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Incidental Constitutional Control in the Republic of Kosovo: A Comparative Analysis³

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Abstract

This article analyses incidental constitutional control and the practice of the Constitutional Court in the Republic of Kosovo during the period 2009–2022, with particular reference to the requirements addressed within this control, also known as incidental referral. The purpose of this study is to determine the efficiency of incidental constitutional control in the current form provided by the Constitution of the Republic of Kosovo.

The research methodology adopts a combined approach in which quantitative, qualitative, and comparative methods dominate.

The importance of this article lies in identifying the existing shortcomings of the current form of this type of constitutional control, as evidenced in the practice of the Constitutional Court in the Republic of Kosovo, and in highlighting the need to develop a more suitable model for future application of incidental referrals in Kosovo, in comparison with other European countries that apply incidental control.

Keywords: constitutional jurisprudence, jurisdictional analysis, rule of law.

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Incydentalna kontrola konstytucyjna w Republice Kosowa: analiza porównawcza⁴

Abstrakt

Niniejszy artykuł analizuje mechanizm incydentalnej kontroli konstytucyjnej oraz praktykę orzeczniczą Sądu Konstytucyjnego w Republice Kosowa w latach 2009–2022 w odniesieniu do wymogów związanych z inicjowaniem tej kontroli w drodze pytania prawnego. Celem opracowania jest oszacowanie skuteczności mechanizmu incydentalnej kontroli konstytucyjnej w jego obecnym kształcie, przewidzianym w Konstytucji Republiki Kosowa.

Zastosowana metodologia badawcza stanowi podejście łączone, w którym dominują metody ilościowe, jakościowe oraz porównawcze.

Istotą niniejszego artykułu jest identyfikacja niedoskonałości obecnej formy incydentalnej kontroli konstytucyjnej, ujawnionych w praktyce orzeczniczej Sądu Konstytucyjnego Republiki Kosowa, a także wskazanie potrzeby wypracowania bardziej adekwatnego modelu jej przyszłego stosowania w Kosowie w porównaniu z rozwiązaniami przyjętymi w innych państwach europejskich stosujących kontrolę incydentalną.

Słowa kluczowe: orzecznictwo konstytucyjne, analiza jurysdykcyjna, rządy prawa.

⁴ Badania opisane w tym artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

The Republic of Kosovo (hereinafter: RK), the object of study in this article, follows the European Model (hereinafter: EM) of constitutional control exercised by the Constitutional Court (hereinafter: CC), which is a centralised body positioned outside the ordinary judicial system.⁵ Moreover, the RK has a special and separate jurisdiction, clearly defined by the Constitution, which cannot be exercised by any other constitutional body.⁶ Its jurisdiction includes, among others, incidental constitutional control (hereinafter: ICC).

The purpose of this article is to present the characteristics of incidental constitutional control as applied in the RK by analysing the legal basis that regulates this form of constitutional control and the practice of the Constitutional Court in the Republic of Kosovo (hereinafter: CCRK) during the period 2009–2022. In addition, the paper compares ICC in Kosovo with its counterparts in selected European states, and identifies the necessary reforms that Kosovo should implement in the future with a view to reducing the number of referrals declared inadmissible.

In this regard, the following hypotheses have been formulated:

H1: Basic courts (hereinafter: BCs) as courts of first instance in the hierarchy of the judicial power of the RK have failed to refer laws for ICC effectively.

The requests referred for ICC by the BC have resulted exclusively in resolutions of inadmissibility, given that they were not within the subject-matter competence (*ratione materiae*) of the CC or were not submitted by an authorised party (*ratione personae*) in accordance with the Constitution.

H2: The greater success of the Supreme Court (SC), as the highest court in the judicial hierarchy, in referring laws for incidental control to the Constitutional Court is attributable to several factors.

⁵ N. Garaupa, *Empirical Legal Studies and Constitutional Courts*, "Indian Journal of Constitutional Law" 2010, 4(3).

⁶ E. Hasani, M. Brahim, *Constitutional justice*, NTG "Blendi", Prishtina 2021.

