



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

Prishtina, on 01 July 2019  
Ref. no.: 1385/19

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

## RESOLUTION ON INADMISSIBILITY

in

Case No. KO181/18

Applicant

**The President of the Republic of Kosovo**

**Request for assessment of the alleged conflict among the constitutional competencies of the President of the Republic of Kosovo and the Government of the Republic of Kosovo, as defined by Article 113.3 (1) of the Constitution, regarding the decision of the Government to transfer some publicly owned and socially owned properties in the use or ownership of municipalities**

### 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 alleged conflict among the constitutional competences of the President of the Republic of Kosovo (hereinafter: the President) and the Government of the Republic of Kosovo (hereinafter: the Government).
3. The allegation of a conflict of constitutional competence is related to the legality of the Government's transfer of certain socially owned properties in the use of municipalities, as, according to the allegation, "*the President [...] as head of state must take the necessary actions to clarify this situation that the immovable property is legally transferred from the Government in the use of municipalities and does not hinder other mandated institutions on this issue*", in accordance with Articles 83 and 84 of the Constitution.
4. In this regard, the Applicant requested the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) that, in light of the constitutional provisions provided for in paragraph 4 of Article 92 and paragraph 4 of Article 93 of the Constitution, to answer the following questions:

*"1. should [the Government] annul all decisions on the transfer of immovable property of the Republic of Kosovo for use to municipalities, in the absence of a legal basis; and  
2. should [the Government] review all decisions related to the withdrawal from the privatization process of properties and their return to the ownership of municipalities and to respect the procedures under the legislation in force on this issue".*

## Legal basis

5. The Referral is based on sub-paragraph (1) of paragraph 3 of Article 113 [Jurisdiction and Authorized Parties], paragraph 9 of Article 84 [Competences of the President] of the Constitution and Article 31 [Accuracy of referral] 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 Court

6. On 16 November 2018, the Applicant, based on paragraph 9 of Article 84 of the Constitution, submitted the Referral to the Court, requesting the interpretation of paragraph 4 of Article 92 [General Principles], paragraph 4 of Article 93 [Competences of the Government] of the Constitution regarding the legality of transfer of some publicly owned and socially owned properties from the Government to the municipalities, in the use or ownership of the latter.
7. On 20 November 2018, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka-Nimani and Radomir Laban.

8. On 21 November 2018, the Court notified the Applicant about the registration of the Referral.
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), in the capacity of the head of Government, and invited him to submit the comments of the Government regarding the Referral, if any, by 7 December 2018. Within the set deadline, namely 7 December 2018, the Court received the comments and additional documents from the Prime Minister.
10. 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 it 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 7 December 2018. Within the set deadline, the Court did not receive any comments from the President of the Assembly or the deputies.
11. On the same date, the Court sent a copy of the Referral to the Privatization Agency of Kosovo (hereinafter: the PAK) and invited it to submit comments regarding the Referral, if any, by 7 December 2018. Within the set deadline, the Court did not receive any comments from the PAK.
12. On 21 November 2018, the Government by Decision [No. 05/76] suspended and annulled several decisions of the Government on the transfer of properties under the management of the PAK, to the municipalities of Kosovo.
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, pursuant to 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 of the Constitution and that the submission of constitutional issues to the Court should be made only based on Article 113 of the Constitution.
14. On 27 December 2018, the Court, taking into account that the Referral KO181/18 was submitted to the Court prior to its decision in case KO79/18, where it found that the Referrals of the President to the Court cannot be based solely on Article 84.9 of the Constitution, but are related to Article 113, requested the Applicant to clarify his Referral submitted to the Court, to justify the admissibility of the Referral KO181/18 on the basis of Article 113 of the Constitution and to specify it according to the criteria foreseen with the Law and the Rules of Procedure. The Applicant was also given the opportunity to submit comments regarding the Prime Minister's comments of 7 December 2018, as to the admissibility and merits of this Referral, if any. The Court determined that all the clarifications and comments of the Applicant should be submitted to the Court no later than 15 January 2019.

