasters are only obliged to display it. In this context, the contested Law has distinguished between the public broadcaster and other generalist channels. More precisely, while (i) the public broadcaster has an obligation to make their show from three (3) to seven (7) minutes and free of charge every week and "*in prime time*"; (ii) other broadcasters have an obligation to do the same only once a month, for the same duration. The latter, taking into account the fact that the public broadcaster bears a greater burden and the fact that it is financed from public funds. While the broadcast of shows or debates in the function of media education obliges the same as the public broadcaster, but also other generalist channels, however, such an obligation is limited to one (1) time in three (3) months.

318. Therefore, the Court considers that, taking into account (i) the positive obligation of the state regarding the provision of pluralism of programs (ii) the content of the materials to be displayed, which relate to educational materials; (iii) the public interest in media education; (iv) the duration and intervals when these materials will appear; (v) the fact that the difference is also made between the burden for the public broadcaster that is financed by public funds and other broadcasters, the Court considers that the alleged interference by the Applicants in the freedom of the media, in this case, is proportionate and reasonable. Furthermore, based on Article 8 (Media pluralism) of the contested Law, (vi) the IMC is obliged to establish a special fund to support media programs and media licensed or registered in accordance with the principles of this Law in the field of education, democracy, arts, sports and economy.

319. On the other hand, in the context of Article 12 of paragraph 7 of the contested Law, the Court recalls that through Law no. 05/L -069, the Assembly had ratified the Stabilization and Association Agreement between the Republic of Kosovo on the one hand and the European Union on the other. It was published in the Official Gazette of the Republic of Kosovo on 1 December 2015 and entered into force on the same day, based on Article 3 (Entry into force) of this Law. As such, the above-mentioned international agreement, based on Article 19 of the Constitution, (i) is part of the internal legal system and is directly applied, insofar as the implementation does not require the issuance of a law; and (ii) has precedence over the laws of the Republic of Kosovo (see Court cases KO216/22, with Applicants: *Isak Shabani and 10 (ten) other deputies* and KO220/22, with Applicants: *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Articles 9, 12, 46 and 99 of the Law No. 08/L-197 on Public Officials, Judgment of 2 August 2023, paragraph 314).

320. In this regard, the Court refers to Article 109 (Cooperation in the Audio-Visual Field) of the abovementioned Agreement, which in terms of the audio-visual field, stipulates that Kosovo, among other things, will harmonize its legislation with the EU *acquis*.

321. In this connection, the Court reiterates that Article 17 of the AVMS Directive stipulates that: *"Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production"*.

322. Therefore, it turns out that the above-mentioned definitions of the EU AVMS Directive have been incorporated through paragraph 7 of Article 12 of the contested Law in the contested Law, in which case the IMC has been defined as a body that will ensure the implementation of these provisions.

323. In addition, the Court, taking into account the principles set out above, including the case law of the ECtHR and the above Recommendation CM/Rec (2007)2, of the Council of Europe, in particular the positive obligation of the State to ensure programme pluralism, assesses as proportionate the obligation for broadcasters to reserve at least ten per cent

(10%) of their broadcasting time, excluding the time allotted for news, sporting events, games, advertising, teletext and teleshoping services or in turn, or at least ten per cent (10%) of their programming budget for "*European works created by producers who are independent of broadcasters*".

324. This is due to the fact that paragraph 7 of Article 12 of the contested Law provides for such a thing to be done (i) gradually and not with immediate effect, and as far as possible. Furthermore, this obligation (ii) does not dictate the content of the broadcast provided that ten percent (10%) of the broadcast excluding the time allotted for news, sporting events, games, advertising, teletext and teleshopping services, or in turn; or ten percent (10%) of their programming budget is directed to (i) European works; and (ii) these works are created by producers that are independent of the broadcasters. Consequently, the Court considers that this restriction meets the proportionality test. Also, the Court reiterates the above-mentioned obligation of the IMC to establish a special fund to support media programs and licensed or registered media in the field of education, democracy, arts, sports and economy, according to Article 8 of the contested Law.

325. Therefore, taking into account the above assessment, the Court finds that paragraphs 2, 3 and 4 of Article 10 (Media education) and paragraph 7 of Article 12 (Broadcasting policy) of the contested Law are not contrary to Article 42 [Freedom of media] of the Constitution.

V. Constitutional review of Article 43 of the contested Law regarding the approval by the IMC of the transfer of ownership of licensed/registered parties as well as the prohibition of another licensed/registered entity to own more than ten percent (10%) of shares in another licensed entity

A. The allegations and counter-arguments of the parties

326. Article 43 of the contested Law regulates the ownership of licensed/registered party and the manner of transfer of ownership of licensed/registered party. Paragraph 1 of this Article stipulates that "*Each licensed/registered party is obliged to notify the IMC in writing for any change of ownership and/or shares*", while paragraph 2 of Article 43 of the contested Law stipulates that "*Each licensed/registered party is obliged for any change of ownership over the value of ten percent (10%) of the shares to receive prior written approval from the IMC*". Furthermore, paragraph 4 of this Article stipulates that "*A licensed/registered party may not own more than ten percent (10%) of the shares in another licensee/registered party"*. In this context, according to paragraph 7 of Article 43 of the contested Law, *"IMC based on the results and needs resulting from the media market analysis, by sub-legal act lays down specific rules for media ownership, concentration, pluralism, diversity, and transparency."* Also in connection with this, according to sub-paragraphs 2.4 and 2.5 of paragraph 2 of Article 4 (Competencies of the IMC) of the contested Law (i) the IMC reviews and approves any change of ownership for all licensed/registered entity; and (ii) the IMC in case of approval of the change of ownership provides the licensed or registered entity with a certificate to allow the change of ownership also in the register of businesses at the respective business registration agency.