Constitutional practice demonstrates that all the requests referred for incidental control by the SC have been resolved on the merits by judgment. In this respect, continuous cooperation between the CC and the SC –through the organization of workshops and also local and international conferences – as well as the expertise of SC judges in exercising the Court’s exclusive competence in the interpretation of laws, appears to have contributed to this outcome.

This article is based on a combined methodology in which quantitative and qualitative methods predominate. A quantitative approach is employed to present the jurisprudence of the CCRK concerning incidental control for the period 2009–2022. Qualitative methods are used to analyse constitutional practice and to identify the reasons why most requests have resulted in resolutions of inadmissibility. Additionally, normative legal research, as well as comparative and historical methods, are applied.

Presentation and Development of Incidental Control in the RK: A Comparative Analysis with Several European Countries

In the case of the RK, the CC was established following the definitive determination of the political status of Kosovo,⁷ a process preceded by the appointment of the Special Envoy of the United Nations, former president Martti Ahtisaari, who prepared the Comprehensive Proposal for the Settlement of the Status of Kosovo (hereinafter: CPSSK). Among other matters, the CPSSK set out the principles and mechanisms on which the Constitution of the Republic of Kosovo would be drafted, including the recommendation for the creation of the new CCRK.⁸

Therefore, the Constitution of the RK, adopted in April 2008 and entering into force on 15 June of the same year, incorporated all the provisions of the CPSSK.⁹ According to Professor Enver Hasani, this Constitution “can be considered a completely internationalised document due to the decisive role of the international factor in its drafting and position.”¹⁰ In the basic constitutional provisions, the CC is defined as an independent body for the protection of constitutionality and for

⁷ Declared independence on 17 February 2008.

⁸ N. Mansfield, *Creating A Constitutional Court: Lessons from Kosovo*, East West Management Institute, New York 2013.

⁹ B. Ahmeti, *Kosova me Kushtetutë tash e 13 vjet/Kosovo with the Constitution for 13 years*, June Prishtina 2021. Available from: <https://albanianpost.com/kosova-me-kushtetute-tash-e-13-vjet/> (accessed: 30.3.2023).

¹⁰ E. Hasani, *Judicial Review of Democracy. Maintenance of Democracy as a Functionalist Mission in the Jurisprudence of the CC of Kosovo*, “Comparative Southeast European Studies” 2020, 68(4), p. 535.

providing the final interpretation of the Constitution.¹¹ According to the Constitution, the CC enjoys full autonomy in its operation and decision-making, separate from the judicial, executive, and legislative powers.¹² Therefore, in the RK, the CC is a specialised body entrusted with guaranteeing and upholding the highest legal and political act of the state and, as such, is not part of any branch of state power.¹³ This court is categorised within the EM of constitutional control.

The most important power of the CC within the EM is to review legislation, which may be carried out in abstract or concrete form.¹⁴ When legislation is reviewed in concrete form, ordinary courts are empowered to refer a question to the CC where doubts arise as to the constitutionality of a legislative provision that is to be applied in a case under consideration. Thus, the CC reviews the constitutionality of provisions on the basis of the case in which the issue arose, and the concrete review takes the form of incidental constitutional control.¹⁵ Incidental control by way of referral is exercised by regular courts by suspending the proceedings and referring the law to the CC for assessment of its constitutionality, which will inform the further resolution of the case.¹⁶

This type of incidental control is also exercised by the CCRK, where regular courts act as authorised parties entitled to initiate the review of the constitutionality of a law or legal provisions.¹⁷ This form of referred to as an incidental referral, as it arises incidentally in the course of adjudicating a specific case. In this context, courts may initiate incidental constitutional control either *ex officio* or at the request of one of the parties to the proceedings.¹⁸ The courts exercising judicial power in the RK and authorised to submit referrals to the CCRK are specified under the law as follows: the BC, the Court of Appeal (hereinafter: CA), and the SC.¹⁹

When a referral court, either *ex officio* or at the request of a party, initiates an incidental referral to the CC, it must first suspend the proceedings pending the CC's decision on the constitutionality of the law to be applied in the resolution of the case.²⁰ Where the court rejects a party's request for referral of a law or legal provision for constitutional review, it must provide reasoned grounds for such

¹¹ Constitution of the RK of 9 April 2008 (Official Gazette of the RK, (K-09042008).

