



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, on 7 February 2019
Ref. no.: AGJ 1320/19

JUDGMENT

in

Case No. KO162/18

Applicant

President of the Assembly of the Republic of Kosovo

**Confirmation of the proposed constitutional amendment, submitted by
the President of the Assembly of the Republic of Kosovo on 24 October
2018, by letter No. 06/2156/DO-1156**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The President of the Assembly of the Republic of Kosovo (hereinafter: the Applicant) referred to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) a constitutional amendment proposed by eighty (80) deputies of the Assembly of the Republic of Kosovo, submitted by letter No. 06/2156/DO-1156 (hereinafter: the proposed amendment).

Subject matter

2. The subject matter of the Referral is the assessment of the proposed amendment whether it diminishes any of the rights and freedoms guaranteed by Chapter II of the Constitution.
3. The proposed amendment reads:

“In Article 22 after paragraph (8) the following paragraph (9) is added:

(9) Council of Europe Convention on preventing and combating violence against women and domestic violence”.

Legal basis

4. The Referral is based on Article 113.9 and Article 144.3 of the Constitution, Articles 20 and 54 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 78 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 24 October 2018, the Applicant (the President of the Assembly of the Republic of Kosovo), by letter No. 06/2156/DO-1156, referred to the Court the proposed amendment for a prior assessment by the Court whether this amendment diminishes any of the rights and freedoms set forth in Chapter II of the Constitution.
6. On 25 October 2018, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 26 October 2018, the Court notified the Applicant about the registration of the Referral. In addition, the Court requested the Applicant to provide a copy of this notification to each deputy of the Assembly in order to provide them the opportunity to submit to the Court their comments, if any, regarding the abovementioned Referral.
8. On the same date, a copy of the Referral was sent to the President of the Republic of Kosovo, the Prime Minister of the Republic of Kosovo and the Ombudsperson. The Court has not received any comments from either party.
9. On 19 December 2018, the Court reviewed the Referral and unanimously decided that the Referral is admissible and that the proposed amendment to the Constitution does not diminish the human rights and freedoms set forth in Chapter II of the Constitution.

Summary of facts

10. On 11 May 2011, the Council of Europe adopted the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: the Convention), which, *inter alia*, aims at protecting women from all forms of violence and prevention, prosecution and elimination of violence against women and domestic violence.
11. The Convention, *inter alia*, foresees and governs issues of fundamental rights, equality and non-discrimination, state obligations and preliminary measures to prevent, investigate, punish and provide compensation for acts of violence covered by the scope of this Convention, the issue of legal remedies, integrated policies and data collection, investigation and prosecution issues and preventive measures.
12. In addition, the Convention in its final provisions, namely Article 73 [Effects of this Convention], establishes:

“The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating violence against women and domestic violence”.
13. On 22 October 2018, 80 (eighty) deputies forwarded to the President of the Assembly of the Republic of Kosovo their proposal for amendment of Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, adding to this Article a paragraph (9), namely *“Council of Europe Convention on preventing and combating violence against women and domestic violence”*.
14. On 24 October 2018, the Applicant (the President of the Assembly of the Republic of Kosovo), pursuant to Articles 113.9 and 144.3 of the Constitution, referred to the Court the proposed amendment to the Constitution. The Applicant requested the Court to make a prior assessment as to whether the proposed amendment diminishes any of the rights and freedoms set forth in Chapter II of the Constitution.

Admissibility of the Referral

15. In order to be able to adjudicate the Applicant's Referral, the Court must first examine whether the admissibility requirements established in the Constitution and further specified in the Law and in the Rules of Procedure have been met.
16. First, the Court must examine whether the Referral was submitted by an authorized party, and secondly, it must examine whether it has jurisdiction to assess the proposed amendment.
17. The Court recalls that, in accordance with Article 113.9 of the Constitution:

“The President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly [...]”