327. According to the aforementioned explanations, it results that Article 43 of the contested Law defines the obligation for licensed/registered entity to (i) notify the IMC regarding the change of ownership; and (ii) to obtain approval from the IMC for the change of

ownership. Whereas, (iii) a licensee/registered person may not own more than ten percent (10%) of the shares in another licensee/registered person; while, (iv) delegates the competence for regulation at the level of the sub-legal act issued by the IMC, of the specific rules on ownership, concentration, pluralism, diversity, and transparency of the media.

328. Applicants claim that (i) paragraph 2 of Article 43 of the contested Law, regarding the obligation to obtain prior approval from the IMC for the change of ownership over the value of over ten percent (10%) of the shares; and (ii) paragraph 4 of Article 43 of the contested Law according to which a licensee/registered cannot own more than ten percent (10%) of the shares in another licensee/registered entity, violate the right to freedom of media under Article 42 of the Constitution as well as the right to economic activity guaranteed through Article 119 of the Constitution. These claims are opposed by the Government, pointing out that (i) the freedom of media guaranteed by Article 42 of the Constitution defines precisely the obligation to prohibit the concentration of media ownership in the same owner, therefore Article 43 of the contested Law breaks down and applies this principle; (ii) the principle of pluralism is also applied as regards political parties, in which case according to the electoral legislation it is not allowed for a person to be the chairperson of more than one political entity; (iii) the percentage determined by the contested Law is already part of the Regulation on the ownership and concentration of IMC licensees; (iv) the obligation to notify the IMC of a change of ownership derives from the AVMS Directive; and (v) the IMC must have authorization, as authorized by the Law of 2012, to regulate the media market in accordance with international principles, international law and Kosovo legislation.

B. Court's assessment

329. Regarding the freedom of media, the Court reiterates that Article 42 of the Constitution contains 3 paragraphs. Paragraph 1 of this Article (i) guarantees the freedom and pluralism of the media, while paragraph 2 of this Article (ii) stipulates that censorship is prohibited and that no one may prevent the dissemination of information or ideas through the media, except in cases where it is necessary to prevent the encouragement and provocation of violence and hostilities on grounds of racial, national, ethnic or religious hatred.

330. The Court reiterates that Article 42 of the Constitution is also related to Article 40 [Freedom of Expression], which stipulates in paragraph 1 that "*Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.*" While paragraph 2 of the same stipulates the possible restrictions by specifically stressing that "*The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion."*

331. Also, as the Court has explained above, according to the ECtHR but also the case law of the Court, exercising freedom of expression in an effective and meaningful way is not only conditioned by the obligation not to interfere by the state, but also by the positive obligation of the state to ensure positive protective measures, through law and practice. Therefore, the ECtHR emphasizes that, given the importance of what is protected through Article 10 of the ECHR, the state should be the ultimate guarantor of pluralism (see the case of ECHR *Manole and others v. Moldova*, no. 13936/02, Judgment of 17 September

2009, paragraph 99; and the case of the Court KO134/21, Applicant *Ramush Haradinaj and nine (9) other deputies of the Assembly of the Republic of Kosovo,* Judgment of 1 August 2023, paragraph 133). The Court and the ECtHR have further pointed out that the ways of achieving these goals depend largely on local circumstances, therefore States enjoy a wide margin of appreciation in this respect (see *Manole and others v. Moldova*, cited above, paragraph 100; and Court case KO134/21, cited above, paragraph 134).

332. Furthermore, as regards the market economy, the Court reiterates that Article 119 of the Constitution, to which the Applicants refer, establishes the obligation of the Republic of Kosovo to (i) provide a favourable legal environment for the market economy, freedom of economic activity and security of public and private property according to the definitions of its first paragraph; (ii) prohibit all actions restricting free competition through the establishment or abuse of a dominant position or practices restricting competition, except where these are explicitly permitted by law according to the definitions of its third paragraph; and (iii) establish independent market regulation bodies where the market itself cannot sufficiently protect the public interest according to the definitions of its fifth paragraph. Beyond the above-mentioned obligations of the Republic of Kosovo, Article 119 of the Constitution, among others, and insofar as it is relevant to the circumstances of the present case, also stipulates that the Republic of Kosovo (i) ensures equal legal rights for all investors and all domestic and foreign enterprises, according to the definitions of paragraph two thereof; and (ii) promotes well-being for all its citizens, encouraging sustainable economic development and guaranteeing consumer protection in accordance with the law (see, Court cases: KO173/22,Constitutional review of Law no. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market, judgment of 8 November 2023, paragraph 133.

333. In the context of the Applicants allegations, the Court refers to EU Directive 2018/1808 of the AVMS which states, *inter alia*, that Member States may enact legislative measures stipulating that media service providers under their jurisdiction make available information regarding the ownership structure, including beneficial owners. According to the aforementioned directive, such measures should respect human rights, such as the private and family life of the beneficial owners, and should be necessary and proportionate and should aim to achieve the objective of general interest (see AVMs Directive 2018/1808, *cited above,* Article 5, paragraph 2).

