



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

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Prishtina, 25 March 2019  
Ref. no.:RK 1339/19

*This translation is unofficial and serves for informational purposes only.*

**RESOLUTION ON INADMISSIBILITY**

in

**Case No. KO131/18**

Applicant

**The President of the Republic of Kosovo**

**Request for assessment of the conflict among the constitutional competences of the President of the Republic of Kosovo and the Assembly of the Republic of Kosovo, as defined in Article 113.3 (1) of the Constitution**

**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 Referral was submitted by the President of the Republic of Kosovo, His Excellency, Hashim Thaçi (hereinafter: the Applicant).

## **Subject matter**

2. The subject matter is the request for assessment of the conflict among constitutional competences of the President of the Republic of Kosovo (hereinafter: the President) and the Assembly of the Republic of Kosovo (hereinafter: the Assembly).
3. The allegation of the conflict among the constitutional competence is related to the constitutional competencies set forth for the President and Assembly in Article 18 [Ratification of International Agreements] of the Constitution. The President, as a party that raised an allegation of conflict between the President and the Assembly alleges uncertainty over the constitutional competence for the ratification of the Exchange of Letters between the Republic of Kosovo and the European Union, as follows:

*“1. Exchange of Letters between the President of the Republic of Kosovo (04.06.2018) and the High Representative of the European Union for Foreign Affairs and Security Policy (08.06.2018) [Fourth Exchange of Letters]:*

- 1.1. should it be ratified in the capacity of an International Agreement by the Assembly of the Republic of Kosovo by the two-thirds (2/3) vote of all deputies (in accordance with Article 18.1 of the Constitution) or*
- 1.2. should it be considered as ratified upon signature of the President (pursuant to Article 18.2 of the Constitution), due to the change of the role and the executive mandate of the European Union Rule of Law Mission in Kosovo, as from now on it will have mainly an advisory and monitoring role”.*

## **Legal basis**

4. The Referral is based on the sub-paragraph (1) of paragraph 3 of Article 113 [Jurisdiction and Authorized Parties], paragraph 9 of Article 84 [Competencies of the President] of the Constitution, Articles 31 [Accuracy of referral] and 32 [Deadline] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 68 [Referral pursuant to Article 113.3 (1) of the Constitution and Article 31 and 32 of the Law] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 4 September 2018, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court). The Applicant requested the Court to interpret Article 18 of the Constitution based on Article 83 [Status of the President] and paragraph 9 of Article 84 of the Constitution. The President claimed constitutional ambiguity related to the competent authority for the Exchange of Letters referred to above.

6. On 7 September 2018, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Bajram Ljatifi and Nexhmi Rexhepi.
7. On 12 September 2018, the Court notified the Applicant about the registration of the Referral.
8. On the same date, the Court sent a copy of the Referral to the President of the Assembly of the Republic of Kosovo, Mr. Kadri Veseli (hereinafter: the President of the Assembly) with the request that the latter be submitted to all deputies of the Assembly. On that occasion, the Court invited the President of the Assembly and the deputies of the Assembly to submit their comments, if any, by 28 September 2018. Within the set deadline, Mr. Korab Sejdiu, the deputy of the Assembly and the Parliamentary Group of Lëvizja VETËVENDOSJE!, represented by Mr. Sami Kurteshi, submitted their comments to the Court.
9. On the same date, the Court sent a copy of the Referral to the Prime Minister of the Republic of Kosovo, Mr. Ramush Haradinaj (hereinafter: the Prime Minister) and invited him to submit his comments regarding the Referral by 28 September 2018. Within the set deadline, the Prime Minister did not submit any comments to the Court.
10. On 1 October 2018, the Court notified the Applicant, the Prime Minister and the President of the Assembly about the comments submitted by the deputy Mr. Korab Sejdiu and the Parliamentary Group of Lëvizja VETËVENDOSJE!, and sent a copy of those comments for their information.
11. On 12 November 2018, in the capacity of the interested party, the Court notified the Head of the EULEX Mission in Kosovo Ms. Alexandra Papadopoulou, about the registration of the Referral and invited her to submit the comments of EULEX, if any, by 23 November 2018.
12. On 23 November 2018, the Head of the EULEX Mission, Ms. Alexandra Papadopoulou, submitted her comments to the Court.
13. On 3 December 2018, the Court published the Resolution on Inadmissibility in case KO79/18, where the Applicant was the President. In that case, the President, based on paragraph (9) of Article 84 of the Constitution, requested the Court to interpret paragraph (4) of Article 139 [Central Election Commission] of the Constitution. The Court declared the Referral inadmissible and found that Article 84 (9) is not independent of Article 113 [Jurisdiction and the Authorized Parties] of the Constitution and that the constitutional issues must be submitted to the Court only based on Article 113 of the Constitution.
14. On 11 December 2018, the Court, having regard to the fact that Referral KO131/18 was submitted to the Court prior to its decision in case KO79/18, where it was established that the referrals of the President to the Court may not be based only on Article 84 of the Constitution, but are interrelated with Article 113, the Court requested the Applicant to clarify his Referral submitted to the



Court, thus giving him the opportunity to reason the admissibility of the Referral KO131/18. The Court also notified the Applicant about the comments submitted by the EULEX Mission and sent a copy of them. The Court requested the Applicant that his explanations regarding the admissibility of the Referral as well as his comments regarding the comments of EULEX, if any, to submit to the Court by 24 December 2018.

15. On 24 December 2018, the Applicant submitted his explanations to the Court, raising allegations of a conflict of constitutional competence between the President and the Assembly, based on the sub-paragraph (1) of paragraph 3 of Article 113 of the Constitution, regarding the constitutional competences set forth in Article 18 of the Constitution. The Applicant did not submit any comments regarding the comments of EULEX.
16. On 28 December 2018, the Court sent to the President of the Assembly a copy of the request for submission of clarifications of the Court, sent to the Applicant and a copy of the explanations submitted to the Court by the Applicant. He was requested to distribute the documentation in question to all deputies of the Assembly with the invitation to submit their comments, if any, by 18 January 2019.
17. On 8 January 2019, the President of the Assembly notified the Court that the Assembly closed the autumn session of the works and that the deputies were on leave until 21 January 2019.
18. On 18 January 2019, the Court provided again the opportunity to the President of the Assembly and deputies of the Assembly to submit their comments regarding the clarifications provided by the Applicant, particularly with regard to his allegation of "*conflict among the competencies of the Assembly of the Republic of Kosovo and the President of the Republic of Kosovo*" for the issues defined by Article 18 of the Constitution. He was requested to distribute the relevant documentation to all deputies of the Assembly with the invitation to submit their comments, if any, by 1 February 2019. The Court did not receive any comments from the President or the deputies of the Assembly.
19. On 6 March 2019, the Review Panel considered the report of Judge Rapporteur Gresa Caka-Nimani and, unanimously, voted against the proposal of the Judge Rapporteur to declare the Referral admissible and to consider the merits of the matter.
20. On the same date, the Court, by a majority of votes, decided to declare the Referral inadmissible. Judge Gresa Caka Nimani voted against the inadmissibility of the Referral.
21. At the same date, the Judge Rapporteur, in accordance with paragraph (4) of Rule 58 (Deliberations and Voting) of the Rules of Procedure, requested the President of the Court to appoint another Judge, from the majority, to prepare the Resolution on Inadmissibility.



22. On the same date, pursuant to the abovementioned Rule, the President of the Court appointed Judge Bajram Ljatifi as one of the Judges of the Review Panel, to prepare the Resolution on Inadmissibility.
23. On 13 March 2019, Judge Bajram Ljatifi presented the Resolution on Inadmissibility before the Court.
24. On 14 March 2019, the Resolution on Inadmissibility was circulated among all the judges in accordance with paragraph 8 of Article 22 of the Law and paragraph (2) of Rule 64 of the Rules of Procedure.
25. On 25 March 2019, the Court published the Resolution on Inadmissibility, after the expiration of the ten (10) day period foreseen by the Law and the Rules of Procedure.

### **Summary of facts**

26. On 4 February 2008, the Council of the European Union adopted the *Council Joint Action 2008/124/CFSP* for the Rule of Law Mission of the European Union (hereinafter: the Council Joint Action) through which the EULEX Mission in Kosovo was established (See Article 1 [Mission] of the Council Joint Action).
27. The Council Joint Action in Article 2 (Mission Statement) stipulates that EULEX will assist Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability as well as in further developing and strengthening an independent multiethnic justice system, police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and best European practices. Further, Article 3 (Tasks) of the Council Joint Action listed the tasks that EULEX will have in its initial mission. EULEX was tasked to monitor, mentor and advise the competent Kosovo institutions in all areas related to the rule of law, including the customs service, while retaining certain executive responsibilities. The last two articles of the Council Joint Action defined the entry into force, duration and publication. According to Article 20 (Entry into force and duration), the Council Joint Action stipulated that this document shall enter into force on the date of its adoption and that the deadline will expire after 28 months from the day of approval of the Operational Plan.
28. On 17 February 2008, the leaders of Kosovo people, gathered in the Assembly, proclaimed the Declaration of Independence of Kosovo, where, among other things, stated that: *"We invite and welcome an international civilian presence to supervise the implementation of the Ahtisaari Plan and a European Union-led rule of law mission"*.
29. On 9 April 2008, the Constitution of the Republic of Kosovo was published. Article 162 [Effective Date] of the Constitution stipulated that the Constitution shall enter into force and effect on 15 June 2008.

30. Until 2012, the EULEX mandate within this time period was extended twice on the basis of the decisions of the European Union Council for the amendment of the Council Joint Action, by Decision 2009/445/CFSP of 9 June 2009, and Decision 2010/322/CFSP of 8 June 2010, namely (see the Official Journal of the European Union).
31. On 7 September 2012, the Constitution for the first time was amended and with 22 amendments which concerned the conclusion of the international supervision of Kosovo's independence.
32. With the termination of the supervised independence, the EULEX mandate was extended through the Exchange of Letters between the European Union and the Republic of Kosovo, which were ratified by the Assembly of the Republic of Kosovo under the laws for ratification of international agreements, Law No. 04/L-148, Law No. 04/L-274, and Law No. 05/L-102 on the Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo.

***First International Agreement on extension of the EULEX mandate in Kosovo - Law No. 04/L-148 on the Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo***

33. On 5 June 2012, the Council of the European Union, by Decision 2012/291/CFSP, amended the Council Joint Action by modifying and extending the EULEX mandate until 14 June 2014.
34. On 4 September 2012, the President of the Republic of Kosovo, her Excellency, Mrs. Atifete Jahjaga, through a letter, invited the High Representative of the European Union for Foreign Affairs and Security Policy (hereinafter: the EU High Representative), Her Excellency, Baroness Catherine Ashton, to agree on the first extension of EULEX mandate until 15 June 2014.
35. The aforementioned letter was based on several constitutional provisions, namely paragraph 1 of Article 17 [International Agreements], paragraph (1) of Article 18 [Ratification of International Agreements], and paragraph (1) of Article 20 [Delegation of Sovereignty] of the Constitution. The letter defined the competencies of EULEX for the period of the EULEX mandate until 15 June 2014.
36. On the same date, the EU High Representative, through a letter, accepted the invitation of the President for the extension of the EULEX mandate until the proposed date.
37. The letters of the President and the EU High Representative of 4 September 2012, present the First Exchange of Letters between the Republic of Kosovo and the European Union, which constituted the first step in the process of concluding the first international agreement on the extension of the mandate of EULEX pursuant to paragraph 1 of Article 18 of the Constitution.