¹² *Ibidem*, Article 4.

¹³ *Ibidem*.

¹⁴ P. Passaglia, *Methods and Purposes of the Constitutional Court*, [in:] *Constitutional court watch*, 2017, p. 240.

¹⁵ *Ibidem*.

¹⁶ S. Sadushi, *Constitutional justice in development*, Toena, Tirana 2012.

¹⁷ Law no. 03/L-121 on the CCRK of 15 January 2009 (Official Gazette of the Republic of Kosova No. 46/1).

¹⁸ Rules of procedure of the CCRK no. 01/2023 of 7 July 2023 (Ref.No. KK 232/23).

¹⁹ Law no. 06/L-054 on courts of 18 December 2018 (Official Gazette of the RK No. 22). Also, from February 2023 it is established a Commercial court as part of the judicial power.

²⁰ Rules of procedure of the CCRK no. 01/2023, *op. cit.*

rejection and record them in the case file.²¹ Additional conditions for initiating such a referral include the requirement that the disputed law be directly applicable to the case and that the constitutionality of the contested law constitute a prerequisite for the court's decision.²²

Although ICC is also applied in other European countries, its design differs in certain respects from the model adopted in Kosovo. For example, in Slovenia, courts, including the SC, have the right to initiate ICC.²³ There, ICC may be initiated by courts exercising judicial power, and the object of constitutional review is limited to law or its provisions, excluding other legal acts.

In Croatia, the SC of the Republic of Croatia or another court of justice may initiate such control, and the object of constitutional review encompasses not only the law or parts thereof, but also other regulations.²⁴

In Albania, a court or judge may initiate ICC either *ex officio* or upon application by the parties, with the object of review being the constitutionality of the law.²⁵ Courts at all level exercising judicial power have the right to initiate such referrals.

Bulgaria also applies the EM of constitutionality control; however, its incidental control differs in that courts of all levels do not possess the right to refer laws for such review. Only the Supreme Court of Cassation and the Supreme Administrative Court, as the highest courts within the judicial system, are entitled to initiate incidental constitutional review.²⁶

In all the states mentioned above, as in Kosovo, ICC is initiated where courts harbour doubts regarding the compatibility of law or other legal acts with the constitution that must be applied in pending judicial proceedings. It is also common to all these systems that a direct connection must exist between the contested law or legal act and the resolution of the specific case. Therefore, ICC in Kosovo resembles that in the aforementioned states in terms of initiation by courts at various levels, with the exception of Bulgaria. Unlike Croatia, where the object of ICC includes

²¹ E. Hasani, M. Brahimi, *op. cit.*, p. 458.

²² Rules of procedure of the CCRK no. 01/2023, *op. cit.*

²³ CC Act of the Republic of Slovenia of 15 July 2007 (Official Gazette of the Republic of Slovenia, No. 33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, 47/13, 75/16 and 92/21), Article 23.

²⁴ The Constitutional Act on the CC of the Republic of Croatia of 3 May 2002 (Official Gazette No. 49/02), Articles 35, 37.

²⁵ Law on the organization and functioning of the CC of the Republic of Albania no. 8577 of 10 February 2000 (Official Journal of the Republic of Albania no.4), Articles 68, 69.

²⁶ Constitution of the Republic of Bulgaria of 12 July 1991 (Prom. Sg 56/13 Jul 1991, Amend. Sg 85/26 Sep 2003, Sg 18/25 Feb 2005, Sg 27/31 Mar 2006, Sg 78/26 Sep 2006 – CC Judgment No.7/2006, Sg 12/6 Feb 2007, Sg 100/18 Dec 2015), Article 150 (2).

both laws and other legal acts, in Kosovo only laws may be subject to incidental review, as is also the case in Slovenia, Albania, and Bulgaria.