334. Furthermore, the Court recalls Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 on the establishment of a common framework for media services in the internal market and the amendment of Directive 2010/11/EU (European Media Freedom Act), which *inter alia* stipulates that media service providers should make easily and *directly accessible to recipients of their services up-to-date data of, inter alia, "the name or names of the direct or indirect owner or owners holding shares enabling you to exercise influence in terms of operation and strategic decision-making, including direct or indirect ownership by the state or by a public authority or entity"* (see, Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 on the *establishment of a common framework for media services in the internal market and the amendment of Directive 2010/11/EU (European Media Freedom Act)*, Article 6, paragraph 1 (b). The aforementioned Regulation also stipulates that "*Member States shall entrust to the national regulatory authority or bodies or other competent authorities or bodies the development of national media ownership databases"* containing the information set out in paragraph 1 of Article 6 of this Regulation (See, Regulation (EU) 2024/1083,*cited above,* Article 6, paragraph 2).

335. According to point 32 of EU Regulation 2024/1083, "*it is crucial that recipients of media services know with certainty who owns and stands behind the media so that they can identify potential conflicts of interest*". Furthermore, according to the above Regulation *"the disclosure of targeted media ownership information would produce benefits clearly outweighing any possible impact of the disclosure obligation on fundamental rights, including the right to private and family life and the right to protection of personal data* (see, Regulation (EU) 2024/1083,*cited above*, point 32).

336. As regards the question of ownership and its concentration, the Court refers to Article 22 (Assessment of Media Market Concentration) of Regulation (EU) No 2024/1083, which lays down that Member States are to establish, in their national legislation, substantive and procedural rules which allow for an assessment of media market concentration that could have a significant impact on media pluralism and editorial independence, setting out the criteria for such an assessment. The same Article also stipulates that the assessment of the media market concentration should be distinct from the assessment under Union or national competition law, including the legal conditions for merger control (see Regulation (EU) 2024/1083, *cited above*, point (22) (1)).

337. The Court also refers to Recommendation No. R(99) 1 of the Committee of Ministers of the Member States, of the Council of Europe, as regards Measures to promote media pluralism, which in point I (Regulation of ownership (broadcasting and press) stipulates that "*Member States should consider the introduction of legislation designed to prevent or counteract concentrations that might endanger media pluralism at the national, regional or local levels",* adding that "*Member States should examine the possibility of defining thresholds — in their law or authorisation, licensing or similar procedures — to limit the influence which a single commercial company or group may have in one or more media sectors."* The same Report states that *"Capital share limits in commercial media enterprises may also be considered* "(see Recommendation No. R(99) 1 of the Committee of Ministers to member States, Council of Europe, Measures to Promote Media Pluralism, of 19 January 1999, paragraph I.

338. The Court also refers to *the Mapping of licensing systems for audiovisual media services in EU-28*, of the European Audiovisual Observatory. According to this document, it turns out that (i) the issue of ownership transparency is ensured through media legislation in 23 (twenty-three) out of 29 (twenty-nine) cases, with the exception of Denmark, Estonia, Finland, Malta, the Netherlands and Slovakia, although in some of these states transparency is ensured in practice through via means other than media legislation. (See *Mapping of licensing systems for audiovisual media services in EU-28,* European Audiovisual Observatory, Strasbourg, 2018, page 49).

339. As far as media concentration is concerned, the issue of media concentration is taken into account in 22 (twenty-two) out of 29 (twenty-nine) cases. In countries this issue of concentration is taken into account, this is done through the following measures:

(i) audience thresholds (Germany, Spain, France, Hungary, Romania);
(ii) banning ownership by certain types of persons (the United Kingdom);
(iii) considering the ownership structure of the applicant (Sweden);
(iv) cross-media ownership rules (Austria, Germany, France, the United Kingdom, Croatia, Italy, Slovakia);
(v) issues related to plurality in terms of content (Finland, Ireland, Portugal);

(vi) population coverage thresholds (Austria, the Czech Republic, Slovakia);
(vii) the presence of AVMS owned by a platform in its offer (Hungary);
(viii) limiting ownership to a certain number of licenses (Cyprus, Czech Republic, France, Malta);
(ix) limiting the ownership of licences that allow for the broadcasting of more than a certain percentage of the total AVMS than can be broadcast on the DTT platform (Italy) or in a certain coverage zone (Portugal);
(viii) limiting (totally or partially) ownership in a certain number of (or at a certain level in) AVMS providers (Cyprus, the Czech Republic, Spain, France, Croatia); and
(ix) referring to a dominant position and/or anti-trust/competition rules (Bulgaria, Estonia, France, Greece, Latvia, Poland) (See *Mapping of licensing systems for audiovisual media services in EU-28,* cited above, pages 49-50).

340. As for the countries that have chosen to establish ownership rules among the media, according to the above document, the percentage of the impossibility for one media to have ownership in another media varies, according to the countries, as well as the different percentage they apply. In this context, the abovementioned document also refers to the Media Law of Croatia, which defines the impossibility for one media to have ownership in another media, at a height ranging from ten percent (10%) and above.

341. Therefore, the Court points out that at EU level there is no unified standard regarding the limitation of the concentration of ownership, however, Member States, through their national legislation, may lay down substantive and procedural rules regarding the concentration in the media market. That said, these rules should not be more restrictive than necessary based on general standards of freedom of expression and freedom of media.

