



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 30 April 2018  
Ref. No.: AGJ 1225/18

## **JUDGMENT**

in

**Case No. KO45/18**

Applicants

**Glauk Konjufca and  
11 other deputies of the Assembly of the Republic of Kosovo**

**Constitutional Review of Law No. 06/L-060 on Ratification of the  
Agreement on the State Border between the Republic of Kosovo and  
Montenegro**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicants**

1. The referral is submitted by Glauk Konjufca, Albin Kurti, Rexhep Selimi, Liburn Aliu, Albulena Haxhiu, Xhelal Sveçla, Arbërie Nagavci, Fitore Pacolli, Shemsi Sylja, Ismajl Kurteshi, Valon Ramadani, Salih Zyba (hereinafter, the Applicants), all of them Deputies of the Assembly of the Republic of Kosovo (hereinafter, the Assembly).

2. The Applicants have authorized Glauk Konjufca to represent them in the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

### **Challenged Law**

3. The Applicants challenge the constitutionality of Law No. 06/L-060 on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro (hereinafter, the Law on Ratification of the Demarcation), adopted by the Assembly on 21 March 2018.

### **Subject matter**

4. The subject matter is the assessment of the constitutionality of the challenged Law on Ratification of Demarcation, which allegedly is in violation of Articles 1 [Definition of State], 2 [Sovereignty], 4 [Form of Government and Separation of Powers], 18 [Ratification of International Agreements], 125 [General Principles], 126 [Kosovo Security Force], 127 [Kosovo Security Council], 128 [Kosovo Police] and 129 [Kosovo Intelligence Agency] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

### **Legal basis**

5. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 42 [Accuracy of the Referral] and 43 [Deadline] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

### **Proceedings before the Court**

6. On 29 March 2018, the Applicants submitted to the Court the Referral with numerous documents attached.
7. On 29 March 2018, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues (presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
8. On 29 March 2018, the Referral was communicated to: the Applicants; the President of the Republic of Kosovo; the President of the Assembly of the Republic of Kosovo (hereinafter, the President of the Assembly) the Prime Minister of the Republic of Kosovo (hereinafter, the Prime Minister); and the Secretariat of the Assembly of the Republic of Kosovo (hereinafter, the Secretariat).
9. In the Letter to the President of the Republic of Kosovo was noted that Article 45 paragraph 2 of the Law on the Constitutional Court specifies that the challenged Law cannot be promulgated until the final decision of the



Constitutional Court on the matter raised. The President of the Assembly was asked to facilitate the distribution of the Referral to all Deputies of the Assembly and if anyone had comments to submit them by 6 April 2018. The Prime Minister also was given the opportunity to submit comments by 6 April 2018. The Secretariat of the Assembly was asked particularly to submit to the Court any documents that might be relevant to the case.

10. On 3 April 2018, the Secretariat presented to the Court the following documents:
  - a. Draft-Law on No. 06/L-060 on Ratification of the Agreement on State Border between the Republic of Kosovo and Montenegro of 20 February 2018;
  - b. Request of the Prime Minister (22 February 2018) to the Assembly to hold an extraordinary session for deliberation of the draft Law on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro of 20 February 2018;
  - c. Report of the Functional Committee on Foreign Affairs, Diaspora and Strategic Investment of 21 February 2018;
  - d. Invitation and agenda for the extraordinary plenary session of the Assembly of 22 February 2018;
  - e. Report with amendments of the Functional Committee on Foreign Affairs, Diaspora and Strategic Investment of 21 March 2018;
  - f. Resolution of the Assembly No. 06-V-090, of 21 March 2018 on adoption of Law No. 06/L-060 on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro;
  - g. Law No. 06/L-060 on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro.
11. The Secretariat did not comment on the allegations raised in the Referral, but added that, if there were any comments by the Deputies, the Court would be informed in due time.
12. On 6 April 2018, the Applicants submitted a document with additional clarifications as per the substantive and procedural allegations raised in their Referral.
13. No comments were submitted by the Prime Minister or the Deputies of the Assembly within the prescribed deadline.
14. On 18 April 2018, the Review Panel considered the Report of the Judge Rapporteur and, by unanimity, made a recommendation to the Court to declare the Referral admissible and to assess the merits of the Referral.