15. On 15 January 2019, the Applicant submitted his comments and his justification regarding the question whether the Referral No. KO181/18 falls within the sphere of jurisdiction established by Article 113 of the Constitution. On that occasion, the Applicant stated that: *"The Referral also falls within the limits of Article 113 of the Constitution, because under Article 113.3 (1) it is determined that the President is authorized to refer matters related to the conflict among the constitutional competencies of (...) the President of the Republic of Kosovo and the Government."*
16. On 22 January 2019, the Court notified the Prime Minister about the comments submitted by the Applicant and invited him to submit his comments, if any, by 7 February 2019. The Court did not receive any additional comments from the Prime Minister.
17. On the same date, the Court notified the President of the Assembly and the PAK about the comments and documents submitted by the Prime Minister as well as the comments received by the Applicant. The President of the Assembly was requested to submit a copy of the attached documents to all the deputies of the Assembly.
18. On 13 June 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

19. On 17 December 2012, Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality (hereinafter: Law No. 04/L-144), was published in the Official Gazette of the Republic of Kosovo.
20. On 22 August 2013, the Government adopted the Regulation GRK No. 23/2013 on the Determination of Procedures on the Allocation for Use and Exchange of the Immovable Property of Municipality (hereinafter: Regulation No. 23/2013).
21. Between 6 June and 6 November 2018, the Government, for the purpose of realizing the public interest, based on Law No. 04/L-144 and Regulation No. 23/2013, issued a number of decisions on the return of socially owned property under the management of the PAL, to the municipalities of Kosovo. (See in this regard: Decision No. 05/55, Decision No. 06/55, Decision No. 07/55, Decision No. 08/55, Decision No. 09/55, Decision No. 10/55, Decision No. 04/57, Decision No. 05/57, Decision No. 06/57, Decision No. 07/59, Decision No. 11/60, Decision No. 12/60, Decision No. 17/61, Decision no. 12/62, Decision No. 10/65, Decision No. 11/65, Decision No. 06/66, Decision No. 09/69, Decision No. 10/69, Decision No. 11/71, Decision No. 07/74, Decision No. 08/74 and Decision No. 09/74).
22. Between 12 June 2018 and 13 November 2018, the Government issued decisions on the transfer of ownership to the municipalities [Decision No. 15/75] or in the use of municipalities (Decision No. 10/51) of some properties that were in the state ownership.

23. On 21 November 2018, the Government by Decision [No. 05/76]:
- (i) suspended all decisions of the Government on the return of PAK properties to the municipalities of Kosovo;
  - (ii) annulled all decisions of the Government on the return of PAK socially owned properties to the municipalities of Kosovo for which it is verified that there are sales contracts or in which there are interim measures by the Special Chamber of the Supreme Court on PAK related matters;
  - (iii) annulled the Decision [No. 05/57] of 17 July 2018; and
  - (iv) upheld the decisions [No. 10/51] of 12 June 2018, [No. 01/53] of 26 June 2018, and [No. 15/75] of 13 November 2018.
24. On 3 April 2019, Law No. 06/L-092 on the Allocation for Use and Exchange of Immovable Property of the Municipality was published in the Official Gazette and pursuant to Article 32 (Entry into force) entered into force fifteen (15) days after its publication in the Official Gazette. By this law, Law No. 04/L-144 on the Allocation for Use and Exchange of Immovable Property of the Municipality of 17 December 2012, which was in force at the time of issuance of the aforementioned decisions of the Government, was repealed.

### **Applicant's Referral**

25. The Court recalls that the Applicant requested the Court to interpret paragraph 4 of Article 92 [General Principles] and paragraph 4 of Article 93 [Competences of the Government] of the Constitution.
26. By his Referral, the Applicant requested the Court that in light of the above-mentioned constitutional provisions, to answer the following questions:
- “1. should the [Government] annul all decisions on the transfer of immovable property of the Republic of Kosovo for use to municipalities, in the absence of a legal basis; and*
- 2. should the [Government] review all decisions related to the withdrawal from the privatization process of properties and their return to the ownership of municipalities and to respect the procedures under the legislation in force on this issue”.*
27. With regard to the abovementioned questions, the Applicant justified his Referral as follows:

*“According to the Constitution, the Government takes decisions in accordance with the Constitution and Laws.*

*In accordance with the Constitution, types of property should be regulated by the Law, which would include the regulation of immovable property of the Republic of Kosovo. The Republic of Kosovo does not have the Law on Public Property, which would regulate in detail the issue of the transfer of immovable property of the Republic of Kosovo to the use of municipalities. The issue of returning a part of the immovable property from the municipalities, managed by the Privatization Agency of Kosovo, is regulated by Article 12 of Law No. 04/L-144 [...], and Article 19 of the GRK Regulation No. 23/2013 [...].*

[...]