Analysis of the Constitutional Practice of Incidental Control in the RK in the Period 2009–2022

On the basis of the statistical data of the constitutional practice in Kosovo for the period 2009–2022, the CC accepted and reviewed ten requests for ICC referred by regular courts.²⁷

Table 1. Statistics of incidental referrals to the CCRK

Courts as authorised parties for incidental referral to the Constitutional Court	Supreme Court	Court of Appeal	Basic (Municipal) Courts
Total number of requests referred to the Constitutional Court	7*	0	3
Number of requests resolved by judgment	5	0	0
Number of requests resolved by resolution of inadmissibility	2	0	3

* Two referrals were made by the SC at the request of the parties, while five others were initiated ex officio by the SC.

Source: CCRK, Decisions 2009–2022.

Most of the requests were submitted ex officio by the referral courts, namely the SC and the Basic (Municipal)²⁸ Courts, with the exception of the requests in cases KI 158/11 and KO 157/18, which were submitted at the request of one of the parties to the proceedings.

Of the requests submitted by the courts for incidental referral and reviewed by the CCRK during the period 2009–2022, five were resolved by judgment and five by resolutions of inadmissibility.

It should be further emphasised that the majority of requests were submitted by the SC of the RK, specifically by the President of the Court and by judicial

²⁷ CCRK, *Decisions 2009–2022*. Available from: <https://gjk-ks.org/en/decisions/> (accessed: 15.4.2023).

²⁸ Since 2013, the new organisation of judicial power has been applied by transforming Municipal Courts into Basic Courts.

panels. In most instances, these requests resulted in judgments on the merits. In three cases, the compatibility of the contested law with the Constitution was confirmed, while in two cases, the incompatibility of the contested law or legal provision with the Constitution was established. The judgments in which inconsistency with the Constitution was established are KO 157/18 and KO 190/19.

By contrast, in the case of referrals from the Basic (Municipal) Courts, acting as courts of first instance, the CCRK found that all such requests resulted in resolutions of inadmissibility.

The statistical data presented above have also been analysed qualitatively. This was undertaken through an examination of the judgments and resolutions of inadmissibility issued in ICC cases, from which findings relevant to the formulated hypotheses were derived.

The constitutional practice in the RK is notably illustrated by case KO 59/14, which was initiated by a presiding judge of the case of the Basic Court in Gjakova. The presiding judge referred the matter to the CC for evaluation of the constitutionality of certain legal provisions in a case pending before a trial panel. However, the request was declared inadmissible because neither the trial panel nor the presiding judge had formally decided to refer the legal provisions to the CC. Consequently, no decision had been taken to suspend the judicial proceeding, as required by the Constitution. The presiding judge, without consulting the other members of the panel and without suspending the judicial proceeding, referred the law for incidental constitutional review.²⁹

In case no. KO 157/18, by contrast, the request was submitted by the SC through its President acting within the scope of their legal powers. In that case, the judicial proceedings had first been suspended pending constitutional review. The CC, therefore, declared the request admissible and proceeded to examine it on the merits.³⁰ The circumstances of this referral differed fundamentally from those in case KO 59/14.

Constitutional practice demonstrates that a direct connection must exist between the contested law and the specific issue before the referral court, such that the constitutionality of the law constitutes a prerequisite for the court's decision. Accordingly, there must be a clear relationship between the decision of the CC and the resolution of the main proceedings before the referral court.³¹

²⁹ Resolution on inadmissibility of the CCRK of 14 July 2014, case no. KO 59/14. Available from: https://gjk-ks.org/wp-content/uploads/vendimet/KO59-14_ANG.pdf (accessed: 18.4.2024).

³⁰ Judgment of the CCRK of 28 March 2019, case no. KO 157/18. Available from: https://gjk-ks.org/wp-content/uploads/2019/03/ko_157_18_agj_ang.pdf (accessed: 20.4.2023).