## Summary of facts

15. On 21 March 2012, the Government adopted Decision No.12/67 on Appointment of Members of the State Commission for Demarcation and Maintenance of the State Border (hereinafter, the Demarcation Commission).
16. On 26 March 2013, the Demarcation Commission of Kosovo and the Demarcation Commission of Montenegro adopted a Regulation of Joint Work, regarding the demarcation of the state border between Kosovo and Montenegro.
17. On 17 July 2013, the Government adopted Decision No. 03/14, by which it approved the Rules of Procedure of the Demarcation Commission.
18. On 8 May 2015, the Government adopted Decision No. 05/28 on the extension of the mandate of the Members of the Demarcation Commission.
19. On 25 June 2015, the Assembly adopted Resolution No. 05-R-03 on the Demarcation of the Border between Kosovo and Montenegro. The Resolution, inter alia, required the border with Montenegro to be determined based on the *“administrative lines foreseen by the legislation in force for administrative boundaries of SFRY, the administrative borders of the territory of Kosovo of 1974 and the current Constitution”*. In addition, it demanded from the Prime Minister of the Republic of Kosovo to undertake actions that ensure that the Demarcation Commission makes available all discussions and proposals of the Demarcation Commission of Montenegro, and that the Government *“reports to the Assembly prior to the adoption of the inter-border [Agreement] between Kosovo and Montenegro”*.
20. On 5 August 2015, the Government adopted Decision No. 01/43, which approved in principle the initiative for an Agreement on the State Border between the Republic of Kosovo and Montenegro. The Decision obliged the Ministry of Foreign Affairs to undertake actions to sign the agreement in accordance with Law No.04/L-052 on International Agreements.
21. On 20 August 2015, the President of the Republic of Kosovo, upon the request of the Government, authorized the Minister of Foreign Affairs and the Minister of Internal Affairs to undertake actions to sign the Agreement on the State Border between the Republic of Kosovo and Montenegro.
22. On 26 August 2015, the respective ministers of Foreign Affairs and the ministers of Internal Affairs of both countries signed the Agreement for the State Border between the Republic of Kosovo and Montenegro. This agreement was drafted based on the joint work of the Demarcation Commission of the Republic of Kosovo and the Demarcation Commission of Montenegro.
23. On 22 September 2017, after the parliamentary elections of 11 June 2017, the new Government decided (Decision No. 01/04) to appoint new Members of the Demarcation Commission, and thus dismissing the Members of the previous Demarcation Commission.



24. On 3 October 2017, the Government decided (Decision No. 01/06) to authorize the new Demarcation Commission to assess the work of the previous one.
25. On 4 December 2017, the Demarcation Commission presented to the Government the Report on Assessment of the Work of the previous Demarcation Commission, pointing out errors allegedly committed by it.
26. On 4 December 2017, the Government approved (Decision No. 02/17) the draft Law on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro (hereinafter, the Draft of the Law on Ratification of the Demarcation), as well as the Report of the Demarcation Commission stated above. In accordance with this Decision, the General Secretary of the Office of the Prime Minister proceeded the Draft of the Law on Ratification of the Demarcation for review and adoption by the Assembly.
27. On 5 December 2017, the draft Law on Ratification of the Demarcation was submitted by the President of the Assembly to the Deputies of the Assembly. The Committee on Foreign Affairs, Diaspora and Strategic Investment (hereinafter, the Committee of Foreign Affairs) was charged to review the Draft of the Law on Ratification of the Demarcation and to present a Report with Recommendations.
28. On 16 February 2018, the President of the Republic of Kosovo and the President of Montenegro signed a joint Declaration. It provided that the Republic of Kosovo and Montenegro shall establish a joint Working Group to determine the border in accordance with the Draft of the Law on Ratification of the Demarcation, to assess it, and correct possible errors in certain parts of the state border between Kosovo and Montenegro.
29. On 20 February 2018, the Prime Minister requested an extraordinary session of the Assembly to be held on 22 February 2018, at 11:00 hrs., concerning the draft of the Law on the Ratification of the Demarcation.
30. On 21 February 2018, based on the request of the Prime Minister, the Presidency of the Assembly decided that the extraordinary session shall be held on 22 February 2018, at 11:00 hrs. However, due to the lack of quorum, the session was postponed.
31. On 27 February 2018, the Presidency of the Assembly decided that the continuation of the postponed extraordinary session shall be held on 28 February 2018, at 10:00 hrs. However, due to the lack of quorum, the session was again postponed.
32. On 15 March 2018, the Presidency of the Assembly decided that the continuation of the extraordinary session on the draft of the Law on Ratification of the Demarcation shall be held on 20 March 2018. Accordingly, the discussion began at 16:00 hrs. and continued until 01:00 hrs of 21 March 2018, when the Assembly voted to postpone the voting on the draft Law on Ratification of the Demarcation and to continue the session on 21 March 2018, at 11:00 hrs.

33. On 21 March 2018, the Committee of Foreign Affairs recommended to the Assembly to adopt the draft of the Law on Ratification of the Demarcation and proposed one Amendment:

*“Article 3 of the draft Law is amended as follows:*

*Article 3*

1. *Integral part of this law are:*

*1.1. The Agreement on the State Border between the Republic of Kosovo and Montenegro, signed in Vienna, on 26 August 2015;*

*1.2. Joint statement of the President of the Republic of Kosovo H.E. Hashim Thaçi and the President of Montenegro H.E. Filip Vujanović signed on 16.02.2018.*

*1.3. Official records of the State Commission for demarcation of the State Border - for orientation.”*