*The Privatization Agency of Kosovo (PAK) is the authority that takes a decision on the approval of the requests submitted by local authorities or the rejection of these requests submitted by the municipal authorities, establishing the grounds for rejection. Regarding the return of socially-owned property on behalf of some municipalities, we have received a letter (Case Prot. No. 1221, of 07.11.2018) from the PAK Board of Directors regarding the Government's decisions on this matter, where it expressed the view that given the legal uncertainty and incorrect legal regulation in this matter, it is impossible for the PAK to legally apply Article 12 (4) of Law No. 04/L-144 on the allocation for use and exchange of immovable property of the Municipality, and for this has notified the Government, the Ministry of Administration and Local Government, the Municipalities and other institutions, also through this letter we have been informed that for some properties for which a decision was made by the Government for return on behalf of the municipalities, are sold and for some properties there are interim measures by the Special Chamber of the Supreme Court."*

28. As to the admissibility of the Referral, the Applicant alleged:

*"The Referral is submitted in accordance with Article 84.9 of the Constitution, because this provision gives the President the competence to refer constitutional issues to the Constitutional Court, when there are unclear constitutional issues which he faces in exercising the competencies guaranteed by the Constitution and for the purpose of realizing the primary role of the President as a representative of the constitutional legal unity of the people of Kosovo and as a guarantor of the democratic functioning of the institutions and the constitutional system of the Republic of Kosovo".*

29. According to the Applicant, *"The competence of the Constitutional Court for the interpretation of the Constitution is defined by Article 112.1 of the Constitution:*

*"The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.*

*Article 84, 9 of the Constitution explicitly gives the President the competence to refer matters to the Constitutional Court. This competence under this constitutional provision is a broad competence and is not subject to any restriction, including, but not limited to, the specific cases listed in Article 113 of the Constitution.*

*The President has the responsibility for implementing the Constitution and guaranteeing the democratic and constitutional functioning of the institutions of the Republic of Kosovo. In implementing such a constitutional responsibility, the President may refer matters to the Constitutional Court in cases where clarification is needed in relation to a situation where the constitutional provision is unclear and is required to render decision that produces legal effects.*

*In this context, the uncertainty lies in rendering decisions by the Government [...] on the transfer of immovable property of the Republic of Kosovo to the use of municipalities, given that, according to the Constitution, the decisions, the Government must take in compliance with the Constitution and the Laws and that we do not have an appropriate law on public property.”*

30. The Applicant further reasoned that *“The Constitutional Court, in accordance with Article 112 of the Constitution, is the final authority in the Republic of Kosovo for the interpretation of the Constitution and the compliance of the Laws with the Constitution and in accordance with Article 113 of the Constitution has jurisdiction to decide only on cases brought before the Court in a legal manner by the authorized party. Undoubtedly, in these cases, these two requirements are fulfilled and consequently the Constitutional Court must interpret the constitutional provisions whenever an issue is addressed to it by mandated institutions for referral. In the present case, the interpretation of Articles 92 (4) and 93 (4) of the Constitution is required in order to clarify these constitutional provisions whether the Government is entitled to transfer the immovable property of the Republic of Kosovo (public properties), for use to the municipalities by decisions, when we consider that we do not have a Law on Public Property”.*
31. The Applicant finally stated that *“in the light of what was emphasized above, the admissibility of this Referral by the Constitutional Court is obvious”.*

#### **Comments submitted by the Prime Minister**

32. On 7 December 2018, the Prime Minister submitted his comments to the Court after the latter's notification about the registration of the Referral. The Court notes that following the submission of the clarifications by the Applicant on 15 January 2019 and following the second notification of the Court to the Prime Minister about the clarifications submitted by the President on the issue of *“conflict of constitutional competencies”* between the President and the Government, the Court did not receive any additional comments from the Prime Minister in response to the explanations submitted by the President. Therefore, the Court will only present the comments submitted in response to the first notification of the Court.
33. As to the admissibility of the Referral, the Prime Minister clarifies that the Applicant *“his request for interpretation of paragraph 4 of Article 92 (General Principles) and paragraph 4 of Article 93 (Competencies of the Government) of the Constitution, this time as in case KO79/18 based referral on Article 84 paragraph 9, as well as Article 112, paragraph 1, of the Constitution. For this particular case, always according to the clarification of the Constitutional Court, it is explicitly stated that it does not deal with interpretations of issues related to actions or legal inactions of constitutional institutions for which it is not authorized under Article 113 of the Constitution”.*
34. In this respect, the Prime Minister further clarifies that, *“[the referrals filed on this ground can only be admissible within the regular jurisdiction of the Court, expressly and clearly set out in Article 113, paragraphs 2 and 3. [. ..]*

therefore, taking into account the basis on which the Referral was filed, without denying the President's right to bring a case before the Court, it is apparent that the Referral does not meet the admissibility requirements due to the lack of the Court's basic jurisdiction in relation to the authorizations of the President as an authorized party deriving precisely from Article 113 of the Constitution”.