342. In the circumstances of the contested Law, the Court initially emphasizes that it is not disputed that (i) the receipt of prior approval by the IMC regarding the change of ownership over the value of ten percent (10%) of the shares of licensed/registered entities; and (ii) the restriction that a licensed/registered entity is not entitled to own more than ten percent (10%) of the shares in another licensed/registered entity affects the rights of licensed/registered entities to dispose of their property and their economic activity. In this respect, based on the consolidated case law of the Court and that of the ECtHR, it should be assessed whether such an interference (i) is prescribed by law; (ii) pursues a legitimate aim; and if so, whether it is proportionate. In this context, the Court will assess the contested provisions in relation to other provisions of the contested Law.

343. That said, the Court will make this assessment separately, for (a) the change of ownership over the value of ten percent (10%) of the shares of licensed/registered entities and (b) the prohibition of the transfer of ownership from one licensed/registered entity to another licensed/registered entity

(a) The constitutionality of paragraph 2 of Article 43 of the contested Law as to the receipt of prior approval by the IMC regarding the change of ownership over the value of ten percent (10%) of the shares of licensed/registered entities

344. Regarding this allegation, the Court emphasizes that it is initially necessary to assess the above-mentioned provisions of the contested Law in the framework of "*prescribed*" by law in the framework of legal certainty under Article 7 of the Constitution. Regarding the

abovementioned criterion, namely "*prescribed by law*", the Court notes that the being prescribed by law alone is not sufficient for a restriction to be in accordance with the principle of legality. The Court reiterates that the Venice Commission has stressed that it is "*essential to the confidence in the judicial system and the rule of law",* that the legal rules are clear and precise, and aim at ensuring that situations and legal relationships remain foreseeable (see, *inter alia*, the Venice Commission Opinion on the Draft Law on Amendments and Addenda to the Armenian Judicial Code, [CDL-AD(2014) 021], of 16 June 2013, paragraph 18).

345. In this regard, the Court recalls the case law of the ECtHR that the expression "in accordance with law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the persons concerned and foreseeable as to its effects. One of the requirements flowing from the expression "in accordance with law" is foreseeability. Thus, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable citizens to regulate their conduct. Therefore, they must be able, if need be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. However, according to ECtHR, such consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable (see, *inter alia,* case of ECtHR, *Tommasi v. Italy*, no. 43395/09, Judgment of 23 February 2017, paragraphs 106 and 107; and Court cases (joined cases) KO114/23, KO192/23, KO227/23 and KO229/23 Applicant: *the Supreme Court of the Republic of Kosovo*, Judgment of 15 May 2024, paragraph 193).

346. In its case-law, the Court has also consistently emphasized, taking into account the above principles regarding "*foreseeability"* and "*clarity"* of the law and the importance of this concept for the principle of legal certainty, based on the relevant opinions of the Venice Commission, in principle, "*rights and obligations*" should be "*prescribed by law*", whose provisions should be *clear, accessible and foreseeable"*, to enable the executive power/public authorities to exercise discretion only in the areas where such competence is delegated, and not simply because the law is uncertain or unclear, but also to enable legal entities to adequately regulate their respective conduct and expectations (see, Court cases KO216/22 and KO220/22, cited above, paragraph 227; and KO46/23, cited above, paragraph 295).

347. Regarding this, the Court initially emphasizes that regarding the receipt of prior approval from the IMC regarding the change of ownership over the value of ten percent (10%) of the shares of licensed/registered entities, this limitation is defined in paragraph 2 of Article 43 of the contested Law. The Court also notes that subparagraph 2.4 of paragraph 2 of Article 4 of the contested Law stipulates that the IMC reviews and approves any change of ownership for all licensed/registered parties as defined in sub-paragraph 2.2 of this Article. Further and according to sub-paragraph 2.5 of paragraph 2 of Article 4 of the contested Law, the IMC, in case of approval of the change of ownership, provides the licensed/registered entity with a certificate. Furthermore, paragraph 5 of Article 25 (Broadcast licenses and their renewal) of the contested Law stipulates that, the continuation of the use of the license can be done only after the change of ownership has been approved in writing by the IMC.

348. The Court initially notes that while on the one hand w (i) paragraph 2 of Article 43 of the contested Law, stipulates the obligation to obtain approval from the IMC only for the change of ownership over the value of ten percent (10%) of the shares of

licensed/registered parties; on the other hand (ii) sub-paragraph 2.4 of paragraph 2 of Article 4 of the contested Law, in conjunction with sub-paragraph 2.5 of Article 4 of the contested Law, entitles the IMC to approve "*any change of ownership for all licensed and registered" entities*. Therefore, while paragraph 2 of Article 43 of the contested Law establishes the obligation for prior approval by the IMC only for the change of ownership over the value of ten percent (10%) of the shares of licensed and registered, paragraph 2.4 of Article 4 of the contested Law establishes an obligation for approval, even for cases when the value of the change of ownership is ten percent (10%) or lower, as it emphasizes "*any change of ownership",* and not the standard set out in Article 43 of the contested Law, which is the value over ten percent (10%).Paragraph 5 of Article 25 of the contested Law defines this in a similar way. Therefore, this has resulted in contradictory provisions within the law that do not meet the criteria of *"clarity*" and "*foreseeability"* of the norm as required by the aforementioned constitutional principles, also embodied in Article 7 of the Constitution.