34. On 21 March 2018, at 11:00 hrs., the Assembly proceeded with the voting of the draft of the Law on Ratification of the Demarcation. However, it was interrupted due to the use of a tear gas by a number of Deputies of the Assembly. Subsequently, the Presidency of the Assembly (Decisions 06/V-112 and 06/V-112) expelled from participation in the extraordinary session a number of Deputies of the Assembly “*due to throwing tear gas in the session of 21 March 2018*”, and one Deputy of the Assembly “*due to demolishing the equipment of the plenary session room*”.
35. On 21 March 2018, after several interruptions and consequent rescheduling of the extraordinary session by the Presidency of the Assembly, the President of the Assembly proceeded with the adoption of the amendments proposed by Committee of Foreign Affairs and then on the adoption of the draft of the Law on Ratification of the Demarcation in its entirety. According to the transcripts of the sessions (22, 23, and 28 February 2018 and on 20 and 21 March 2018) ninety-one (91) Deputies were present and voted. Eighty (80) Deputies voted in favor, eleven (11) Deputies voted against and there were no abstentions. The amendment of the draft of the Law on Ratification of the Demarcation was adopted in its entirety.
36. Therefore, on 21 March 2018, the Assembly adopted Law No. 06/L-060 on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro (the Law on Ratification of the Demarcation).
37. The Law on Ratification of the Demarcation stipulates that:

*“Article 1*

*The Agreement on the state border between the Republic of Kosovo and Montenegro, signed in Vienna, on 26 August 2015, is ratified.*



#### *Article 2*

*Provisions of the Agreement on the State Border between the Republic of Kosovo and Montenegro, signed in Vienna, on 26 August 2015, if new legal facts are provided, can be changed, and amended with the approval of the parties. Provisions of this Agreement can be changed following the same procedures that were envisaged for its adoption. With the consent of parties, international arbitration can be sought for changing provisions of the Agreement.*

#### *Article 3*

*2. Integral part of this law are:*

*1.1. The Agreement on the State Border between the Republic of Kosovo and Montenegro, signed in Vienna, on 26 August 2015;*

*1.2. Joint statement of the President of the Republic of Kosovo H.E. Hashim Thaçi and the President of Montenegro H.E. Filip Vujanović signed on 16.02.2018.*

*1.3. Official records of the State Commission for demarcation of the State Border - for orientation.*

#### *Article 4*

##### *Entry into force*

*This Law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.”*

### **Arguments presented by the Applicants**

38. The Applicants claim that the procedure followed for the adoption as well as the substance of the Law on Ratification of the Demarcation are in violation of Articles 1 [Definition of State], 2 [Sovereignty], 4 [Form of Government and Separation of Powers], 18 [Ratification of International Agreements], 125 [General Principles], 126 [Kosovo Security Force], 127 [Kosovo Security Council], 128 [Kosovo Police], and 129 [Kosovo Intelligence Agency] of the Constitution.

### **Regarding the procedure followed**

39. The Applicants allege that “[t]he request for an extraordinary session filed in the Assembly [by the Prime Minister] does not meet the criteria foreseen in Article 38, paragraph 3 of the Rules of Procedure of the Assembly” which require that the request for an extraordinary session must provide the justification on why a certain matter is considered ‘urgent’. They consider that the failure to provide a justification for the request of an extraordinary session as required by Article 38 (3) of the Rules of Procedure of the Assembly also leads to a violation of Article 69 (4) of the Constitution, which foresees that the Assembly convenes an extraordinary meeting upon the request of, among others, the Prime Minister.

40. The Applicants state that from the time when the extraordinary session was requested and scheduled until the adoption of the Law on Ratification of the Demarcation passed more than one (1) month. Thus, the matter that was initially considered urgent but was not decided for more than one (1) month, did not correspond with the nature of the 'urgent matter' as foreseen in Article 69 (4) of the Constitution, in conjunction with the Article 38 (3) of the Rules of Procedure of the Assembly.
41. The Applicants consider that Law No 04/L-052 on International Agreements does not specify in any of its provisions that "*an international agreement must be ratified (in extraordinary session) as urgent*". Thus, they consider that the ratification of an international agreement in extraordinary session is in violation of Article 18 [Ratification of International Agreements] of the Constitution, which regulates the ratification of international agreements.
42. The Applicants specify that the discussion of the Law on Ratification of the Demarcation that started on 20 March 2018 at 16:00 hrs. and continued until 21 March at 01:00 hrs. was proposed to be continued on 21 March at 11:00 hrs. This proposal was put into vote by the President of the Assembly and "*69 Deputies were present, 46 voted "For" 1 was "Against", and "Abstentions" where not counted*". In this regard, the Applicants allege that by not verifying if all Deputies who made the quorum voted "For", "Against" or "Abstained", leads to violation of Article 69 (3) [Schedule of Sessions and Quorum] of the Constitution, in conjunction with Article 51 (3) of the Rules of Procedure of the Assembly, which requires that laws, decisions and other acts of the Assembly are considered adopted if they are voted by the majority of the Deputies present and voting.
43. The Applicants further consider that Decision 06/V-114 of the Presidency of the Assembly for expelling a number of Deputies from the extraordinary session of 21 March 2018, "*due to throwing tear gas*", was not correct, because most of the Deputies expelled did not throw tear gas in the Session. Therefore, their removal from the session constitutes a violation of "*Articles 18 and 80 of the Constitution in conjunction with Article 21 of the Rules of Procedure of the Assembly, because they were denied the rights to express their free will*" for the matter that was discussed and decided in the Session of 21 March 2018.