35. In response to the legal context for decisions of the executive, the Prime Minister clarified that the Constitution, pursuant to Article 93.4 among other things, foresees that the Government makes decisions for the implementation of the laws, and under Article 93.2, the Government “*promotes the economic development of the country*”. Further, he noted that paragraph 4 of Article 12 (The Right of the Municipality to Reinstate Part of the Land Managed by Privatization Agency of Kosovo) of Law No. 04/L-144 gives the exclusive competence to the Government, in cooperation with the PAK, to take legal actions for returning the parcels of former socially owned enterprises under the ownership of the municipality. This right of return of property managed by the PAK is also regulated by Regulation No. 23/2013.
36. According to Law No. 04/L-034 on the Privatization Agency of Kosovo, Article 15.3, the Agency makes decisions on privatization or liquidation of enterprises only after consultations with officials from municipalities in which the socially owned enterprise is located. He also clarified that Law No. 03/L-040 on Local Self-Government, gives municipalities competencies with regard to “*local economic development*”. It also refers to Law No. 03/L-139 on the Expropriation of Immovable Property, which regulates the procedure for the expropriation of immovable property.
37. Regarding the nature of Government’s decisions, the Prime Minister's response can be summarized as follows: (i) based on Article 93.4 [Competencies of the Government] of the Constitution, the Government has the right, *inter alia*, to make decisions as uncontested constitutional competence, *ex lege*; (ii) based on Article 92.2 (3) and (4) [General Principles], the decisions of the Government have executive title because the constitutional nature of the power of the Government is executive; (iii) Kosovo still has no law for the Government, but based on Article 99 [Procedures] of the Constitution, the Government issued the Rules of Procedure of the Government of the Republic of Kosovo No. 09/2011; (iv) The Rules of Procedure of the Government determined that issues related to the work of the Government that are not regulated by that regulation are determined by a decision or by another act of the Government; (v) The challenged decision of the Government is a legal collective act approved by the vote of entire cabinet after the establishment of necessary quorum; and (vi) if the decisions of the Government were to be indefinitely challenged, the security of government decision-making would be impaired.
38. Furthermore, the Prime Minister clarifies the chronology of the Government's decisions for which the Applicant addressed the Court by clarifying the steps taken in relation to these decisions and inter-institutional interaction until the decision is made, clarifying the procedure regarding the requests of the municipalities , the actions of the Government and the involvement of the PAK



in this process. The Prime Minister also clarifies that in relation to decisions on the transfer of socially owned property, the Ministry of Local Government Administration (hereinafter: MLGA) forwarded the requests to the PAK for the conduct of procedures for the return of property of municipalities under the legislation in force.

39. According to the Prime Minister's response, based on Article 12 of Law No. 04/L-144, the municipalities, for the purpose of realizing the public interest, have the right to request the return of the property of former socially-owned enterprises managed by the PAK. Also, according to Article 19 of Regulation No. 23/2013, "*After receiving the list of municipal property and request for withdrawal from privatization process and their return to municipal ownership in order to realize the local public interest of the properties managed by AKP, Government of the Republic of Kosovo, through the Ministry Responsible for Local Self-Governance, shall submit the same lists and requests to Kosovo Privatization Agency*".
40. He also clarifies that Law No. 04/L-34 on the PAK, the PAK makes decisions for privatization or liquidation only after consultations with the officials of the municipalities in which the socially-owned enterprise is located.
41. Finally, the Prime Minister clarifies that after case KO181/18 was brought to the Court, the Government issued Decision No. 05/76 on the suspension of decisions of the Government regarding decisions that are subject of review before the Court, and it has established a working group on this matter.

#### **Clarifications submitted by the Applicant**

42. In his clarifications submitted to the Court, following the Court's request of 27 December 2018, the Applicant reiterated that "*the Referral was submitted for the interpretation of Articles 92.4 and 93.4 of the Constitution, the President of the Republic of Kosovo, in the capacity of Head of State, the representative of the unity of the people, and the guarantor of the constitutional functioning of the institutions of the Republic of Kosovo as defined in Articles 83 and 84 of the Constitution of the Republic of Kosovo*".
43. Furthermore, with regard to the legal basis for the submission of the Referral, the Applicant stated that "*The Referral also falls within the limits of Article 113 of the Constitution, because under Article 113.3 (1) it is determined that the President is authorized to raise issues related to conflict between the constitutional competences of the Assembly of Kosovo, the President of the Republic of Kosovo and the Government of Kosovo, which in the present case has to do with the conflict between the President and the Government in such a way as to clarify the constitutional provisions, that the immovable property of the Republic of Kosovo is transferred to the use of municipalities in accordance with the legislation in force*".
44. In addition, the Applicant reiterated his allegations and concluded his clarifications for the Court, stating the following:

*“Taking into account Article 84.9 of the Constitution, this provision gives the President the competence to refer constitutional issues to the Constitutional Court, Article 112.1 of the Constitution, where this provision stipulates that the Constitutional Court is the final authority in the Republic of Kosovo for the interpretation of the Constitution and the compliance of laws with the Constitution, Article 113.3 (1), which stipulates that the President may raise issues related to conflict among constitutional competences of the Assembly of Kosovo, the President of the Republic of Kosovo and the Government of Kosovo and that considering that this referrals falls even in the limits of this article, which in the present case relates to the conflict of constitutional competencies between the President and the Government, regarding the transfer of immovable property of the Republic of Kosovo, because the President in accordance with Articles 4.3, 83 and 84 of Constitution, represents the unity of the people, is a legitimate representative of the country inside and outside and guarantees the democratic functioning of the institutions of the Republic of Kosovo, in accordance with the Constitution and that the head of state should take the necessary actions to clarify this situation that the immovable property is transferred in a legitimate way from the Government in the use of municipalities and does not hinder other institutions mandated on this issue”.*

## **Relevant constitutional provisions**

### **The Constitution of the Republic of Kosovo**

#### *“Article 4 [Form of Government and Separation of Power]*

*3. The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.*

#### *Article 83 [Status of the President]*

*The President is the head of state and represents the unity of the people of the Republic of Kosovo.*

#### *Article 84 [Competencies of the President]*

*The President of the Republic of Kosovo:*

- (1) represents the Republic of Kosovo, internally and externally;*
- (2) guarantees the constitutional functioning of the institutions set forth by this Constitution;*
- (3) announces elections for the Assembly of Kosovo and convenes its first meeting;*
- (4) issues decrees in accordance with this Constitution;*
- (5) promulgates laws approved by the Assembly of Kosovo;*

- (6) has the right to return adopted laws for re-consideration, when he/she considers them to be harmful to the legitimate interests of the Republic of Kosovo or one or more Communities. This right can be exercised only once per law;
- (7) signs international agreements in accordance with this Constitution ;
- (8) proposes amendments to this Constitution;
- (9) may refer constitutional questions to the Constitutional Court. (10) leads the foreign policy of the country;
- (11) receives credentials of heads of diplomatic missions accredited to the Republic of Kosovo;
- (12) is the Commander-in-Chief of the Kosovo Security Force; (13) leads the Consultative Council for Communities;
- (14) appoints the candidate for Prime Minister for the establishment of the Government after proposal by the political party or coalition holding the majority in the Assembly;
- (15) appoints and dismisses the President of the Supreme Court of the Republic of Kosovo upon the proposal of the Kosovo Judicial Council;
- (16) appoints and dismisses judges of the Republic of Kosovo upon the proposal of the Kosovo Judicial Council;
- (17) appoints and dismisses the Chief Prosecutor of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;
- (18) appoints and dismisses prosecutors of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;
- (19) appoints judges to the Constitutional Court upon the proposal of the Assembly;
- (20) appoints the Commander of the Kosovo Security Force upon recommendation of the Government;
- (21) with the Prime Minister, jointly appoints the Director, Deputy Director and Inspector General of the Kosovo Intelligence Agency;
- (22) decides to declare a State of Emergency in consultation with the Prime Minister;
- (23) may request meetings of the Kosovo Security Council and chairs them during a State of Emergency;
- (24) decides on the establishment of diplomatic and consular missions of the Republic of Kosovo in consultation with the Prime Minister;
- (25) appoints and dismisses heads of diplomatic missions of the Republic of Kosovo upon the proposal of the Government;
- (26) appoints the Chair of the Central Election Commission;
- (27) appoints the Governor of the Central Bank of the Republic of Kosovo who will also act as its Managing Director, and appoints the other members of the Bank's Board;
- (28) grants medals, titles of gratitude, and awards in accordance with the law;
- (29) grants individual pardons in accordance with the law;
- (30) addresses the Assembly of Kosovo at least once a year in regard to her/his scope of authority.

Article 92 [General Principles]

[...]

4. The Government makes decisions in accordance with this Constitution and the laws, proposes draft laws, proposes amendments to existing laws or other acts and may give its opinion on draft laws that are not proposed by it.

[...]

Article 93 [Competencies of the Government]

[...]

(4) makes decisions and issues legal acts or regulations necessary implementation of laws;

[...]"

**Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality**

*"Article 12 (The Right of the Municipality to Reinstate Part of the Land Managed by Privatization Agency of Kosovo)*

1. For the purpose of public interest, municipalities shall have the right to reinstate the immovable properties that include lands of former enterprises which are administered and managed by the PAK.

2. Municipalities shall list the land parcels, property these under the management of former socially owned enterprises managed by PAK, that municipalities request to reversion of public interest.

3. List of properties developed by the municipalities, according to paragraph 2 of this Article, shall be forwarded to the Government of Republic of Kosovo, for the purpose of releasing such properties from privatization process, and reinstate them under the municipal ownership for the purpose of accomplishing public interest.

4. Government of Kosovo in cooperation with PAK shall take legal actions for returning such parcels under the ownership of the municipality"

**Regulation GRK No. 23/2013 on the Determination of Procedures on the Allocation for Use and Exchange of the Immovable Property of Municipality**

*"Article 19 (The right to return property managed by KPA)*

1. After receiving the list of municipal property and request for withdrawal from privatization process and their return to municipal ownership in order to realize the local public interest of the properties managed by AKP, Government of the Republic of Kosovo, through the Ministry Responsible for Local Self-Governance, shall submit the same lists and requests to Kosovo Privatization Agency.

2. Kosovo Privatization Agency based on the relevant Law on Kosovo Privatization Agency shall take decision to:

2.1 Approve requests submitted by local authorities, or

2.2 Reject these requests submitted by municipal authorities, specifying the reasons for rejection."

## Admissibility of the Referral

45. In order to decide on the Applicant's Referral, the Court should first assess whether the admissibility requirements set out in the Constitution and further specified in the Law and the Rules of Procedure have been met.
46. In this respect, the Court first refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, where the jurisdiction of the Constitutional Court to decide on the cases raised by the Applicant namely the President, is established.

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

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

- (1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;*
- (2) the compatibility with the Constitution of municipal statutes.*

*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;*
- (2) compatibility with the Constitution of a proposed referendum;*
- (3) compatibility with the Constitution of the declaration of a State of Emergency and the actions undertaken during the State of Emergency;*
- (4) compatibility of a proposed constitutional amendment with binding international agreements ratified under this Constitution and the review of the constitutionality of the procedure followed;*
- (5) questions whether violations of the Constitution occurred during the election of the Assembly.*

47. According to the Constitution and the case law of this Court, the authority of the President to refer constitutional questions should be understood in relation to the provisions of the Constitution pertaining to the jurisdiction of the Court established in Article 113 of the Constitution and that the constitutional provision established by paragraph 9 of Article 84 of the Constitution which states that the President may "*refer constitutional questions*" - is related to Article 113 of the Constitution (see, case of the Constitutional Court, KO79/18, Applicant *President of the Republic of Kosovo*, Request for interpretation of

Article 139, paragraph 4, of the Constitution of the Republic of Kosovo, Resolution on Inadmissibility of 3 December 2018, paragraphs 72, 74, 77, 78 and 82).

48. Therefore, the Court notes that the aforementioned constitutional provisions cited in Article 113 of the Constitution are the only basis upon which the President may refer matters to the Constitutional Court.
49. Before reviewing further the admissibility of the Applicant's Referral, the Court initially notes that the Government, by Decision [No. 05/76] of 21 November 2018, annulled all the decisions of the Government for the return of socially owned properties of PAK to the municipalities of Kosovo for which is verified that there are sales contracts, or in which there are interim measures by the Special Chamber of the Supreme Court on PAK related matters. Consequently, the Court will not address the Applicant's referral in relation to these decisions as they are now annulled by the Government itself.
50. To return to the present case, the Court recalls that the Applicant initially based his Referral on paragraph 9 of Article 84 [Competences of the President], in conjunction with paragraph 1 of Article 112 [General Principles] of the Constitution.
51. In this regard, the Court notes that after providing clarifications by the President, the latter stated that his referral falls "*also within the limits*" of Article 113.3 (1) as the case "*has to do with the conflict of constitutional competencies between the President and the Government*". Thus, the Court notes that the Applicant in the present case alleges that there is a conflict between the constitutional competencies of the President and the Government.
52. In this regard, the Court notes that the President, in the capacity of the Applicant, raised a case of conflict of constitutional competence between him and the Government. According to the allegation, the present case "*has to do with the conflict of constitutional competencies between the President and the Government, regarding the transfer of immovable property of the Republic of Kosovo*". According to the same allegation, the Applicant in this case, namely the President as a representative of the "*unity of the people*" and "*legitimate representative of the country internally and externally and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo*", must take action necessary to clarify this situation that the immovable property is legally transferred from the Government to the use of municipalities and does not hinder other mandated institutions on this issue".
53. In this regard, the President has submitted to the Court the following three decisions of the Government:
  1. Government's Decision [No. 05/55] of 6 July 2018 - for the return of socially owned property under the management of the PAK, to the Municipality of Gjilan, for the purpose of realizing the public interest, based on Article 12 of Law No. 04/L-144;
  2. Government's Decision [No. 10/51] of 12 June 2018 - for the approval of the request of the Municipality of Prizren for the allocation for use of

immovable property of the “former Federal Secretariat for People Defence” for use of the Municipality of Prizren; and,

3. Government’s Decision [No. 11/55] of 6 July 2018 - for the approval of the proposal of the Ministry of Local Government Administration regarding the request of the Municipality of Hani i Elezit on allocation for use of immovable property of the Republic of Kosovo located in the cadastral zone Hani i Elezit evidenced in the certificate of ownership No. 000.16-0,00017-1 and 00020-0.

54. Therefore, the question raised before the Court is whether the Government, by rendering decisions to transfer some of the properties of socially-owned enterprises to the municipalities of Kosovo, by allocating to the municipalities some state owned properties and transferring the ownership of some state properties to the municipalities, is included in the conflict of constitutional competencies between the President and the Government.
55. In this regard, the Court recalls the constitutional provision based on which it an issue of conflict of constitutional competencies between the President and the Government may be referred:

*“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;  
[...].”*

56. In this regard, the Court recalls that the first case for assessing the conflict among the constitutional competencies was the case KO131/18, where the Applicant was the President who alleged a conflict between his constitutional competencies and the Assembly (see case of the Constitutional Court, KO131/18, Applicant *President of the Republic of Kosovo*, Request for assessment of the conflict among the constitutional competencies of the President of the Republic of Kosovo and the Assembly of the Republic of Kosovo, as defined by Article 113.3 (1) of the Constitution, Resolution on Inadmissibility of 6 March 2019).
57. In that case, the Court emphasized the constitutional requirements set out in the Constitution, the legal criteria set by the Law and the Rules of the Rules of Procedure - as provisions to be assessed on a case-by-case basis, in order to determine whether a concrete case concerns a conflict between constitutional competences or not (see the case of the Constitutional Court KO131/18, cited above, paragraphs 92-95).
58. The Court recalls its interpretation that Article 113.3 (1) of the Constitution encompasses three constitutional requirements at the constitutional level, namely the necessity that: (i) the conflict be brought by one of the three authorized parties; (ii) the issue be raised for a constitutional competence established in the Constitution for one of the three authorized parties; and (iii)

there should be a conflict (see case of Constitutional Court KO131/18, cited above, paragraphs 92-95).

59. As to the requirement (i), the Court notes that Article 113.3 (1) of the Constitution authorizes the Assembly, the President and the Government to raise cases of conflict between their constitutional competencies. This authorization is mutual and each of these authorized parties may raise issues of conflict of competences for one or the other party, not excluding the possibility of raising conflict with both parties at the same time. In the present case, this constitutional requirement is complemented by the fact that the referral was submitted by the President vis-a-vis the Government as one of the three potential parties authorized to raise issues of conflict between their respective constitutional competencies.
60. As regards the requirement (ii), the Court notes that Article 113.3 (1) of the Constitution provides that a conflict may be referred only for a constitutional competence set forth in the Constitution for one of the three authorized parties. Although the Constitution leaves open the object of conflict between constitutional competences, it makes a significant restriction regarding the fact that the alleged conflict of constitutional competence must necessarily derive from the constitutional competencies defined by the Constitution for the President, the Assembly, namely the Government.
61. In the present case, the Court notes that the Applicant first invokes his role as defined in paragraph 3 of Article 4 [Form of Government and Separation of Power] of the Constitution, according to which, *“The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution”*
62. Secondly, the Applicant invokes his role as established in Article 83 [Statute of the President] of the Constitution, according to which, *“The President is the head of state and represents the unity of the people of the Republic of Kosovo”*.
63. And thirdly, he invokes his constitutional competencies as defined in Article 84 [Competences of the President] of the Constitution. Concerning the latter, the Court notes that the Applicant does not state any specific constitutional paragraph of Article 84 of the Constitution, but refers to the entire Article 84 which defines the competencies of the President, which in total includes 30 paragraphs, namely 30 enumerated competences for the President.
64. In this connection, the Court notes that the role of the President established in paragraph 3 of Article 4 of the Constitution and Article 83 of the Constitution is related to the exercise of his competencies as set out in Article 84 of the Constitution.
65. In this regard, the Court notes that none of the competencies enumerated in Article 84 of the Constitution gives the President the competence to take any action in relation to matters raised by the President before the Court, namely in



relation to the management of the property of socially owned enterprises, or the management of state property.

66. Moreover, the Court refers to paragraph 6 of Article 84 of the Constitution, which explicitly specifies that the President *“has the right to return adopted laws for re-consideration, when he/she considers them to be harmful to the legitimate interests of the Republic of Kosovo or one or more Communities”*.
67. The Court notes that the Constitution does not give such a competence to the President in relation to decisions issued by the Government based on laws or with regard to the implementation of laws.
68. As regards the authorization of the Applicant, namely the President of the Republic of Kosovo to challenge acts of the Government, the Court refers to Article 113.2 (1), according to which: *“The Assembly of Kosovo, the President of the Republic of Kosovo [the Applicant], the Government and the Ombudsperson are authorized to refer [before the Court] the following matters: (1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government”*.
69. Therefore, the Court notes that the Constitution stipulates specific provisions on the basis of which the authorized parties cited above, including the President, may challenge the constitutionality of the acts of the Government set forth in Article 113.2 (1) of the Constitution. In order to do so, the authorized parties are obliged to specifically refer to the relevant constitutional provisions based on which they may challenge before the Court the acts of the Government and also to justify their allegations based on the relevant provisions of the Law and the Rules of Procedure, which further specify Article 113.2 (1) of the Constitution (see, in this regard, Articles 29 and 30 of the Law and Rule 67 of the Rules of Procedure). In the present case, the Applicant did not do so but he requested that his Referral be considered under Article 113.3 (1) of the Constitution, alleging that there is a conflict between his constitutional competencies and the Government.
70. However, in this regard, the Court emphasizes that when a party raises allegations on issues of conflict of competences between the President, the Assembly and the Government under Article 113.3 (1) of the Constitution, as is the case with the present referral submitted by the President of the Republic of Kosovo as an Applicant, it is an obligation of the latter to prove that the issue raised before the Court relates to his constitutional competencies, and then also to justify his allegations of conflict between constitutional competencies.
71. In the light of the foregoing, the Court considers that the facts presented by the Applicant do not in any way justify that the issues raised in connection with the Government’s competencies to transfer ownership or use of properties of socially-owned enterprises, namely state-owned enterprises, relate to the constitutional competencies of the President. This leads to the conclusion that the second constitutional requirement foreseen by Article 113.3 (1) of the Constitution, which stipulates that the conflict can only be raised for a

constitutional competence stipulated by the Constitution for one of the three authorized parties - is not fulfilled in the present case.

72. Accordingly, having in mind that the Court has just found that the issues raised by the Applicant are not related to his competencies as laid down in the Constitution, the Court considers that it is not necessary to assess the requirement (iii) of the admissibility of the Referral, namely whether the “*conflict*” between the competencies of the President and the Government exists.
73. Therefore, in conclusion, the Court notes that the Applicant, although being an authorized party to refer matters of conflict of constitutional competencies between him and the Government, has not proved that the referred matter relates to his competences foreseen by the Constitution.
74. Thus, the Applicant has not accurately specified how the issuance of the Government's decisions on transfer of the properties of socially-owned or state-owned enterprises to the municipalities “*has to do with the conflict of constitutional competencies between the President and the Assembly*”.
75. The Court also notes that the Applicant has submitted his Referral in the form of a question to clarify the constitutional provisions that the immovable property of the Republic of Kosovo by the Government is transferred to the use of municipalities in accordance with the legislation in force, and in the absence of the submission of relevant arguments and evidence on where the conflict lies between his constitutional competencies and the Government. In addition, the Court notes that, even after the Court's request for clarification, the Applicant has not shown or elaborated how his constitutional competencies could be violated.
76. Therefore, the Court finds that the Applicant did not sufficiently substantiate his Referral, in accordance with the criteria established in Article 113.3 (1) of the Constitution, Articles 31 and 32 of the Law and Rule 68 of the Rules of Procedure, and consequently, the Applicant's Referral is inadmissible.
77. The Court, however, emphasizes in the end that the conclusions reached above do not in any way prejudice whether the decisions of the Government raised by the Applicant are in accordance or not with the Constitution, or whether they have legal basis or not.

## **Conclusions**

78. The Referral of the President of the Republic of Kosovo for alleged conflict among his constitutional competencies and the Government of the Republic of Kosovo is declared inadmissible for review on merits for the reasons elaborated in this Resolution on Inadmissibility.
79. The Court finds that the Applicant, although an authorized party to refer matters of conflict of constitutional competencies between him and the Government, has not sufficiently proved that the referred matter is related to his constitutional competencies provided by the Constitution.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113, paragraph 3 (1), of the Constitution, Articles 31 and 32 of the Law, and Rules 59 (b) and 68 of the Rules of Procedure, on 13 June 2019, unanimously:

### DECIDES

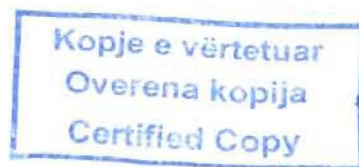
- I. TO DECLARE the Referral inadmissible;
- II. TO HOLD that the Applicant has not sufficiently proved that the referred matter relates to his constitutional competences provided by the Constitution;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Arta Rama-Hajrizi



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