349. Furthermore, the Court notes that paragraph 7 of Article 43 of the contested Law stipulates that "the *IMC based on the results and needs resulting from the media market analysis, by sub-legal act lays down specific rules for media ownership, concentration, pluralism, diversity, and transparency."*

350. The Court notes that such a determination for the concentration of ownership in the media, and further regulation by sub-legal act by the IMC is also foreseen in paragraph 1 of Article 42 (Ownership and concentration of media) of the contested Law.

351. Consequently, the Court notes that the property issues, including the change of ownership and the conditions for approving such an amendment, which is made by the IMC, the contested Law has delegated their further regulation at the level of the sub-legal act that the IMC will issue itself.

352. In this connection, the Court notes that the Venice Commission's Rule of Law Checklist regarding the legislative procedure by the executive, should be assessed that when parliament delegates legislative competence to the executive, if the objectives, content, and scope of such delegation, are explicitly defined in the legislative act *(*see *the Venice Commission's Rule of Law* Checklist, cited above, paragraph 48).

353. In addition to this limitation, the Court considers that the determination of the rights and obligations of natural and legal persons, and the competencies of state administrative bodies, constitute exclusively issues that must be prescribed by law, since their manner and exercise is subject to a more detailed normative regulation by sub-legal acts. In this context, the Court refers to its Judgment in the case KO46/23, Applicant *Abelard Tahiri and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, where the Court has emphasized that "*Consequently, considering the principle of legal certainty, including the obligation that applicable norms be "clear" and "predictable," as defined in the aforementioned principles and stated in the Venice Commission's Rule of Law Checklist, the rights and obligations of the parties in the procedure must be defined by law and not through sub-legal acts."* (see the case of the Court KO46/23, Applicant *Abelard Tahiri and 9 (nine) other deputies of the Assembly of the Republic of Kosovo,* Constitutional review of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, Judgment of 20 June 2024, paragraph 342).

354. In this respect as it results from the provisions of Article 141 of the Constitution that define the IMC as an independent regulatory institution, and international standards including Recommendation (2000)23 of the Council of Europe that stipulates that within the legal framework, the regulatory authority should have the competence to make the regulation which enables them to act flexibly and adequately in terms of questions that may be unpredictable and are often complex.

355. However, returning once again to the circumstances of the present case, since, paragraph 2 of Article 43 of the contested Law, stipulates the obligation to obtain prior approval from the IMC regarding the change of ownership over the value of ten percent (10%) of the shares of licensed/registered entities, paragraph 7 of Article 43 of the contested Law stipulates that the specific rules on ownership, concentration, pluralism, diversity, and transparency of the media, shall be determined at the level of the sub-legal act by the IMC. However, the Court considers that such an arrangement cannot be further made by sub-legal acts if the provisions of the contested Law itself regarding the approval of the transfer of ownership are contradictory.

356. This is because paragraph 2 of Article 43 of the contested Law, stipulates the obligation to obtain approval from the IMC only for the change of ownership over the value of ten percent (10%) of the shares of licensed/registered entity, on the other hand (ii) sub-paragraph 2.4 of paragraph 2 of Article 4 of the contested Law, in conjunction with sub-paragraph 2.5 of Article 4 of the contested Law, entitles the IMC to approve "*any change of ownership for all licensed and registered entities*", similarly as defined by paragraph 5 of Article 25 of the contested Law.

357. Therefore, the Court finds that sub-paragraphs 2.4 and 2.5 of paragraph 2 of Article 4 (Competencies of the IMC), paragraph 5 of Article 25 (Broadcast license and their renewal) and paragraph 2 of Article 43 (Regulation of ownership of licensed/registered entities) of the contested Law are not compatible with paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo.

(b) Regarding paragraph 4 of Article 43 of the contested Law and the impossibility of owning more than ten percent (10%) of shares in another licensed/registered entity

358. The Court initially emphasizes that at international level there is not a well-defined standard regarding how states should act in order to prevent the concentration of media ownership. As explained above, there are various measures that the state has taken in order to achieve this goal. As it results from the Mapping of licensing systems for audiovisual media services in EU-28, one of these measures is the restriction of media concentration in the same owner, as in Austria, Germany, France, the United Kingdom, Croatia, Italy, Slovakia. But even in this case, countries differ both in the percentage they apply and in how they apply this percentage, which varies from ten percent (10%) or more, as is the case with Croatia in terms of some types of concentration.

359. As for paragraph 4 of article 43 of the contested Law, the same sets the limitation that a licensed/registered entity is not entitled to own more than ten percent (10%) of the shares in another licensed/registered entity. In this respect, as this constitutes a restriction on the right to transfer ownership, the Court will hereafter assess whether such a restriction (i) is not prescribed by law; (ii) has a legitimate aim; and (iii) is proportionate.

360. In this context, and with regard to the first condition that a restriction be *"prescribed by law*", the Court considers that, unlike paragraph 2 of article 43 of the contested Law, paragraph 4 of article 43 of the contested Law, clearly stipulates the rights and obligations deriving from the norm in question, that a licensee/registered entity is not entitled to own more than ten percent (10%) of the shares in another licensee/registered entity, and that this norm is foreseeable for the entities that address it and those that apply it.

361. As regards the second step of the test, namely whether the restriction pursues a "*legitimate aim"*, the Court once again recalls that as it results from the case law of the ECtHR, and the above recommendation of the Council of Europe, and where the emphasis is placed on that the state has an obligation, beyond ensuring freedom of expression and media pluralism, to take steps that, through legislation, ensure pluralism of the programs.