18. The Court notes that the President of the Assembly, Mr. Kadri Veseli submitted the proposed amendment and that, consequently, the Referral was submitted by an authorized party pursuant to Article 113.9 of the Constitution.
19. In addition, the Court recalls that under Article 113.9 of the Constitution, it must:

“[...] confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution”.
20. Therefore, the Court has jurisdiction to assess whether the proposed amendment diminishes the rights and freedoms guaranteed by Chapter II of the Constitution.
21. Therefore, having been submitted by an authorized party and since the Court has jurisdiction to review the case, the Referral is admissible pursuant to Article 113.9 of the Constitution.

Scope of the constitutional assessment

22. As stated in the section “Proceedings before the Court” above, the Applicant submitted to the Court the proposed amendment.
23. Therefore, the Constitution, as the highest legal act must be respected formally and solemnly when proposing amendments to it. The Court, mindful of the necessity for legal certainty in relation to this issue, emphasizes that, in accordance with Article 112 [General Principles] of Chapter VIII of the Constitution, *“the Constitutional Court is the final authority for the interpretation of the Constitution and compliance of laws with the Constitution”* (see case No. KO44/14, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 31 March 2014, para. 24).
24. In this respect, the Court confirms that the constitutional review under Article 144.3 of any proposed amendment to the Constitution must be considered in light of Chapter II [Fundamental Rights and Freedoms], including the legal order of the Republic of Kosovo, the very basis of which - by virtue of Article 21 [General Principles] of Chapter II of the Constitution - consists of human rights and freedoms mentioned in that Chapter (See case No. KO29/12 and KO48/12, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 20 July 2012; see, also: Case No. KO61/12, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 31 October 2012, par. 18, see also case no. KO44/14, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 31 March 2014).
25. The Court also considers that Article 21 of the Constitution should be read in conjunction with Article 7.1 of the Constitution that defines the values of the constitutional order of the Republic of Kosovo which is based *“on the principles of freedom, peace, democracy, equality, respect for human rights*

and freedoms and the rule of the law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers and a market economy”.

26. The Court notes that the proposed amendment is consistent with the obligations deriving from Article 53 [Interpretation of the Human Rights Provisions] of the Constitution, which requires that human rights be interpreted in accordance with the case law of the European Court on Human Rights.
27. Therefore, when assessing the constitutionality of the proposed amendments, this Court will not take into account only the human rights and freedoms contained in Chapter II, but also the entire letter, content and spirit of the Constitution (see: Cases Nos. KO29/12 and case KO48/12, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 20 July 2012).
28. In light of the above, the Court will now consider the proposed amendment.

Proposed amendment: new paragraph (9), of Article 22 of the Constitution

29. Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, currently stipulates:

“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;*
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
- (3) International Covenant on Civil and Political Rights and its Protocols;*
- (4) Council of Europe Framework Convention for the Protection of National Minorities;*
- (5) Convention on the Elimination of All Forms of Racial Discrimination;*
- (6) Convention on the Elimination of All Forms of Discrimination Against Women;*
- (7) Convention on the Rights of the Child;*
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment”;*

30. The Court recalls that the proposed amendment foresees the addition of a new paragraph after paragraph 8 of Article 22, namely to add paragraph 9 as follows:

“(9) Council of Europe Convention on preventing and combating violence against women and domestic violence”.

Reasons for the proposed amendment as emphasized by 80 (eighty) deputies

31. The proposers of the amendment allege that the proposed amendment establishes important standards in the field of violence against women and domestic violence and aims at *“protecting women from all forms of violence and prevent, prosecute and eliminate violence against women and domestic violence”*.
32. The proposers of the amendment are of the opinion that through this Convention, *“The state of the Republic of Kosovo demonstrates the commitment to zero tolerance to any violence against women”*.
33. According to the authors of the amendment, *“The state as such should have the responsibility if it does not respond to the violation of human rights envisaged by this Convention”*.
34. The deputies proposing this amendment further consider that through this Convention are sanctioned *“the offences such as: genital mutilation, forced marriage, persecution, abortion and forced sterilization. This means that our state for the first time will include these criminal offenses in our legal system and that it will support other offenses that are part of the criminal code. Through this Convention, we will try to change the behavior of society, gender roles and stereotypes that make violence against women acceptable, training of professionals working with victims [...]”*.