### **Regarding the substance of the Law on Ratification of Demarcation**

44. The Applicants specify that Law No. 04/L-072 on Control and Supervision of the State Border requires the Government to appoint members of the Commission of Demarcation and Maintenance of State Borders based on "international agreements". According to the Applicants, the "international agreement" mentioned in Article 40 of this Law means "Comprehensive Proposal for the Kosovo Status Settlement" (hereinafter, the Ahtisaari package). Thus, they allege that the entire process of demarcation of the state border between Kosovo and Montenegro should have been done in accordance with the Ahtisaari Package, which required the border lines to be marked in accordance with those as of 31 December 1988.



45. The Applicants complain that the Demarcation Commission did not follow the constitutional and legal history of the territorial integrity of Kosovo and accepted the proposal of the Demarcation Commission of Montenegro to determine the border line between Kosovo and Montenegro based on cadastral criterion. This criterion is in violation of the international law which does not recognize the 'cadastral criteria' as the only criteria for border demarcation. Thus, by ignoring the criteria of '*uti possidetis*' and '*effective control criteria*', the border line determined is five (5) to six (6) kilometers inside the territory of Kosovo.
46. In this regard, the Applicants allege that the Commission has exceeded its competencies by conducting the delimitation of a new border rather than conducting demarcation of the border line as it was mandated with the Law on Control and Supervision of State Border. Thus, the Commission has violated the sovereignty and territorial integrity of Kosovo, guaranteed by Article 2, paragraph 2 [Sovereignty] of the Constitution as well Articles 125 [General Principles] to 129 [Kosovo Intelligence Agency] of the Constitution which specify the constitutional institutions which have constitutional obligations to protect the territorial borders of Kosovo.
47. The Applicants recall the Resolution of the Assembly of 25 June 2015 which required from the ex-Prime Minister Isa Mustafa to undertake measures to ensure that the Demarcation Commission reveals all the discussion and matters raised by the Demarcation Commission of Montenegro and to report before the Assembly before the conclusion of the agreement between Kosovo and Montenegro. They allege that the Government of Kosovo failed to respect the Resolution of the Assembly and also failed to dismiss the Demarcation Commission, even though the Government was informed that the Commission had exceeded its competencies.
48. Furthermore, the Applicants allege that the Report of the Demarcation Commission of 4 December 2017, which forms part of the Law on Ratification of the Demarcation, argue that the Agreement for Demarcation of the Border of 26 August 2015 violates the constitutional provision of Articles 1 [Definition of State], 2 [Sovereignty], 4 [Form of Government and Separation of Power], 125 [General Principles] and 129 [Kosovo Intelligence Agency] of the Constitution, because, instead of demarcation of the borders between Kosovo and Montenegro, it determined new borders (delimitation of borders).
49. Thus, the Deputies of the Assembly who voted for the approval of the Law on Ratification of the Demarcation violated the sovereignty and territorial integrity of Kosovo because the Law ratifying the Agreement and the Agreement itself must be in line with the constitutive elements of state sovereignty and territorial integrity. Therefore, any law, sub-legal act or agreement that violates the sovereignty and territorial integrity of the state must become null from a constitutional and international law perspective.
50. Additionally, in their clarification of 6 April 2018, the Applicants also allege that Article 3 (1 and 2) of the Law on Ratification of the Demarcation is contradictory, incomprehensible and creates confusion. In this regard, the Applicants specify that the Government "*deliberately created confusion,*

*defrauding and disorientation of the public and especially of the Deputies of the Assembly in order to entice them with the final aim that they vote that Law”.*

### **Admissibility of the Referral**

51. The Court first examines whether the Referral fulfills the admissibility requirements established by the Constitution and as further provided for by the Law and specified by the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).
52. The Court refers to Article 113 (1) [Jurisdiction and Authorized Parties] of the Constitution, which establishes that *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”*.
53. The Court also refers to Article 113 (5) of the Constitution, which establishes that *“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.”*
54. In that respect, the Court recalls that the Applicants challenge the constitutionality of the Law on Ratification of the Demarcation as regards its substance and the procedure followed for its adoption.
55. The Court further recalls that the Referral was submitted by 12 Deputies of the Assembly, in accordance with Article 113 (5) of the Constitution. Therefore, the Applicants are an authorized party.
56. The Court takes into account Article 42 [Accuracy of the Referral] of the Law, which provides:

*“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.”*
57. The Court notes that the Applicants indicated the names with the signatures of the Deputies, specified the law they contested, referred to the relevant constitutional provisions they allege have been violated and presented evidence supporting their allegations. Thus, the Court considers that the requirements of Article 42 of the Law have been met.
58. Regarding the established deadline of *“eight (8) days from the date of adoption”*, the Court notes that the Law on Ratification of the Demarcation was



adopted on 21 March 2018, while the Referral was submitted to the Court on 29 March 2018.

59. The Court recalls that, pursuant to Rule 27 of the Rules of Procedure, the deadline for submitting the Referral, "*when it is expressed in days is to be calculated starting from the day after the event takes place*". In this case, on the next day following the approval of the Law on the Ratification of the Demarcation. Therefore, the Referral has been submitted in a timely manner.
60. The Court considers that there are no grounds to declare this Referral inadmissible. Therefore, the Referral is admissible.