362. In this regard, based on the Government's response, it results that the purpose of this restriction for a licensed/registered entity to not have the right to own more than ten percent (10%) of the shares in another licensed/registered entity, is to ensure the prevention of the concentration of media ownership in the same owner, namely the mandatory respect of media pluralism defined by the Constitution, in Article 42 and Article 43 of the contested Law.

363. The Court considers that ensuring media pluralism can serve a legitimate purpose in the context of freedom of media. Therefore, the Court should further assess the third step of the test, namely whether such a restriction is "*proportionate"*.

364. In this context, the Court reiterates that the lawmaker is in a more favorable position to assess public policies, therefore, the Court has already emphasized in its case law that in considering the constitutionality of a Law, it never assesses whether it is a law based on good public policies or not but only if the same may have violated the provisions of the Constitution of the Republic of Kosovo.

365. In this respect, the Court notes that (i) the limitation of the transfer of ownership set out in the contested Law is limited to the impossibility of transferring ownership only from one licensee/registered to another; (ii) the same does not include a limitation in relation to the transfer of ownership to entities that are not licensed or registered under the contested Law. Also, (iii) the limitation is not complete but is limited only to the transfer of ownership that exceeds the value of ten percent (10%) of the shares of one licensed/registered entity to another. The same is also in line with international standards including, and Recommendation No. R (99) 1 of the Council of Europe, cited above.

366. In these circumstances, the Court considers that the limitation set for the ownership of shares of one licensee/registered to the other, also meets the proportionality criterion.

367. Therefore, the Court finds that paragraph 4 of Article 43 (Regulation of ownership of licensed/registered entities) of the contested Law is not in contradiction with Article 42 [Freedom of Media] and Article 119 [General Principles] of the Constitution.

VI. Regarding the sanctions and fines established by Article 60 of the contested Law

368. The Court initially notes that Article 60 of the contested Law establishes sanctions and fines in relation to the violation of the provisions of the contested Law. More specifically, based on Article 60 of the contested Law, namely paragraph 1, sub-paragraph 1.1 of this Article, the IMC imposes a fine from five hundred (500) to four thousand (4,000) euro for the natural person when operating without license from the IMC. Whereas, paragraph 1, sub-paragraph 1.2 authorizes the IMC to impose a fine from five hundred (500) to twenty thousand (20,000) euro on the legal person if one of the conditions set out in sub-paragraph 1.2 is met, where the reasons for such fines are included, because the legal entity:

(i) does not comply with the obligations arising from the contested Law (as defined in point 1.2.1 of subparagraph 1.2 of paragraph 1 of article 60 of the contested Law);

(ii) does not submit the annual report to the IMC within the stipulated time limit (as set out in point 1.2.2 of subparagraph 1.2 of paragraph 1 of Article 60 of the contested Law);

(iii) transmits, retransmits or distributes audio and audiovisual media services in an unauthorized manner (as defined in point 1.2.16 of subparagraph 1.2 of paragraph 1 of Article 60 of the contested Law); and

(iv) does not comply with other obligations under this Law (as defined in point 1.2.24 of subparagraph 1.2 of paragraph 1 of Article 60 of the contested Law).

369. Whereas sub-paragraph 1.3 of the contested Law authorizes the IMC to double the sanction with fine from sub-paragraph 1.2 of this article, in cases where the legal person:

"1.3.1. repeatedly causes harmful interference to another entity;

1.3.2. repeat the violations set out in subparagrapf 1.2. of this article;

1.3.3. transmits, retransmits, or disseminates programming content that provoke hatred, violence, and disorder;

1.3.4. transmits, retransmits, or distributes content that violates public order and security;

1.3.5. transmits, retransmits or carries out illegal distribution of programme content;

1.3.6. does not submit within the deadline the annual report to the IMC."

370. Applicants claim that Article 60 of the contested Law is in collision with Article 29 of the Law on Minor Offenses, which uniformly regulates and defines the minor offenses that are applied, and consequently, the principle of legal certainty, the principle of legality and foreseeability, as an integral part of the rule of law, guaranteed by Article 7 of the Constitution, has been violated.

371. As noted above, the expression "*in accordance with law*" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality

of the law in question, requiring that it should be accessible to the persons concerned and foreseeable as to its effects. One of the requirements resulting from the expression "*in accordance with law*" is foreseeability. Thus, a norm cannot be regarded as a *"law"* unless it is formulated with sufficient precision to enable citizens to regulate their conduct. Therefore, they must be able, if need be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. However, according to ECtHR, such consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable (see, in the case of the ECtHR, *Tommasi v. Italy*, cited above, paragraphs 106 and 107; and Court cases (joined cases) KO114/23, KO192/23, KO227/23 and KO229/23 cited above, paragraph 193).