³¹ *Ibidem*.

A further illustrative case is request no. KO 197/19, referred by judges of the Serious Crimes Department of the Basic Court in Prishtina. These judges contested the constitutionality of legal provisions concerning subject-matter jurisdiction that had recently entered into force. The CCRK held that the request could not be accepted as one submitted by a “court” within the meaning of the Constitution, because the referring body did not have a concrete case pending in which those provisions were applicable.³² As no direct connection between the contested law and a pending case had been demonstrated, the request was declared inadmissible by resolution.

Considering the applicable conditions for referral, it is evident that only laws – and not other legal acts – may be referred to the CCRK for constitutional review. This principle was also confirmed in case KI 158/11, where it was held that, in the context of incidental control, courts are authorized to request review of the compatibility of laws with the Constitution, but not of other legal acts. In that case, initiated by the Municipal Court in Ferizaj at the request of a party to the proceedings, a decision of the Constitutional Court of Serbia was referred for review. The CCRK declared the request inadmissible by resolution.³³

Through the mechanism of incidental control, constitutional practice in the RK has clarified the dividing line between constitutional jurisdiction and ordinary judicial jurisdiction. The CC determines only the compatibility of legal provisions with the Constitution and does not adjudicate factual or other legal issues arising in the dispute before the referral court.³⁴

The establishment of a fair and complete factual situation remains within the jurisdiction of the regular courts,³⁵ while the role of the CC consists in the final interpretation of the Constitution, the review of the compatibility of laws with the Constitution, and the protection of human rights and fundamental freedoms.

Accordingly, the CC may intervene only where ordinary courts infringe any of the human rights and freedoms guaranteed by the Constitution – including, in particular, the right to a fair and impartial trial.

³² Resolution on inadmissibility of the CCRK of 18 February 2020, case no. KO 197/19. Available from: https://gjk-ks.org/wp-content/uploads/2020/02/ko_197_19_av_ang.pdf (accessed: 20.4.2023).

³³ Resolution on inadmissibility of the CCRK of 30 August 2012, case no. KI 158/11. Available from: https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ki_158_11_ang.pdf (accessed: 20.4.2023).

³⁴ Law no. 03/L-121 on the CCRK, *op. cit.*

³⁵ Resolution on inadmissibility of the CCRK of 30 August 2012, case no. KI 158/11, *op. cit.*

Discussion

Following an analysis of books, scientific articles, national and international legal acts, and the practice of the CCRK during the period 2009–2022, the study presents relevant findings that highlight the need to amend the current constitutional design of ICC in Kosovo. Additionally, the data presented in this section support the validity of the hypotheses proposed and demonstrate that they have been empirically tested and proven.

In this regard, the Basic Courts appear to have failed to refer laws for ICC effectively, as the requests submitted to the CC were either outside its subject-matter competence (*ratione materiae*) or were not lodged by an authorised party (*ratione personae*) in accordance with the Constitution. In certain instances, the referrals were not formally submitted by the court acting as an authorised body, while in others the constitutionality of a law or legal provision was not contested as required, but rather subordinate legislation was challenged. This indicates that these courts faced ambiguities regarding the eligibility criteria that must be satisfied in order to submit a valid request to the Constitutional Court.