### **Comparative analysis**

61. Before assessing whether the challenged Law on the Ratification of the Demarcation is in compliance with the Constitution, the Court recalls that it has already used detailed comparative analyses in its Case No. KO95/13, *Visar Ymeri and 11 other Deputies*, Judgment of 9 September 2013.
62. The Court reiterates that Constitutions of different European countries approach the issue of constitutional review of the ratification of international agreements in various ways. These differences are a result of the various ways in which the relationship between an international agreement and the domestic legal order are defined. This definition can be understood as falling along a scale of constitutional approaches.
63. At one end of the scale, is the approach taken by the United Kingdom where international agreements are concluded by the Queen through her Minister for Foreign and Commonwealth Affairs and do not have to be ratified by the British Parliament before becoming binding on the state. Once concluded, they bind the state only in its relations with other countries and have no effect on the internal legal order of the United Kingdom. In order for the provisions of an international agreement to become effective within the domestic legal order, specific legislation must be adopted containing those provisions and defining their operation within domestic law. Once incorporated through specific legislation, these provisions remain of an inferior legal order than the Constitution of the state.
64. At the opposite end of the scale, is the approach taken by the Netherlands. Here, following ratification by Parliament, the international agreement becomes binding on the state in its relations with other countries, and any self-executing provisions of the agreement become binding within the internal legal order. What is more, the provisions of ratified international agreements are of superior legal order even than the Constitution of the state, and domestic legislation may be reviewed by all courts for compliance with obligations deriving from such international agreements.
65. The Constitutional system of Kosovo has its own specificities that fall in between these two examples. Following the ratification by the Assembly, an international agreement becomes binding on the state in its relations with other states, and such agreements become part of the internal legal system.

However, those provisions of an international agreement which are self-executable are of superior legal order to the legislation of Kosovo, while remaining of inferior legal order to the Constitution of Kosovo, as defined in Article 19 of the Constitution. Self-executing provisions of international agreements may be applied directly within the internal legal order of Kosovo, but their application remains subject to the Constitution. (See case No. KO95/13, *Visar Ymeri and 11 other Deputies*, Judgment of 9 September 2013, paragraphs 53-69).

## Merits

66. The Court notes that the Applicants allege that the Law on Ratification of the Demarcation of the State Borders between the Republic of Kosovo and Montenegro is in violation of the Constitution as regards the procedure followed for its adoption and its substance.

### Regarding the procedure followed for adopting the contested law

67. The Applicants complain that the procedure for adopting the contested law is in violation of:
- a. Article 69 (4) [Schedule of Sessions and Quorum] of the Constitution in connection with Article 38 (3) of the Rules of Procedure, *“which require that the request for extraordinary session must provide the justification on why certain matter is considered urgent”*.
  - b. Article 18 [Ratification of International Agreements] of the Constitution, which regulates the question of ratification of international agreements because *“the Law No 04/L-052 on International Agreements does not specify in any of its provisions that an international agreement must be ratified (in extraordinary session) as urgent”*.
  - c. Article 69 (3) [Schedule and Sessions and Quorum] of the Constitution, in connection with Article 51 (3) of the Rules of Procedure of the Assembly, which establishes that *“The Assembly of Kosovo has its quorum when more than one half (1/2) of all Assembly deputies are present”*. Those articles were violated because it was not verified if all Deputies who made the quorum voted “For”, “Against” or “Abstained”. Furthermore, the Applicants allege that the proposal of the contested law was put to a vote by the President of the Assembly and *“69 Deputies were present, 46 voted “For”, 1 was “Against”, and “Abstentions” were not counted”*.
  - d. Articles 18 [Ratification of International Agreements] and 80 [Adoption of Laws] of the Constitution in conjunction with Article 21 of the Rules of Procedure of the Assembly because *“they (the Deputies) were denied the right to express their free will”*. In this respect, the Applicants further consider that Decision 06/V-114 of the Presidency of the Assembly for expelling a number of Deputies from the extraordinary session of 21 March 2018, *“due to throwing tear gas”*, was not correct, because most of the expelled Deputies did not throw tear gas in the Assembly Session.



68. However, the Court reiterates that it can only analyze the steps undertaken by the Government and the Assembly for the adoption of the contested law, on the basis of the relevant constitutional provisions, i.e. the legislative procedure and process proper.
69. In this connection, the Court notes that the competencies of the Assembly are determined in Article 65 [Competencies of the Assembly] of the Constitution, of which, for the present case, only its paragraphs 1 and 4 are relevant. They read as follows:

*“The Assembly of the Republic of Kosovo:  
(1) adopts laws, resolutions and other general acts;  
[...]  
(4) ratifies international treaties;”*

70. The Assembly, pursuant to its competence under Article 65 (1) of the Constitution, voted and adopted the Law on Ratification of the Demarcation, in accordance with the requirements for the adoption of a law foreseen in paragraph 1 of Article 80 [Adoption of Laws] which establishes that *“Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution”*.
71. Furthermore, the Court also refers to Article 18 (1) of the Constitution and Article 10 (2) of Law No. 04/L-052 on International Agreements, which defines the procedure for the ratification of international agreements. Paragraph 1 of Article 18 [Ratification of International Agreements] reads as follows:

*“International agreements relating to the following subjects are ratified by two thirds (2/3) vote of all deputies of the Assembly:  
(1) territory, peace, alliances, political and military issues;  
(2) fundamental rights and freedoms;  
(3) membership of the Republic of Kosovo in international organizations;  
(4) the undertaking of financial obligations by the Republic of Kosovo;”*

72. Thus, the ratification of an international agreement on the demarcation of the borders of the state is related to the subject of the territory of the state and, therefore, comes within the scope of Article 18 (1) of the Constitution. As such, the Agreement on the Demarcation requires a two-thirds majority vote in the Assembly for its ratification.
73. As to which authority of a State has the power to conclude international treaties, the Court refers to Article 2 (c) of the Vienna Convention on the Law of Treaties of 1969, which defines “full powers” as meaning *“[...] a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty”*.
74. In this regard, the Court notes that the reference to the ‘competent authority’ to conclude international agreements leaves it to the internal law of each State to

determine the authority that holds the full powers. Usually, such documents emanate from the Head of State (or somebody to whom he/she has delegated the necessary powers), the head of government or the foreign minister and bear the official emblem and, in some cases, the seal of a country.

75. In addition, the internal law of Kosovo, that regulates which institutions are authorized to conclude international agreements, is specified in Article 6 of Law No. 04/L-052 on International Agreements which reads as follows:

*“[...]”*

*1. The President and the Prime Minister and the Minister of Foreign Affairs shall be entitled to perform all acts relating to the conclusion of the International Agreements of the Republic of Kosovo, in compliance with the Constitution of Republic of Kosovo and the Vienna Convention on the Law of Treaties.*

*2. The head of a diplomatic mission of the Republic of Kosovo or the authorized representative of the Republic of Kosovo at an international conference, international organization or one of its bodies shall be entitled to negotiate the conclusion of an International Agreement of the Republic of Kosovo or to approve its text with the State to which he is accredited or at the international conference, international organization or one of its bodies.*

*3. Other persons may perform acts relating to the conclusion of the International Agreements of the Republic of Kosovo only provided they possess powers granted to them based on the laws in force and according to the procedure established in Article 6 of this Law.*

*“[...]”*

76. The Court notes that, on 25 June 2015, the Assembly adopted Resolution No. 05-R-03 on Demarcation of the State Border between the Republic of Kosovo and Montenegro. In addition, it requested from the Prime-minister to undertake actions to ensure that the Demarcation Commission made available all discussions and proposals of the Demarcation Commission of Montenegro. It also requested that the Government reports before the Assembly prior to adoption of the agreement between Kosovo and Montenegro.
77. Thus, a series of actions started involving the Prime Minister, the respective Presidents of Kosovo and Montenegro, the ministers of Foreign Affairs and of Internal Affairs before the challenged the Law on Ratification of the Demarcation was presented to the Deputies of the Assembly. Subsequently, on 21 March 2018, the Assembly voted and adopted the challenged Law on Ratification of the Demarcation.
78. In this regard, the Court refers to Article 10 of Law No. 04/L-052 on International Agreements, which, in addition of reiterating the provision of Article 18 of the Constitution, provides:

*2. International Agreements referred to in paragraph 1 of this Article [10 of Law No. 04/L-052] shall be ratified by a law by two thirds (2/3) vote of all deputies of the Assembly of the Republic of Kosovo.*  
*“[...]”*



79. In that respect, the Court notes that, for the purposes of the incorporation into the Kosovo legal order of the agreement, the Government is responsible to submit to the Assembly, according to the established procedure, a draft of the respective law, pursuant to Article 15 (3) of Law No. 04/L-052 on International Agreements.

80. Article 15 (3) of Law No. 04/L-052 on International Agreements reads as follows:

*“If a law or any other legal act has to be passed for the purpose of implementation of an International Agreement of the Republic of Kosovo, the Government of the Republic of Kosovo shall submit to the Assembly according to the established procedure a draft of the appropriate law or shall adopt an appropriate decision of the Government or ensure according to its competence the passing of another legal act”.*

81. In this connection, the Court notes that, on 4 December 2017, the Government, pursuant to its competences under Article 92 (4) [General Principles] of the Constitution and based on Decision No.02/17, proposed for adoption to the Assembly a Draft Law on Ratification of the Demarcation.

82. The Court refers to Article 60 of the Rules of Procedure of the Assembly which regulates the adoption of this kind of laws, which is different from other laws, and stipulates as follows:

*“[...]*

*1. The Assembly of the Republic of Kosovo ratifies international agreements by law, pursuant to Article 18 of the Constitution of the Republic of Kosovo.*

*2. The Draft Law on ratification of international agreements shall contain the text of the international agreement, reasons for such ratification and financial statement, in cases of financial implications.*

*3. Proceeding a Draft Law on ratification of international agreements is special and shall be subject to only one reading.*

*[...]”*

83. In this regard, particular attention should be paid to the wording of Article 60 (3) of the Rules, which provides that *“Proceeding a Draft Law on ratification of international agreements is special and shall be subject to only one reading”*. Other laws adopted by the Assembly require more than one reading.