372. In the context of the allegations related to the collision of the contested Law with the Law on Minor Offences, the Court recalls that Article 1 (Purpose and Scope) of the Law on Minor Offences lays down, *inter alia*, "*the conditions for determining minor offences and sanctions on minor offences, parties and responsibility on minor offences, minor offence procedures"*. Whereas Article 29 of the Law on Minor Offenses, in paragraph 1*, stipulates that "Minor offence sanctioned by fines may be foreseen in a determined or specific amount."*

373. Paragraph 2 of Article 29 of the Law on Minor Offences stipulates that the minor offence sanctioned by fines may be prescribed in the amounts and that (i) for the natural person and the liable person of the legal person, it may not be less than thirty (30) euro, and not more than two thousand (2,000) euro; (ii) for the natural person who exercises individual business, it may not be less than two hundred (200) euro, and not more than five thousand (5,000) euro; and (iii) for the legal person may not be less than five hundred (500) euro, and not more than twenty thousand (20,000) euro. Moreover, Article 29 of the Law on Minor Offenses stipulates the possibility that (i) for lenient minor offenses can be prescribed the minor offence sanctioned in amounts lower than those set out above, while paragraph 6 of this article stipulates the possibility that exceptionally from paragraph 2 of Article 29 of the Law on Minor Offenses, for offenses in the of, *inter alia*, *"public information"*, the minor offense sanctioned by fine may be doubled to the maximum foreseen in paragraph 2 of Article 29 of the Minor Offence Law.

374. In connection with the circumstances of the present case, the Court notes that Article 1, paragraph 1.1 of the contested Law has stipulated fines for natural persons in case they operate without license from the IMC, up to double amount determined in Article 2, paragraph 2.1 of the contested Law.

375. However, the Court notes that this is not contrary to the Law on Minor Offences as paragraph 6 of Article 29 of the Law on Minor Offences sets out the possibility that the fine may be doubled if it concerns, *inter alia*, the field of public information. Therefore, in the present case, the legislator has used the discretion set forth in paragraph 6 of Article 29 of the Law on Minor Offences to determine the amount of four thousand (4,000.00) euro, as the maximum fine that can be imposed on natural persons.

376. Whereas, as regards legal persons, by sub-paragraph 1.2 of paragraph 1 of Article 60 of the contested Law, fines have been determined in the amount provided by paragraph 2, sub-paragraph 2.3 up to the amount of twenty thousand (20,000.00) euro. In this regard, the Court notes that the discretion to determine fines up to the double set forth in paragraph 2 of Article 29 of the Minor Offense Law, according to paragraph 7 of Article 29 of this Law, in the case of legal persons, the lawmaker has used it in paragraph 1.3 of

Article 60 of the contested Law and that for cases where the legal person (i) repeatedly causes harmful interference to another subject; (ii) repeats the violations set forth in subparagraph 1.2. of this Article; (iii) transmits, retransmits, or distributes program content that provokes hatred, violence and riots; (iv) transmits, retransmits, or distributes content that violates public order and security; (v) transmits, retransmits, or makes illegal distribution of program content; and (iv) does not submit within the stipulated deadline annual report to the IMC.

377. However, the Court points out that although Article 60 of the contested Law is not contrary to Article 29 of the Law on Minor Offences as regards the amounts of fines, the legal provisions should be clear, foreseeable and in accordance with the norms of the same act.

378. In this connection, the Court notes that paragraph 1, sub-paragraph 1.2 of Article 60 of the contested Law determines the possibility of imposing a fine because the legal entity, (i) transmits, retransmits or distributes audio and audiovisual media services in an unauthorized manner, as defined in paragraph 1.2.16, sub-paragraph 1.2, of paragraph 1 of Article 60 of the contested Law; and (ii) does not submit the annual report to the IMC within the stipulated time limit, as defined in paragraph 1.2.2, sub-paragraph 1.2 of paragraph 1 of Article 60 of the contested Law.

379. However, for the same actions, the contested Law determines the possibility of doubling the fine specified in sub-paragraph 1.2 of paragraph 1 of article 60 of the contested Law, namely when (i) transmits, retransmits, or makes illegal distribution of program content as defined in point 1.3.5 of sub-paragraph 1.3 of paragraph 1 of article 60 of the contested Law, (ii) does not submit within the stipulated deadline the annual report to the IMC, as defined in clause 1.3.6 of sub-paragraph 1.3 of paragraph 1 of article 60 of the contested Law.

380. In this sense, the contested Law, for the same or similar actions that determines the amount of the maximum fine of twenty thousand (20,000.00) euro in sub-paragraph 1.2 of paragraph 1 of Article 60 of the contested Law, and enables the IMC to double the fine through paragraph 3 of the contested Law. Therefore, the Court notes that paragraphs 1.3.5 and 1.3.6 of sub-paragraph 1.3 of paragraph 1 of article 60 of the contested Law are contrary to points 1.2.16 and 1.2.2 of sub-paragraph 1.2 of paragraph 1 of article 60 of the contested Law, which make these norms unpredictable for the subjects to whom it is addressed.

381. Furthermore, and in relation to paragraph 1.2.1 of subparagraph 1.2, paragraph 1 of Article 60 of the contested Law, the Court notes that while all other stipulations regarding fines are specified, this provision contains a general wording related to the violation of the contested Law, without specifying precisely the actions that are subject to the fine. Similarly, paragraph 1.2.24 of subparagraph 1.2, paragraph 1 of Article 60 of the contested Law, contains the wording "*does not respect other obligations under this Law*".

382. The Court notes that such wording, as noted by the Council of Europe Opinion, is not sufficiently clear, and gives the IMC broad discretion to impose fines on entities addressed to them without clearly specifying the actions that lead to such an infringement.

383. Therefore, the Court reiterates that paragraphs 1.2.1 and 1.2.24 of subparagraph 1.2, of paragraph 1 of Article 60 of the contested Law, do not meet the foreseeability criteria for the subjects addressed, as defined by the above principles of clarity and foreseeability of the norm.

384. Consequently, the Court finds that point 1.2.1 and point 1.2.24 of sub-paragraph 1.2, of paragraph 1, and points 1.3.5 and 1.3.6 of sub-paragraph 1.3 of paragraph 1 of article 60 (Sanctions with fine) of the contested Law, are not in accordance with paragraph 1 of article 7 [Values] of the Constitution.

385. Finally, the Court recalls that the applicants' referrals have been submitted to the Court based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution. This category of referrals has suspensive effect in relation to the contested laws because based on Article 43 (Deadline) of the Law on the Constitutional Court, such law can be sent to the President of the Republic of Kosovo for publication only after the decision of the Court and in accordance with the modalities set out in the final decision of the Court on the contested case.

386. However, given that, *inter alia*, sub-paragraphs 1.2 and 1.3 of paragraph 1 of Article 15 (Election of members of the IMC) of the contested Law defining the manner of reviewing and recommending candidates for chairperson and members of the IMC, have been declared incompatible with the Constitution, and the implementation of the contested Law without these provisions, would be impossible since an important part of the procedure for appointing members of the IMC would remain unregulated, the Court considers that the contested Law should be repealed.

387. The Court also noted that in assessing the constitutionality of the contested Law, it has limited itself to the claims raised by the Applicants themselves and has not dealt with the claims of other parties that are not related to the Applicants' claims. However, the Court noted a number of issues raised during the process of drafting the contested Law by relevant international institutions, but also by interested parties through comments submitted to the Court, including the issue of some of the definitions set out in Article 3 (Definitions) of the contested Law, as well as the regulation of online media. In this regard, the Court points out that it is up to the Government and/or the Assembly during the review of the contested Law to further consider the issues raised in relation to the definitions, as well as the obligations foreseen by the Stabilisation and Association Agreement with regard to the legislation of the European Union. In this context, and furthermore, the Court stresses the need for inclusiveness and the possibility for substantive consultations with interested parties during the review of the contested Law, given the impact it has on the functioning of the media in the Republic of Kosovo.

VIII. Request for interim measure and suspension of entry into force of the contested Law

388. The Court recalls that the applicants requested the Court to impose an interim measure and to suspend the entry into force and application of the contested Law, until the final decision on the referrals by the Court.

389. The Court, in this context, emphasizes that paragraph 2 of Article 43 (Deadline) of the Law determines the suspensive effect of the entry into force of the laws contested under paragraph 5 of Article 113 of the Constitution, emphasizing that *"[...] In the event that a*

law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5 of the Constitution, such a law or decision shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest". Based on the above provision, the Court on 26 July 2024, requested the President of the Assembly, the President and the Secretary of the Assembly to take into account the requirements of paragraph 2 of Article 43 of the Law.

390. Therefore, taking into account that based on paragraph 2 of article 43 of the Law, the contested Law according to paragraph 5 of Article 113 of the Constitution cannot be decreed, enter into force, or produce legal effects without the decision being rendered by the Court, as well as in accordance with Article 27 (Interim Measures) of the Law and Rule 57 [Decision on Interim Measure] of the Rules of Procedure, the request for interim measure is without subject of review and, as such, is rejected (see, *mutatis mutandis,* Judgment of the Court in the case KO43/19, Applicant *Albulena Haxhiu, Driton Selmanaj and thirty other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of 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, Judgment of 13 June 2019, paragraph 113, and the Court's Judgment in the case KO100/22 and KO101/22, cited on above, paragraph 411).

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113 (5) and 116 (2) of the Constitution, Articles 20, 27 and 42 of the Law, and based on Rules 45, 48 (1) (a) and 72 of the Rules of Procedure, on 16 April 2025, unanimously:

DECIDES

I. TO DECLARE the referrals admissible;

II. TO HOLD that sub-paragraphs 1.2 and 1.3 of paragraph 1 of Article 15 (Election of IMC Members) of Law no. 08/L-289 on the Independent Media Commission, are not compatible with Article 141 [Independent Media Commission] of the Constitution of the Republic of Kosovo;

III. TO HOLD that sub-paragraphs 3.4 and 3.5 of paragraph 3 of Article 18 (Dismissal of the Chairperson and member of the IMC) of Law no. 08/L-289 on the Independent Media Commission, are not compatible with Article 7 [Values] and Article 141 [Independent Media Commission] of the Constitution of the Republic of Kosovo;

IV. TO HOLD the paragraphs 2.4 and 2.5 of paragraph 2 of Article 4 (Competencies of the IMC), paragraph 5 of Article 25 (Broadcast license and their renewal) and paragraph 2 of Article 43 (Regulation of ownership of licensed/registered parties) of Law no. 08/L-289 on the Independent Media Commission, are not compatible with paragraph 1 of Article 7 [Values] of the Constitution of the Republic of Kosovo;

V. TO HOLD that point 1.2.1 and point 1.2.24 of subparagraph 1.2, of paragraph 1, and points 1.3.5 and 1.3.6 of subparagraph 1.3 of paragraph 1 of Article 60 (Sanctions with fines) of Law no. 08/L-289 on the Independent Media Commission, are not compatible with paragraph 1 of Article 7 [Values] of the Constitution;

VI. TO HOLD that Law No. 08/L-289 on the Independent Media Commission is repealed;

VII. TO REJECT requests for interim measure;

VIII. TO NOTIFY this Judgment to the parties; and

IX. TO HOLD that this Judgment enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Jeton Bytyqi	Nexhmi Rexhepi

This translation is unofficial and serves for informational purposes only.