Assessment of the constitutionality of proposed amendment

35. The Court recalls that, in addition to the rights expressly contained in Chapter II, the Court must also assess the compliance of the proposed amendment with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution.
36. In this regard, the Court emphasizes that human rights and fundamental freedoms guaranteed by the international instruments contained in Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution are directly applicable and are part of the legal order of the Republic of Kosovo.
37. The Court notes that through the amendment proposed by eighty (80) deputies of the Assembly, the Applicant proposes adding a new paragraph after paragraph 8 of Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, namely adding paragraph *“(9) Council of Europe Convention on preventing and combating violence against women and domestic violence”*.
38. The Court specifies that the international instruments, which are directly applicable, do not exclude and limit each other, nor diminish the rights and freedoms foreseen by other provisions established in Chapter II of the Constitution.

39. The Court once again recalls the purpose of the Convention, which, *inter alia*, stipulates:
- a. *protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;*
 - b. *contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;*
 - c. *design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;*
 - d. *promote international co-operation with a view to eliminating violence against women and domestic violence;*
 - e. *provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.*
40. In addition, the Convention specifically obliges states to take the necessary legislative measures, as well as other measures, by establishing mechanisms with a view to have it fully implemented.
41. Therefore, the Court notes that the implementation of the Convention produces effects of various nature for member states of the legislative nature (supplementing and amending the legal framework in force), budget implications, etc.
42. The Convention, *inter alia*, specifies the need for comprehensive and coordinated policies, which require data collection and search, training of professionals dealing with victims or perpetrators of all acts of violence covered by the provisions of this Convention.
43. In addition, the provisions of this Convention also stipulate the establishment of monitoring mechanisms, specialized support services, victim housing, the adoption of legislative measures in accordance with the international principles.
44. The Convention also envisages availability of civil legal remedies against the state authorities that do not fulfill their obligations. Furthermore, Article 30 [Compensation] of the Convention provides for adequate compensation from states, for those victims who have suffered serious bodily injury or impairment of health.
45. The Court also notes that the proposers of the proposed amendment did not submit to the Court any preliminary analysis of the impact that the Convention may have, such as the financial implications or the necessary mechanisms and institutions to be created for the purpose of its implementation.

46. Specifically, these provisions have as a consequence a high financial impact, which implies the assessment and inclusion of this cost in the appropriate budget framework.
47. In the light of the foregoing explanations, the Court notes that even within the member states of the Council of Europe there are different views on the adoption of the Convention and the manner of its adoption.
48. The Court further notes that the Convention was adopted by the Council of Europe on 11 May 2011 in Turkey and was ratified by thirty-three (33) member states of the Council of Europe and thirteen (13) states have only signed it and twenty-one (21) states have expressed their reservations regarding the application of certain provisions of this Convention. Most of the states, which have expressed reservations about the application of certain provisions, mainly relate to Article 30 [Compensation] and Article 44 [Jurisdiction] of this Convention.
49. The Court further recalls Article 7 [Values] of the Constitution, which provides:
 - (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.*
50. The Court considers that the proposed amendment leads to enrichment of these values.
51. In light of the foregoing, the Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution. Moreover, it only advances and develops these rights.
52. The Court considers that, pursuant to Article 144, paragraph 4, of the Constitution, the proposed amendments to the Constitution enter into force upon adoption by the Assembly of Kosovo.
53. Therefore, the Court confirms that the proposed amendment is in compliance with Chapter II of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.9 and Article 144.3 of the Constitution, in accordance with Article 20 of the Law and in accordance with Rule 59 (1) of the Rules of Procedure, in its session held on 19 December 2018, unanimously

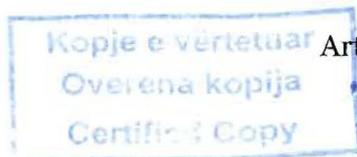
DECIDES AS FOLLOWS:

- I. TO DECLARE, unanimously, the Referral admissible;
- II. The Court confirms that the amendment proposed by eighty (80) deputies, submitted by the President of the Assembly on 24 October 2018, does not diminish the rights and freedoms set forth in Chapter II of the Constitution;
- III. This Decision shall be notified to the parties and shall be published in the Official Gazette, in accordance with Article 20.4 of Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha



Arta Rama-Hajrizi