38. On 7 September 2012, the Assembly ratified the First Exchange of Letters between the President of the Republic of Kosovo and the EU High Representative. (See Law No. 04/L-148 on the Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo).
39. On the same date, namely on 7 September 2012, the President of the Republic of Kosovo, by Decree No. DL-039-2012 promulgated the aforementioned Law. In accordance with Article 3 [Entry into Force] of Law No. 04/L-148, it entered into force on the date it was signed by the President of the Republic of Kosovo.

***Second International Agreement on the extension of EULEX mandate in Kosovo - Law No. 04/L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo***

40. On 14 April 2014, the President of the Republic of Kosovo, her Excellency, Mrs. Atifete Jahjaga, through a second letter sent by the Presidency of the Republic of Kosovo, invited the EU High Representative, Her Excellency, Baroness Catherine Ashton, to agree on the second extension of the EULEX mandate until 15 June 2016.
41. The abovementioned letter was based on the same constitutional provisions as the First Exchange of Letters, namely paragraph (1) of Article 17, paragraph (1) of Article 18, and paragraph (1) of Article 20 of the Constitution. The letter defined the EULEX competencies for the period of the EULEX mandate until 14 June 2016.
42. On an unspecified date, the EU High Representative, through a letter, accepted the invitation of the President for the extension of EULEX mandate until the proposed date.
43. The letters of the President and the EU High Representative constitute the Second Exchange of Letters between the Republic of Kosovo and the European Union, which constituted the first step in the process of concluding the second international agreement on the extension of the mandate of EULEX based on paragraph 1 of Article 18 of the Constitution.
44. On 23 April 2014, the Assembly ratified the Second Exchange of Letters between the President of the Republic of Kosovo and the EU High Representative (See Law No. 04/L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo).
45. On 7 May 2014, the President of the Republic of Kosovo, by Decree No. DL-022-2014 promulgated the aforementioned Law No. 04/L-274.
46. On 15 May 2014, the aforementioned Law was published in the Official Gazette of the Republic of Kosovo (hereinafter: the Official Gazette) and pursuant to Article 3 of Law No. 04/L-274, it entered into force 15 (fifteen) days after its publication in the Official Gazette.

47. On 12 June 2014, the Council of the European Union through Decision 2014/349/CFSP amended the Council Joint Action by modifying and extending the mandate of EULEX until 14 June 2016.

***Third International Agreement on the extension of EULEX mandate in Kosovo - Law No. 05/L-102 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo***

48. On 9 June 2016, the President of the Republic of Kosovo, His Excellency, Mr. Hashim Thaçi, through a letter sent by the Presidency of the Republic of Kosovo, invited the EU High Representative, Ms. Federica Mogherini, to agree on the third extension of the EULEX mandate until 15 June 2018.
49. The abovementioned letter was based on the same constitutional provisions as the First and Second Exchange of Letters, namely paragraph (1) of Article 17, paragraph (1) of Article 18, and paragraph 1 of Article 20 of the Constitution. The letter defined the competencies of EULEX mandate for the period of the EULEX mandate until 14 June 2018.
50. On an unspecified date, the EU High Representative accepted the invitation of the President for the third extension of the EULEX mandate until the proposed date.
51. The letters of the President and the High Representative of the EU constitute the Third Exchange of Letters between the Republic of Kosovo and the European Union, which constituted the first step in the process of concluding the third international agreement on the extension of the EULEX mandate based on paragraph 1 of Article 18 of the Constitution.
52. On 14 June 2016, the Council of the European Union through Decision 2016/947/CFSP amended the Council Joint Action by modifying and extending the EULEX mandate until 14 June 2018.
53. On 17 June 2016, the Assembly ratified the Third Exchange of Letters between the President and the EU High Representative (See Law No. 05/L-102 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo).
54. On 29 June 2016, the President of the Republic of Kosovo, by Decree no. DL-020-2016 promulgated the abovementioned Law No. 05/L-102.
55. On the same date, namely, on 29 June 2016, the aforementioned Law was published in the Official Gazette and pursuant to Article 3 of Law No. 05/L-102, it entered into force on the day of its publication in the Official Gazette.

**Fourth Exchange of Letters between the Republic of Kosovo and the European Union on the EULEX mandate in Kosovo**



56. On 4 June 2018, the President of the Republic of Kosovo, His Excellency, Mr. Hashim Thaçi, through a letter sent by the Presidency of the Republic of Kosovo, invited the EU High Representative, Mrs. Federica Mogherini, to agree on the fourth extension of EULEX mandate until 14 June 2020.
57. In the abovementioned letter, no article of the Constitution was mentioned, as it was done in the other Exchanges of Letters between these two authorities. Among others, the letter stated: *“As a result of the transition of competences from EULEX KOSOVO, all executive activities taken by EULEX KOSOVO regarding investigations, prosecutions, judicial and execution proceedings which will be transferred will end on 14 June 2018, and will, therefore, be exclusively taken by Kosovo authorities. Based on the relevant legislation, EULEX KOSOVO is welcomed to exercise its monitoring role in all cases that it considers relevant during ongoing support, including but not limited to full access to facilities, documents and Kosovo officials. Based on the relevant legislation and based on our preliminary exchange of letters, I welcome the engagement of the EULEX KOSOVO mission in the field of public order and security, witness protection and in support of Specialized Chambers and Specialized Prosecutor in Kosovo. We continue to fully support the EULEX KOSOVO mandate as envisaged by the Council Joint Action 2008/124/CFSP, approved by the Council of the European Union on 4 February 2008, and as amended by the Council Decision, and our letters of 4 September 2012, 14 April 2014 and 9 June 2016, and agreed upon through this letter”*.
58. On 8 June 2018, the Council of the European Union, through the Decision CFSP 2018/856, after the Fourth Exchange of Letters amended the Council Joint Action. By Article 1 of the Decision was amended Article 2 [Mission Statement] of the Council Joint Action, so that the EULEX Mission would now be: *“EULEX KOSOVO shall support selected Kosovo rule of law institutions on their path towards increased effectiveness, sustainability, multi-ethnicity and accountability, free from political interference and in full compliance with international human rights standards and best European practices — through monitoring activities and limited executive functions as set out in Articles 3 and 3a — with the aim of handing over remaining tasks to other long-term EU instruments and phasing out residual executive functions”*.
59. On 8 June 2018, the EU High Representative, through a letter, accepted the invitation of the President of the Republic of Kosovo for the extension of the EULEX mandate until the proposed date.
60. The letters of the President and the EU High Representative constitute the Fourth Exchange of Letters between the Republic of Kosovo and the European Union.
61. Based on the data, to date, in the Republic of Kosovo, regarding the Fourth Exchange of Letters, no other action has been taken by the President or by the Assembly.

## Applicant's Referral

62. The Applicant initially, through the Referral submitted to the Court pursuant to paragraph (9) of Article 84 of the Constitution, requested the interpretation of Article 18 of the Constitution, alleging uncertainty as to the ratification of the Fourth Exchange of Letters between the Republic of Kosovo and the European Union. The Applicant explained that this uncertainty was related to the fact that: (i) this was the Fourth Exchange of Letters and the first three in 2012, 2014, and 2016, were ratified by the Assembly through the laws on ratification of international agreements; and (ii) unlike the first three cases, the Fourth Exchange of Letters reduces the competences of the EULEX Mission to “*mainly*” advisory and monitoring competencies.
63. Following the explanations submitted to the Court on the request of the latter, the Applicant alleges that he filed the Referral in question as to the issue of conflict of constitutional competence between the President and the Assembly, based on the sub-paragraph (1) of paragraph 3 of Article 113 of the Constitution regarding the constitutional competencies provided for in Article 18 of the Constitution.
64. The President raised this issue of the conflict of constitutional competence related to the constitutional competences of the President and Assembly regarding the ratification of international agreements, as follows:
- “1. Exchange of letters between the President of the Republic of Kosovo (04.06.2018) and the High Representative of the European Union for Foreign Affairs and Security Policy (08.06.2018) [Fourth Exchange of Letters]:*
- 1.1. should it be ratified in the capacity of an International Agreement by the Assembly of the Republic of Kosovo by the two-thirds (2/3) vote of all deputies (in accordance with Article 18.1 of the Constitution) or*
- 1.2. should it be considered as ratified upon signature of the President (pursuant to Article 18.2 of the Constitution), due to the change of the role and executive mandate of the European Union Rule of Law Mission in Kosovo, as from now on it will have mainly an advisory and monitoring role”.*
65. More specifically, in his Referral, the Applicant requests the Court that after the review of the allegation of the conflict of constitutional competencies between the President and the Assembly clarify that: “*is it necessary to make the ratification of these letters [see the section of facts: the Fourth Exchange of Letters], in the capacity of the international agreement, in accordance with Article 18 (1) of the Constitution, as it has been done in three cases, on the prior exchanges of letters [see the section of facts: First, Second, and Third Exchange of Letters ] (...) or, in the present case, [the fourth] exchange of letters between the President and the High Representative of the European Union for Foreign Affairs and Security Policy, it can be ratified in accordance with Article 18 (2) of the Constitution”.*



66. His Referral addressed to the Court, the Applicant justifies with the need “*to avoid any dilemma in taking further steps for the entry into force of the International Agreement (Exchange of Letters)*” signed by the President and the High Representative.
67. In this regard, the Applicant states that the dilemma is related to the constitutional authority competent for the ratification of the agreement because now the role of EULEX defined by the fourth Exchange of Letters “*will mainly be advisory and monitoring*”. In this regard, the Applicant states that “*all executive activities taken by EULEX KOSOVO so far with regard to investigations, prosecutions, judicial and execution proceedings will be transferred to Kosovo authorities and will end on 14 June 2018 and, as a result, the actions will be taken exclusively by the authorities of Kosovo, while the documents and other relevant materials will be transferred to Kosovo competent institutions no later than 14 December 2018*”.
68. The Applicant also stated that the Constitutional Court, pursuant to Article 112 [General Principles] of the Constitution, is the final authority in the Republic of Kosovo for interpretation of the Constitution and the compliance of the laws with the Constitution. In the present case, the Applicant states that it is necessary to make the interpretation of Article 18 of the Constitution so as to clarify this constitutional provision as to whether the Fourth Exchange of Letters between the President and the High Representative “*need to be ratified by the Assembly of the Republic of Kosovo or ratified upon the signature of the President.*”

**Comments submitted by the deputy of the Assembly, Mr. Korab Sejdiu, upon the notification of the Court of 12 September 2018**

69. On 28 September 2018, the deputy of the Assembly, Mr. Korab Sejdiu, submitted his comments to the Court. The Court notes that following the submission of the clarifications by the Applicant on 24 December 2018 and following the second notification of the Court sent to the deputies of the Assembly on 18 January 2019 regarding the clarifications submitted by the President on the issue of “*conflict of constitutional competencies*” between the President and the Assembly, the Court did not receive any additional comments in response to the clarifications submitted by the President. Consequently, the Court will present only the comments submitted in response to the first notification of the Court.
70. Initially, Mr. Korab Sejdiu requested the Court “*to immediately terminate the practice of total disregard of Article 113 of the Constitution*” when rendering its decisions, in cases related to the referrals submitted by public institutions, including the President. He claims that “*we are all witnessing the consequences that have resulted from this unconstitutional practice, however, I hope that the new composition of this Court will result in decision-making in accordance with the Constitution, and not necessarily with the precedent established in violation of the Constitution*”.
71. With regard to the admissibility of the Referral, Mr. Korab Sejdiu built his arguments in terms of the inadmissibility of the referrals in the form of

"constitutional questions" based on Article 84 (9) of the Constitution, stating, *inter alia*, that the Applicant "is not an authorized party to submit this constitutional referral, because the Constitution does not recognize the status of the authorized party in any other case, except those expressly provided for by the Constitution". In this connection he stated that the President "is not entitled to request interpretation 'in abstracto' of the constitutional provisions, except in cases expressly related to the proceedings for which the Court has jurisdiction under Articles 113.2 and 113.3."

72. According to Mr. Korab Sejdiu, despite the fact that in some countries like Germany, Article 97 of the Law on the Federal Court of Germany provided for the procedure of addressing "constitutional questions", in the Republic of Kosovo such a procedure is not foreseen neither by the Constitution, nor by the Law. Consequently, he concludes that the Court has no jurisdiction to review this referral, despite the fact that the Applicant "tried to justify that Article 84 (9) of the Constitution gives him the competence to refer constitutional issues".
73. Mr. Korab Sejdiu, regarding the content of the Referral, further emphasizes that "considering that it is about the change (amendment) to the existing international agreement, then paragraph 4 of Article 18 of the Constitution is applied, which provides that the amendment of or withdrawal from the international agreements follows the same decision making process as the ratification of such international agreements." Therefore, according to his allegations, in the present case there is no constitutional ambiguity to be interpreted, but the present case "represents a political action in relation to which the Court would have to apply the principle of "judicial restraint" by not acting as an actor to the actions implicating it as a political body."
74. Mr. Korab Sejdiu also states that the Court should pay special attention to the time and circumstances in which the Applicant is filing this Referral, "where at all costs is trying to find ways to overcome the constitutional limitations that his position as a President of the country has". He also stated that: "The Constitutional Court should not be allowed to become prey of the Applicant's attempts to use this honored Court as a tool for achieving his goals of bypassing the Assembly as the highest body in our parliamentary republic. Therefore, this moment of vital importance to Kosovo requires attention to the historical proportions by all decision-makers in this Court, and consequently, decisions in full and strict compliance with what the Constitution says and the spirit upon which it is drafted by the drafters."
75. The deputy, Mr. Korab Sejdiu concluded his comments by emphasizing that: "(a) the Applicant is not an authorized party; (b) The Court has no jurisdiction to review the referrals of such a nature; (c) The Court should review its unconstitutional practice; (d) The issue presented does not constitute any constitutional dilemma, no conflict of competence between the authorities, but a purely political act." Consequently, he requested the Court to: (i) declare the Referral inadmissible; (ii) to notify the decision to the parties and institutions involved as parties to the proceedings; and (iii) publish it in accordance with Article 20.4 of the Law.



**Comments submitted by the Parliamentary Group of Lëvizja VETËVENDOSJE!, after the notification of the Court of 12 September 2018**

76. On 28 September 2018, the Parliamentary Group of Lëvizja VETËVENDOSJE!, submitted comments to the Court. The Court notes that following the submission of the explanations by the Applicant on 24 December 2018 and following the second notification of the Court to the deputies of the Assembly on 18 January 2019 regarding the explanations submitted by the President on the issue of “*conflict of constitutional competencies*” between the President and the Assembly, the Court did not receive any additional comments in response to the clarifications submitted by the President. Therefore, the Court will present the comments submitted in response to the first notification of the Court.
77. The Parliamentary Group of Lëvizja VETËVENDOSJE! stated that by the way of ratification, the Constitution divides international agreements into two main categories. According to the comments, in the first category are placed the international agreements that are ratified by the Assembly, under Article 18 (1) of the Constitution; whereas, in the second category are placed international agreements ratified by the signature of the President, under Article 18 (2) of the Constitution. The latter, according to them, “*has also defined issues for which international agreements can be concluded and which should be ratified by approving the law by 2/3 of all deputies (see Article 60 of the Rules of Procedure of the Assembly of Kosovo)*”. The law that is passed in the Assembly through the procedures foreseen by the Rules of Procedure of the Assembly ratifies the international agreements by giving them binding force of international character. They emphasize that “*the conclusion of international agreements is a right of the Republic of Kosovo, defined in Article 17 of the Constitution, the ratification of international agreements is a condition for the entry into force and implementation of international agreements*”. Ratification, according to the explanations of the Parliamentary Group of Lëvizja VETËVENDOSJE! “*in the general sense is the act by which the competent body of a state approves finally a treaty/agreement*”.
78. According to the Parliamentary Group of Lëvizja VETËVENDOSJE!, the Fourth Exchange of Letters between the President and the High Representative for the extension of EULEX mandate until 14 June 2010 and “*the international agreements ratified by the Assembly of Kosovo on 7 September 2012, 15 May 2014 and 29 June 2016, between the same parties, with almost identical issues and the same legal nature, must be placed in the corpus of cases as set out in Article 18 par. 1 in conjunction with Article 20 par. 1 of the Constitution, which should be ratified exclusively by the Assembly of Kosovo*”.
79. The Parliamentary Group of Lëvizja VETËVENDOSJE! emphasizes that from the content of the letter of the President addressed to the High Representative “*it is clear that the executive competencies will continue to be exercised by EULEX KOSOVO in the field of public order and security, as the second responsible for security in the witness protection and in support of specialized chambers as well as the Specialized Prosecutor in Kosovo*”. Hence, according to them, the “*executive powers of EULEX KOSOVO, as defined in earlier*



*international agreements ratified by law, in the Assembly of Kosovo (see International Agreements of 16 June 2018 and 29 June 2016)” are reconfirmed. The same content according to them, is also reflected in Decision of the Council of the European Union through which EULEX mandate in Kosovo is extended for another two years, namely until 2020. Based on this content, the Parliamentary Group of the Lëvizja VETËVENDOSJE! expresses the view that “the nature of the correspondence is entirely of a political nature and affects the fundamental issues of the sovereign competencies of the executive constitutional institutions”.*

80. Parliamentary Group of Lëvizja VETËVENDOSJE! emphasizes that the present case *“should also be related to Article 20 of the Constitution which stipulates that the Republic of Kosovo, may on the basis of ratified international agreements delegate state powers for specific matters to international organizations. In support of Article 18 par. 1 in conjunction with Article 20, para. 1 of the Constitution as well as the correspondence between the representatives of Kosovo and the EU [Fourth Exchange of Letters], it is clearly seen that the Republic of Kosovo through this international agreement, which is considered of a political character, has begun to agree with the exercise of the certain state competences in certain fields, namely in the field of public order and security by EULEX KOSOVO. Therefore, such an international agreement falls within the corpus of issues set out in Article 18 paragraph 1 of the Constitution of Kosovo, which should be voted exclusively by the Assembly of Kosovo”.*
81. The Parliamentary Group of the Lëvizja VETËVENDOSJE! further emphasizes that *“the time period for the implementation of this international agreement must be correctly interpreted”, as in the present case, “the international agreement which entered into force on 29 June 2016 has foreseen the extension of the mandate of EULEX KOSOVO in certain areas until 15 June 2018” and as such “the international agreement has ceased to produce legal effects, as an act with normative power from the abovementioned date, in the territory of the Republic of Kosovo.”*
82. The Parliamentary Group of Lëvizja VETËVENDOSJE! further states that, under Article 18 (2) of the Constitution, *“international agreements other than those in paragraph 1 are ratified upon signature of the President of the Republic of Kosovo”.* Thus, the nature of the international agreement also expresses its importance in the function of regulating a given issue, but also of the procedure that is necessary for its ratification. The agreements envisaged by Article 18 (2) of the Constitution are of lesser importance and therefore are not subject to ratification by the Assembly and for such matters the President's sole obligation is to notify the Assembly.
83. Parliamentary Group of Lëvizja VETËVENDOSJE! concludes their comments to the Court, pointing out that the constitutional provisions foreseen by Article 17, paragraphs (1) and (2) of Article 18, 19, 20 of the Constitution show in a *“clear, accurate and fair way the manner of the procedural acts of ratification of an international agreement”.* According to them *“the constitutional questions should not be raised to explain a constitutional competence, when it is well known that this competence belongs to the official*



*and effective holders of the state sovereignty, such as the Assembly of Kosovo”.*

#### **Comments submitted by EULEX Kosovo**

84. Ms. Alexandra Papadopoulou, Head of the EULEX Mission emphasized that EULEX Kosovo cannot express any stance regarding the referral under consideration by the Court, because EULEX is not a part of the Kosovo institutions and based on their immunities and privileges cannot be a party to the procedures within the jurisdiction of Kosovo.
85. She further added that from the perspective of the European Union, the EULEX mandate as envisaged in the Council Joint Action 2008/124/CFSP, adopted on 4 February 2008, as amended by subsequent Council decisions, and based on the Exchange of Letters of 4 September 2012, 14 April 2014, 9 June 2016 and 4 June 2018, constitute the basis of the Mission to continue supporting Kosovo institutions in the field of rule of law.

#### **Assessment of the admissibility of the Referral**

86. In order to decide on the Applicant's Referral, the Court must first examine whether the admissibility requirements, established in the Constitution and as further specified in the Law and the Rules of Procedure have been met.
87. In this regard, the Court first refers to Article 113 [Jurisdiction and the Authorized Parties] of the Constitution, where is also determined the jurisdiction of the Constitutional Court to decide on the issues raised by the Applicant, namely the President.
88. More specifically, the Court refers to respective constitutional provision under which the President may appear as Applicant before this Court, such as:

#### Article 113 [Jurisdiction and Authorized Parties]

(...)

*3. The Assembly of Kosovo, the President of the Republic of Kosovo and the Government are authorized to refer the following matters to the Constitutional Court:*

*(1) conflict among constitutional competencies of the Assembly of Kosovo, the President of the Republic of Kosovo and the Government of Kosovo;*

(...)

89. The Court also refers to paragraph 9 of Article 84 [Competencies of the President] which establishes:

*“The President of the Republic of Kosovo:*

*(9) may refer constitutional questions to the Constitutional Court;”*

90. According to the Constitution and the case law of this Court, the authority of the President to refer a constitutional issue must be understood in relation to the provisions of the Constitution relating to the jurisdiction of the Court set forth in Article 113 of the Constitution. (See the case of the Constitutional Court, Applicant *President of the Republic of Kosovo*, Request for interpretation of Article 139, paragraph 4, of the Constitution of the Republic of Kosovo KO79/18, Resolution on Inadmissibility of 3 December 2018, paragraphs 72, 74, 77, 78 and 82).
91. To turn to the present case, the Court notes that the President, in the capacity of the Applicant, raised a case of conflict among constitutional competence between him and the Assembly. According to the allegation, in the present case, it is not clear the constitutional competence envisaged by Article 18 [Ratification of International Agreements] of the Constitution as to whether the agreement signed through the Fourth Exchange of Letters between the President and the High Representative should be ratified by the Assembly, according to paragraph 1 of Article 18 of the Constitution, or the ratification of the latter is his competence, therefore, it enters into force after the signing by the President under paragraph 2 of Article 18 of the Constitution.
92. The Court notes that Article 113.3 (1) of the Constitution encompasses three requirements of the constitutional level, namely the necessity that (i) the conflict be brought by one of the three authorized parties; that (ii) the conflict be raised for a constitutional competence set forth in the Constitution for one of the three authorized parties and (iii) to have a conflict.
93. Regarding (i) the first constitutional requirement, the Court notes that Article 113.3 (1) of the Constitution authorizes the Assembly, the President and the Government to raise cases of conflict among their constitutional competences. This authorization is mutual and each of these authorized parties may raise issues of conflict of competence for one or the other party, not excluding the possibility of raising the conflict against two parties at the same time. In the present case, this constitutional requirement is supplemented by the fact that the Referral is submitted by the President against the Assembly as one of the three potential parties authorized to raise the issue of conflict among their respective constitutional competences.
94. With respect to (ii) the second constitutional requirement, the Court notes that Article 113.3 (1) of the Constitution provides that a conflict may arise only for a certain constitutional competence set forth in the Constitution for one of the three authorized parties. Although the Constitution leaves open the subject of conflict among the constitutional competencies, it makes a significant limitation on the fact that the alleged conflict of constitutional competence must necessarily stem from the constitutional competencies laid down in the Constitution for the President, the Assembly and the Government. In the present case, this constitutional requirement is complemented by the fact that the allegation of conflict among constitutional competence of the President and the Assembly is related to the meaning of Article 18 of the Constitution, where the constitutional competencies of these two parties are also defined regarding the ratification of international agreements.



95. As to (iii) the third constitutional requirement, the Court notes that Article 113.3 (1) of the Constitution mentions the term “conflict” but does not specify what that term means. Further specification of this constitutional requirement and of this constitutional term is made by the Law. Whether this constitutional requirement of Article 113.3 (1) has been met, the Court will determine after having explained the meaning of this term in relation to its further specification by Articles 31 and 32 of the Law and Rule 68 of the Rules of Procedure.
96. In this regard, the Court initially points out that this is the first case with a request for assessment of the allegation of “*conflict*” among constitutional competencies. Since it is impossible to summarize all possible cases that could be presented, and given the fact that the Constitution does not specify the subject of constitutional conflict that may be presented, the Court emphasizes that each case of conflict among constitutional competencies will be decided in light of the circumstances of each case that is submitted, but based on the constitutional requirements and limits set forth in the Constitution and further specified by the Law and the Rules of Procedure.
97. Before assessing the aforementioned third requirements, the Court also wishes to point out that the language of the Constitution, but also the language of the Law that further specifies the constitutional provision foreseen in Article 113.3 (1) implies that we are dealing with a jurisdiction of the Constitutional Court of a preventive character, namely constitutional control *ex-ante*, but that does not exclude even an *ex-post* constitutional control. In other words, the allegation of “*conflict among constitutional competencies*”, which is the language used by the Constitution, can be filed before the conflict occurs or after a conflict among constitutional competencies has taken place. In such cases, the Court has the jurisdiction to decide whether the alleged conflict exists, whether the case deals with the constitutional competencies, whether the raised allegations of assumption and the allegation of the existence of the conflict of constitutional competencies have been sufficiently substantiated and, after passing the admissibility test, to decide whether or not the latter are violated by either party in a specific case or not.
98. Therefore, in order to answer the key procedural question of the present case whether there is a “conflict” and whether the existence of a possible “conflict” has been proven, the Court further refers to the legal requirements established in Article 31 [Accuracy of referral] and 32 [Deadlines] of the Law as well as Rule 68 [Referral pursuant to Article 113.3 (1) of the Constitution and Article 31 and 32 of the Law] of the Rules of Procedure as provisions further specifying the aforementioned constitutional provision for a “*conflict among constitutional competencies*”:

Article 31  
[Accuracy of referral] of the Law

*A referral made pursuant to Article 113, Paragraph 3 item 1 of the Constitution shall be filed by any authorized party in conflict or from any*

*authorized party directly affected from the said conflict. The referral shall include any relevant information in relation to the alleged conflict as further determined by the Rules of Procedures of the Constitutional Court.*

Article 32 [Deadlines] of the Law

*A referral made pursuant to Article 31 of this Law shall be submitted within six (6) months from the day upon which the alleged conflict started.*

Rule 68

[Referral pursuant to Article 113.3 (1) of the Constitution and Article 31 and 32 of the Law] of the Rules of Procedure

*(1) A referral filed under this Rule must fulfill the criteria established under Article 113.3 of the Constitution and Articles 31 and 32 of the Law.*

*(2) When filing a referral pursuant to this Rule, an authorized party shall state precisely what conflict exists between the constitutional competencies of the Assembly of Kosovo, the President of the Republic of Kosovo or the Government of Kosovo.*

*(3) The authorized party shall identify the act which violates its competence and the relevant provision of the Constitution which has been violated by such act.*

*(4) The referral under this Rule must be filed within a period of six (6) months from the day the alleged conflict started.*

*(5) The Secretariat shall provide notice to the authority whose act is challenged. They may respond within fifteen (15) days from the date of notification, unless good cause is shown for a longer time and the respective extension is granted.*

99. In this regard, the Court notes that Article 31 of the Law contains a total of two legal requirements that must be met, whereas Article 32 of the Law contains a total of one legal requirement.
100. Setting from the last requirement of the three abovementioned legal requirements stipulated by Articles 31 and 32 of the Law, the Court initially finds that the case was filed within the 6-month time-limit laid down in Article 32 of the Law, as the starting moment of the “*alleged conflict*” is 8 June 2018, the moment when the High Representative has accepted the invitation of the President and has finalized the Exchange of Letters; whereas the Referral to the Court was submitted on 4 September 2018, i.e. before the expiration of the six-month period. In this regard, the Court finds that the requirement stipulated in Article 32 of the Law, in the circumstances of the present case, has been met.
101. Turning to the first two legal requirements, the Court notes that the first legal requirement of Article 31 of the Law is that the case filed under Article 113.3 (1) of the Constitution should be submitted by either: (i) the authorized party in conflict; or (ii) by the party directly affected by the conflict. Thus, it is sufficient to have a referral filed with the Court by an authorized party that assumes or claims to be in conflict or by a party which assumes or claims to be directly affected by the conflict. This request is supplemented as the President, in the



capacity of the Applicant, is a party that claims to be or may be in conflict. The second legal requirement of Article 31 of the Law is that any useful information regarding “*assumed*” or “*alleged conflict*” should be submitted to the Court. Referring to this item, the Court will refer to the following two additional requirements defined in paragraphs (2) and (3) of Rule 68 of the Rules of Procedure, which specify this legal provision even further and as such should be assessed jointly and in a succinct manner, namely:

*(2) When filing a referral pursuant to this Rule, an authorized party shall state precisely what conflict exists between the constitutional competencies of the Assembly of Kosovo, the President of the Republic of Kosovo or the Government of Kosovo.*

*(3) The authorized party shall identify the act which violates its competence and the relevant provision of the Constitution which has been violated by such act.*

102. In this regard, the Court notes that the third constitutional requirement of Article 113.3 (1) with regard to the second legal requirement of Article 31 of the Law, read closely with paragraphs (2) and (3) of the Rules of Procedure, have not been met in the present case.
103. This is because, according to the Court, the Applicant did not submit sufficient useful information about the “*assumed*” or “*alleged conflict*” as required by Article 31 of the Law nor did he accurately specify “*what conflict exists among the constitutional competencies*” of the President and the Assembly, as required by item (2) of Rule 68. Accordingly, finally he failed to prove the violation of his competence provided by the Constitution, with regard to the ratification of international agreements, as provided for in paragraph (3) of Rule 68 of the Rules of Procedure.
104. To further clarify, the Court notes that the Applicant, although an authorized party claiming to be in conflict, did not accurately specify what conflict exists between his constitutional competences and of the Assembly, despite the Court request to clarify his Referral, originally brought in the form of a constitutional question based on Article 84 (9) of the Constitution. Thus, the Applicant did not accurately specify what conflict potentially exists, except his statement that this case “*has to do with the conflict of constitutional competences between the President and the Assembly*” because it is unclear whether the Fourth Exchange of Letters “*needs to be ratified by the Assembly of the Republic of Kosovo or after the signing by the President*”. The uncertainty in itself, and especially unsubstantiated and unproven, may not necessarily result to be sufficient to raise a claim of a conflict among constitutional competences.
105. The Court also notes that the Applicant has submitted his Referral in the form of a question and in the absence of presenting relevant arguments and evidence as to where the conflict exists. In addition, the Court notes that, even after the Court's request for clarification, the Applicant did not indicate or elaborate on how his or the Assembly constitutional competences could be violated. The Court notes that the Applicant cites Article 18 of the Constitution as a contested Article, but does not state and does not “*accurately specify*” how this Article

violates his constitutional competences or how the Assembly through this Article violates his constitutional competences.

106. Therefore, the Court finally finds that the Applicant did not provide evidence and useful information to raise a case of conflict among the constitutional competences of the President and the Assembly and that he did not sufficiently substantiate his claim, according to the criteria foreseen by Article 113.3 (1) of the Constitution, Articles 31 and 32 of the Law and Rule 68 of the Rules of Procedure.
107. Accordingly, the Court will declare the Referral inadmissible.

### **Conclusions**

108. The Referral of the President of the Republic of Kosovo for an alleged conflict between his constitutional competences and of the Assembly of the Republic of Kosovo is declared inadmissible for review of merits for the reasons elaborated in this Resolution on Inadmissibility.
109. In the present case, the Court considers that the Applicant has not submitted evidence and useful information, by which the existence of a conflict between the constitutional competences of the President of the Republic of Kosovo and of the Assembly of the Republic of Kosovo would be specified and proved.



## **FOR THESE REASONS**

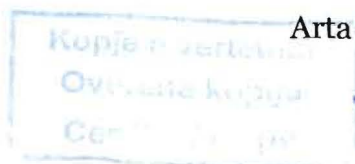
The Constitutional Court of the Republic of Kosovo, in accordance with Articles 84 (9) and 113.3 (1) of the Constitution, Articles 31 and 32 of the Law and Rules 59 (b) and 68 of the Rules of Procedure, on 6 March 2019, by majority,

## **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO HOLD that it has not been specified and proven that there exists a conflict among the constitutional competences of the President of the Republic of Kosovo and the Assembly of the Republic of Kosovo as established in Article 113.3 (1) of the Constitution;
- III. TO NOTIFY this decision to the Parties;
- IV. TO PUBLISH this decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This decision is effective immediately.

**Judge that prepared the decision    President of the Constitutional Court**

Bajram Ljatifi



Arta Rama-Hajrizi

***This translation is unofficial and serves for informational purposes only.***