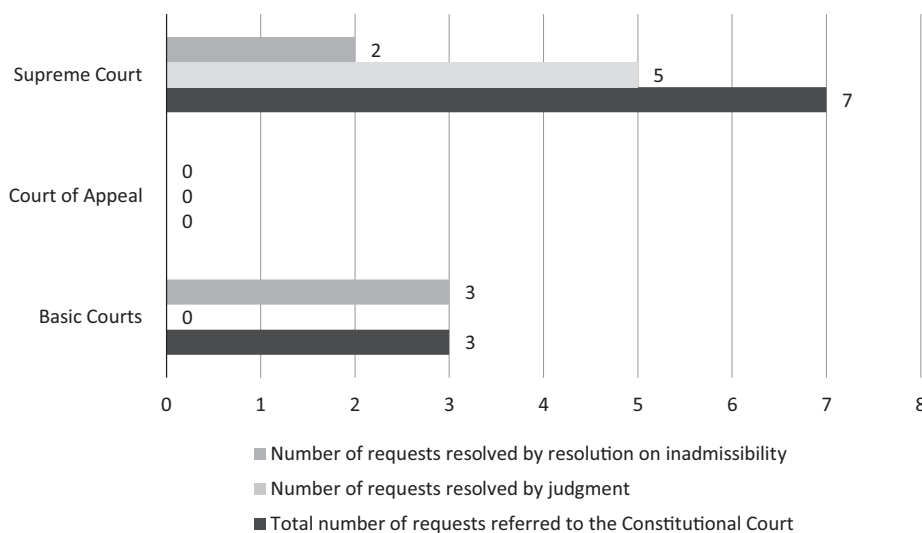
By contrast, the greater success demonstrated by the SC in exercising incidental referral, compared with the achievements of the CA and the BC, may be attributed to sustained collaboration between the CC and the SC. Conferences and workshops have been continuously organised by the CC in cooperation with the SC. In 2016, for example, the CCRK also organised an international conference on ICC as a mechanism for safeguarding constitutionalism in transitional states, attended by representatives of domestic institutions as well as constitutional courts and supreme courts of Albania, Macedonia, Turkey, Portugal, and Bulgaria.³⁶

However, workshops organised by the CC and the Academy of Justice in Kosovo for newly appointed judges of the Basic Courts are held only once per year as part of the initial training programme. The aim of these initiatives is to raise awareness of the possibility of referring laws for incidental constitutional review to the CC.³⁷ The limited number of incidental referrals from regular courts suggests that such training should not be confined to initial induction only, but rather should be provided on an ongoing, continuous basis throughout judicial service.

³⁶ Constitution of the RK, *Annual Report* 2016, Prishtina, 2017, pp. 7–8. Available from: <https://gjkkapi.pbc.group/Custom/f40d57b9-167b-4ee2-97ce-373e7fa95f14.pdf> (accessed: 25.04.2023).

³⁷ CCRK, *New judges informed about the role and function of the Constitutional Court*, Prishtina, 2022. Available from: <https://gjkkapi.pbc.group/Custom/f40d57b9-167b-4ee2-97ce-373e7fa95f14.pdf> (accessed: 25.04.2023).

Figure 1. Requests for incidental referral resolved by judgment and resolution of inadmissibility



Source: Authors' own elaboration.

In these circumstances, the SC accounted for the majority of ICC referrals that were resolved on the merits by judgment. This suggests that the right of incidental referral might more effectively be confined to the highest judicial instance of Kosovo, namely the SC, which exercises jurisdiction over the entire territory of the RK.

Such a constitutional reform could increase the proportion of successful referrals to the CC. Bulgaria serves as an example of a system in which the right of incidental referral is vested exclusively in the highest judicial authorities, namely, the Supreme Court of Cassation or the Supreme Administrative Court.³⁸

The joint workshops and conferences conducted between the CC and the SC³⁹ appear to have contributed to clarifying the constitutional criteria governing incidental referrals. These criteria – which must be satisfied in order for a referral to be admissible – have been successfully applied in practice, as demonstrated by the referrals submitted during the period 2009–2022.⁴⁰

³⁸ Constitution of the Republic of Bulgaria of 12 July 1991, *op. cit.*

³⁹ CCRK, *News 2009–2022*, <https://gjk-ks.org/njofitme/?fjala=Gjykata%20Supreme%20%20punetori> (accessed 25.04.2023)

⁴⁰ CCRK, *Decisions 2009–2022*, *op. cit.*

Furthermore, the effectiveness of the SC in submitting admissible ICC referrals may also be explained by its expertise in the interpretation of laws, which constitutes its exclusive competence as the highest court within the judicial system. Pursuant to its legal powers, the SC may convene a general session of all its judges in order to adopt principled stands, legal opinions and guidelines aimed at ensuring the uniform application of the law.⁴¹ In this respect, the SC plays a central role in interpreting legal norms referred by lower courts within the judicial hierarchy, thereby promoting uniform application of legal provisions throughout the RK.