### **Allegation on violation of Article 69 (4) of the Constitution**

84. The Court recalls that the Applicants claim a violation of Article 69 (4) of the Constitution, in connection with Article 38 (3) of the Rules of Procedure, because extraordinary session needs justification on why certain matter is urgent.

85. The Court notes that Article 69 (4) of the Constitution does not require expressly nor implicitly from the political actors to provide a thorough justification in order to convene an extraordinary meeting of the Assembly. The Court is bound to assess observance of constitutional procedure, and in the concrete, the Assembly has observed constitutional provisions on approval of the Law on Ratification of the Demarcation.
86. It follows that the allegation on violation of Article 69 (4) of the Constitution is manifestly ill-founded on a constitutional basis.

**Allegation on violation of Article 18 of the Constitution in conjunction with the Law No 04/L-052 on International Agreements**

87. The Court also recalls that the Applicants claim a violation of Article 18 of the Constitution, because the Law No 04/L-052 on International Agreements does not provide that an international agreement must be ratified (in extraordinary session) as urgent.
88. The Court notes that Article 18 of the Constitution does not regulate the tempo of a matter to be deliberated and voted upon by the Deputies of the Assembly. Whether a matter is considered 'urgent' or not, it is left to the discretion of the political actors. (See, *mutatis mutandis*, Case No. KO118/16, *Slavko Simić and 10 other deputies*, Resolution on Inadmissibility, of 31 October 2016 and Case No. KO120/16, *Slavko Simić and 10 other deputies*, Resolution on Inadmissibility, of 1 February 2017).
89. The Court notes that the Law on Ratification of International Agreements does not regulate the procedure for adoption of international agreements and particularly does not mention the "urgency" of adoption or "extraordinary session" is not relevant. This is a question of legislative priorities and management of the work of the Assembly. It is the Constitution that regulates the legislative process and procedure.
90. The Court considers that the allegation raised by the Applicants does not fall within the ambit of the procedures regulated by the Constitution. It cannot be expected each and every law dealing with specific legislative matter to preview a special procedure for its adoption. Finally, it is for the legislative body to decide.
91. Therefore, the Court concludes that the procedure and adoption of the Law on Ratification of the Demarcation is in conformity with the Constitution. In this connection, the Court underscores, in accordance with the principle of hierarchy of norms, that laws are subjected to the Constitution and not the other way around.
92. It follows, that that the Applicants' allegation on violation of Article 18 of the Constitution is manifestly ill-founded on a constitutional basis.



### **Allegation on violation of Article 69 (3) of the Constitution**

93. The Court further recalls that the Applicants complain that Article 69 (3) of the Constitution, in connection with Article 51 (3) of the Rules of Procedure of the Assembly, was violated because it was not verified if all Deputies who made the quorum voted “For”, “Against” or “Abstained”.
94. The Court notes that, according to the transcript of the extraordinary plenary session of the Assembly, ninety-one Deputies were present and voted. Eighty (80) Deputies voted in favor, eleven (11) Deputies voted against, with no abstention. The Law on Ratification of the Demarcation was adopted in its entirety. Thus, the legislative procedure was conducted in accordance with Article 18 (1) of the Constitution which deals with the ratification of international agreements.
95. It follows, that the allegation on violation of Article 69 (3) of the Constitution is manifestly ill-founded on a constitutional basis.

### **Allegation on violation of Articles 18 of the Constitution in conjunction with Article 21 of the Rules of Procedure of the Assembly**

96. The Court finally recalls that the Applicants claim a violation of Articles 18 and 80 of the Constitution in conjunction with Article 21 of the Rules of Procedure of the Assembly because the expelled Deputies were denied the right to express their free will.
97. The Court notes that those Deputies were expelled from the Assembly Session ‘due to throwing tear gas’. The Court considers that “throwing gas” does not come within the ambit of constitutionalism and the rule of law. As to the assertion that the expelled Deputies did not factually throw or are not guilty of throwing tear gas, it is for the respective authorities to make the necessary investigations and conclusions based on the Rules of Procedure of the Assembly and other applicable legislation. Therefore, the Court reviews the constitutionality of a legislative procedure and its compliance with the relevant provisions of the Constitution.
98. In view of the above considerations, the Court notes that the Assembly followed the procedures prescribed in paragraphs 1 and 4 of Article 65 [Competencies of the Assembly], paragraph 1 of Article 18 [Ratification of International Agreements] of the Constitution, Article 10 [Ratification of International Agreements] of the Law on International Agreements and Rule 60 of the Rules of Procedure of the Assembly.
99. It follows, that this allegation on violation of Articles 18 of the Constitution is manifestly ill-founded on a constitutional basis.

### **Conclusion Regarding the procedure followed**

100. Therefore, as to the part of the Referral regarding the procedural complaint for the adoption of the Law on Ratification of the Demarcation, the Court



concludes that the procedure followed for the adoption of the challenged Law is compatible with the Constitution of the Republic of Kosovo.