Moreover, the review of the constitutionality in incidental referral proceedings reveals certain gaps in the constitutional and legislative framework. Specifically, the Constitution and relevant legislation do not regulate the procedural consequences for other courts applying a law that is simultaneously under review by the Constitutional Court. In principle, such courts should be notified and suspend their proceedings pending the CC's decision. Albania provides an example of a system in which such notification mechanisms are expressly regulated.⁴²

According to Law No. 03/L-121 on the CCRK, decisions of the CC are published in the Official Gazette and enter into force on the date of publication. Therefore, publication constitutes the moment at which such decisions begin to produce legal effects.

Where a case is resolved by judgment declaring a law or legal provision unconstitutional, the referral court must maintain the suspension of proceedings until the relevant law or legal provisions are amended or repealed in accordance with the CC's judgment. Likewise, other regular courts applying the law or legal provisions that have been declared unconstitutional are required to suspend their proceedings until legislative amendment has occurred. This follows from the binding nature of CCRK decisions, which are obligatory for the judiciary and for all institutions and persons within the RK, and must be implemented within the scope of their constitutional and legal competences.⁴³

In addition, Parliament and the Government are obliged to undertake the necessary legislative amendments in accordance with the Constitution and the judgment of the CCRK, and to notify the CCRK of the measures taken to implement the relevant decision.⁴⁴

It should be emphasised that in the context of incidental referrals, the law or legal provisions declared unconstitutional cease to produce legal effects from the

⁴¹ Law no. 06/L-054 on courts, *op. cit.*

⁴² Law on the organization and functioning of the CC of the Republic of Albania no. 8577, *op. cit.*, Article 70.

⁴³ Rules of procedure of the CCRK no. 01/2023, *op. cit.*

⁴⁴ Judgment of the CCRK of 16 January 2019, case no. KO 190/19. Available from: https://gjk-ks.org/wp-content/uploads/2023/01/ko_190_19_agj_ang.pdf (accessed: 5.5.2023).

date of publication of the Constitutional Court's judgment in the Official Gazette. Accordingly, the CC's judgment produces effects *ex nunc* – that is, for the future.

In conclusion, when courts – in the course of judicial proceedings – refer the law or legal provisions for incidental constitutional review due to doubts regarding their unconstitutionality, they give effect to the fundamental principle that adjudication must be based on the Constitution and the law. Through the mechanism of ICC, the application of laws contrary to the Constitution is prevented.

Conclusion

Based on the outcomes of the research conducted through the applied methodology, it may be concluded that the CCRK applies incidental control with by way of referral exclusively to the laws in the material aspect.

The constitutional practice during the period 2009–2022 in the RK shows that incidental referrals by regular courts to the CC were infrequent. This may be attributed to ambiguities in fulfilling the constitutional and legal conditions for referral, as well as to limited experience in initiating ICC requests, in addition to the considerable caseload borne by the courts.

In these circumstances, it has been argued that the current model of initiating incidental control should be reconsidered, so that the right of referral is recognised exclusively for the highest judicial authority – namely the SC. Such a reform could enhance the quality and admissibility of referrals submitted by the regular judiciary.

It is further recommended that, when the constitutionality of law or specific legal provisions is under review in incidental proceedings, the CC should be required to issue a public notification indicating that such review is pending. This would enable regular courts applying the contested provisions to suspend their proceedings until a decision is rendered by the Constitutional Court.

Incidental control constitutes a form of a *posteriori* review, exercised after a law has entered into force, and serves as a mechanism for filtering unconstitutional legislation that has not been subject to abstract constitutional review.

Through incidental referrals, the application of laws or legal provisions contrary to the Constitution is prevented, which safeguards the parties' right to a fair and impartial trial.

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