### **Regarding the substance of the contested Law**

101. The Applicants complain with respect to the standards used by the Commission for Demarcation and its alleged overstepping of the given constitutional mandate resulting in a violation of the Constitution.
102. In this respect, the Court reiterates that “*international agreements serve to satisfy a fundamental need of States to regulate by consent issues of common concern, and thus to bring stability into their mutual relations. Thus, International Agreements are instruments for ensuring stability, reliability and order in international relations and therefore the international agreements have always been the primary source of legal relations between the States*”. (Constitutional Court case No. KO95/13, *Visar Ymeri and 11 other Deputies*, Judgment of 9 September 2013, paragraphs 94).
103. In this connection, the Court first assesses whether it is competent under the Constitution to deal with these complaints. As said above in the comparative analysis, there are some Constitutions that empower Constitutional Courts to review the conformity of international agreements with the Constitution. For example, Albania and Bulgaria empower their respective Constitutional Courts to review the constitutionality of an international agreement prior to its ratification; while Bosnia and Herzegovina, Croatia and Macedonia have chosen not to give jurisdiction to their Constitutional Courts to review international agreements. In addition, Slovenia has adopted a mixed system whereby, during the ratification procedure, the Constitutional Court reviews the constitutionality of international agreements if expressly requested by the President, the Government or one third of the Deputies of the Parliament. (Constitutional Court case No. KO95/13, *Ibidem*, paragraphs 93-101).
104. Thus, the comparative analysis reveals that Constitutional Courts of the surveyed countries generally do not have jurisdiction to review the constitutionality of international agreements after the adoption of the ratification law by the Parliament. A few Constitutional Courts may review the constitutionality of international agreements prior to its ratification based on an explicit empowering by a Constitution.
105. The Court considers that the Law on Ratification of the Demarcation and the International Agreement on Demarcation are two separate legal acts. Each of these acts follow a different legal procedure. As to the adoption of the Law on Ratification of the Demarcation by the Assembly, the Court notes that this Law was adopted by the required two-thirds (2/3) majority and in only one reading, as constitutionally prescribed. Therefore, the Court considers that the adoption of the Law on Ratification of the Demarcation by the Assembly was in compliance with the procedural provisions of the Constitution.
106. In addition, the Court considers that the purpose of the challenged Law is to confirm the international character of the Agreement on Demarcation of the



State Borders, and to incorporate the Agreement into the legal system of the Republic of Kosovo and strengthen its statehood.

107. Regarding the substance of the International Agreement on Demarcation of the State Borders, the Court notes that no Article of the Constitution provides for a review, by the Court, of the constitutionality of the substance of international agreements.
108. In these circumstances, it follows that under the Constitution the Court has jurisdiction to review the Law on the Ratification of the Demarcation, but it is not empowered to review whether the international agreement itself is in conformity with the Constitution. (Constitutional Court case No. KO95/13, *Ibidem*, paragraph 100).
109. Therefore, the Court concludes that it is not within its jurisdiction *ratione materiae* to review the constitutionality of the International Agreement on Demarcation of the State Borders between the Republic of Kosovo and Montenegro.
110. In sum, the Court, rejects the Applicants request to review the constitutionality of the International Agreement on Demarcation of State Borders between the Republic of Kosovo and Montenegro as it does not comprise the substance of the contested Law on Ratification of the Demarcation. The Law on Ratification of the Demarcation is, in substance, a tool for the ratification of an international agreement, but the substance of the international agreement itself does not come within the ambit of constitutional review by the Court.
111. As far as the proper substance of the Law on Ratification of the Demarcation is concerned, the Applicants do not elaborate separately on its substance from the subject of ratification at stake, i.e. the International Agreement of Ratification of the State Border. The Court notes that the substance of the challenged Law is the content of the Law as such and reiterates that the International Agreement does not comprise its substance. Based on this reasoning the Court concludes that the substance of the Law on Ratification of the Demarcation does not contradict constitutional provisions and is, therefore, in conformity with the Constitution.

## FOR THESE REASONS

The Constitutional Court therefore, pursuant to Article 113.5 of the Constitution, Articles 20, 42 and 43 of the Law and Rule 36 of the Rules, on 18 April 2018,

## DECIDES

- I. TO DECLARE unanimously the Referral admissible;
- II. TO DECLARE unanimously that the procedure followed for the adoption of Law No. 06/L-060 on Ratification of the Agreement on Demarcation of the State Border between the Republic of Kosovo and Montenegro is in compliance with the Constitution;
- III. TO DECLARE unanimously that the Law No. 06/L-060 on Ratification of the Agreement on Demarcation of the State Border between the Republic of Kosovo and Montenegro is not in contradiction with the Constitution;
- IV. TO REJECT unanimously the Applicants' request to review the International Agreement on Demarcation of the State Border between the Republic of Kosovo and Montenegro as being incompatible *ratione materiae* with the Constitution and thus outside of the scope of the Court's jurisdiction;
- V. TO DECLARE that, pursuant to Article 43 of the Law on Court, the Law on Ratification of the Agreement on Demarcation of the State Border between the Republic of Kosovo and Montenegro adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation;
- VI. TO NOTIFY this Judgment to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;
- VI. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20(4) of the Law;
- VII. TO DECLARE this Judgment effective immediately.

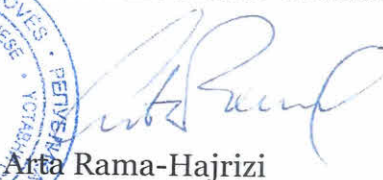
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi