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

Prishtina, 1 June 2020
Ref. no.:AGJ 1574/20

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JUDGMENT

in

Case No. KO72/20

Applicant

Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Decree No. 24/2020 of the President of the Republic of Kosovo, of 30 April 2020

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

Applicants

1. The Referral is submitted by: Rexhep Selimi, Yllza Hoti, Liburn Aliu, Fatmire Mulhaxha Kollçaku, Arbërie Nagavci, Hekuran Murati, Fitore Pacolli, Hajrullah Çeku, Saranda Bogujevci, Jahja Koka, Mefail Bajçinovci, Valon Ramadani, Mimoza Kusari Lila, Fitim Uka, Shpejtim Bulliqi, Artan Abrashi, Arbër Rexhaj, Arbëresha Kryeziu Hyseni, Labinotë Demi Murtezi, Alban Hyseni, Gazmend Gjyshinca, Arta Bajraliu, Enver Haliti, Agon Batusha, Dimal Basha, Fjolla Ujkani, Fitim Haziri, Elbert Krasniqi, Eman Rrahmani, Salih Zyba (hereinafter: the Applicants or the Applicants deputies), all deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

Challenged act

2. The Applicants challenge Decree No. 24/2020 of the President of the Republic of Kosovo, of 30 April 2020 (hereinafter: the challenged Decree) by which Mr. Avdullah Hoti, was proposed to the Assembly of the Republic of Kosovo as a candidate for the Prime Minister to form the Government of the Republic of Kosovo (hereinafter: the Government).

Subject matter

3. The subject matter of the Referral was the constitutional review of the challenged Decree, which according to the Applicant's allegations is not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power], paragraph 2 of Article 82 [Dissolution of the Assembly], paragraph 14 of Article 84 [Competencies of the President] as well as Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

4. The Applicants requested the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure *"on the Decree in order to prevent unrecoverable damage to the party and the institution"*.

5. The Applicants also requested the holding of the public hearing.

Legal basis

6. The Referral is based on Article 113, paragraph 2, sub-paragraph 1 [Jurisdiction and Authorized Parties] of the Constitution, Article 29 [Accuracy of the Referral] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as Rules 32 [Filing of Referrals and Replies] and 67 [Referral pursuant to Article 113.2 (1) and (2) of the Constitution and Article 29 and 30 of the Law] of the Rules of Procedure No. 01/2018 of the Constitutional Court of the Republic of Kosovo, (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. On 30 April 2020, about 17:00 hrs, the Applicants submitted the Referral to the Court.

8. On the same date, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka-Nimani and Radomir Laban (members).

9. On the same date, the Court, through electronic mail, notified the Applicants about the registration of the Referral.

10. On the same date, the Court notified the President of the Republic of Kosovo (hereinafter: the President) about the registration of the Referral; the President of the Assembly of the Republic of Kosovo (hereinafter: the President of the Assembly), who was requested to submit a copy of the Referral to all deputies of the Assembly; the caretaker Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); as well as the Ombudsperson.

11. The Court notified all interested parties mentioned above that their comments: (i) regarding the request for the imposition of an interim measure, if any, to present them to the Court, by 1 May 2020, at 12:00 hrs; whereas (ii) the comments regarding the merits of the Referral, if any, to submit to the Court no later than 8 May 2020, at 16:00 hrs.

12. On 1 May 2020, before 12:00 hrs, the Court received a letter from the Head of the Parliamentary Group of the Serbian List, the deputy Slavko Simić, requesting the Court to provide additional deadline to submit comments on interim measure because they received Referral KO72/20 only in Albanian.

13. On the same date, the Court responded to the deputy Slavko Simić by notifying him that the Referral KO72/20 was received in the Court only in the Albanian language and that the Court sent it for urgent translation immediately after its receipt. The Court sent the full copy of the Referral in Serbian to the deputies in question, and approved the request for an extension of the deadline for submitting comments for an interim measure until 16:00 hrs on 1 May 2020.

14. On 1 May 2020, within the set deadline, the Court received comments regarding the interim measure from the following parties: the President, the President of the Assembly, the Prime Minister, the Parliamentary Group of the Democratic League of Kosovo (hereinafter: the LDK), the deputy Arban Abrashi and the deputy Shkëmb Manaj.

15. On 1 May 2020, the Judge Rapporteur recommended to the Court the approval of the interim measure. On the same date, the Court, by majority of votes, decided to approve the interim measure until 29 May 2020, namely to suspend the further implementation of the challenged Decree of the President.

16. On 6 May, 2020, the Court received from A.M. a request to allow him to present *Amicus Curiae* regarding the case KO72/20.

17. On 7 May 2020, the Judge Rapporteur in accordance with Rule 55 [Amicus Curiae], after consulting with the Review Panel, assessed that the request of A.M. to present *Amicus Curiae* must be rejected. The Court notified A.M. about the rejection of his request.

18. On 8 May 2020, within the prescribed time limit, the Court received comments regarding the merits of the Referral from the following parties: the President; the President of the Assembly; the Prime Minister; the Deputy President of the Assembly, Ms. Arbërie Nagavci; the Ombudsperson; the Parliamentary Group of the LDK; deputies of the Assembly, Behxhet Pacolli and Mirlindë Sopi-Krasniqi from the Alliance New Kosovo (hereinafter: the AKR), supported by the deputies Endrit Shala, Haxhi Shala and Albulena Balaj-Halimaj from Social Democratic NISMA (hereinafter: NISMA); and the deputy Arban Abrashi.

19. On 11 May 2020, the Court submitted the following questions to the Venice Commission Forum:

"1. After the motion of no confidence in the Government, is there a constitutional/legal possibility that allows the formation of the new Government within the same legislature?
2. Is there a constitutional/legal obligation to dissolve the Assembly after the no-confidence motion against the Government?
3. Do you have case law on this issue?"

20. Between 11 and 21 May 2020, the Court received answers to questions posed through the Venice Commission Forum by the constitutional/supreme courts of the following states: England, Brazil, Liechtenstein, Austria, Slovakia, Sweden, Czech Republic, Croatia, Germany, Bulgaria, North Macedonia, Moldavia and South Africa. (See summaries of thirteen (13) responses received in paragraphs 291-306 of this Judgment).

21. On 12 May 2020, the Court notified the Applicants; the President; the President of the Assembly; the Prime Minister; as well as the Ombudsperson regarding the comments received on 8 May 2020.

22. The Court also requested the President of the Assembly to take all necessary steps in her jurisdiction to inform the Court about *"Travaux Preparatoires"* or "*Preparatory Documents"* of the Constitution and, if the same exist, to submit them to the Court within an urgent time limit and no later than 13 May 2020.

23. On 13 May 2020, the Court received from the President of the Assembly the letter in which the latter informed the Court that *"Travaux Preparatoires"* of the Constitution are not found in the Assembly but in the State Agency of Archives of Kosovo (hereinafter: the Archive of Kosovo). Therefore, the President of the Assembly notified the Court that she had addressed an official request to the Archive of Kosovo and based on their response they were informed that due to the large volume of documents, *"it is impossible to photocopy the material before 15 May* [2020]" and as soon as they receive the copy of *"Travaux Preparatoires"* from the Kosovo Archive, they will forward it immediately to the Court.

24. On the same date, 13 May 2020, the Court responded to the letter of the President of the Assembly, in which case it emphasized: *"Taking into account the urgency of the case that the Court is dealing with as well as the large declared volume of files of "Travaux Preparatoires", please take all steps at your disposal to ensure that the Court has access to certified copies as authentic and original documents of "Travaux Preparatoires" as soon as possible and no later than within the deadline proposed by you, 15 May 2020."* The Court also noted in the letter that: *"In accordance with the Constitution of the Republic of Kosovo and Law No. 04/L-088 on State Archives, please submit to the Court the full copy of the archival material together with the document certifying the authenticity of that archival material".*

25. On 14 May 2020, the Court received through the Assembly a certified copy of the Preparatory Documents for drafting the Constitution.

26. On 18 May 2020, the Court accepted from the President of the Assembly the letter by which the latter presented some issues regarding the Preparatory Documents for the drafting of the Constitution, which the Court received on 14 May 2020, and which the Assembly had obtained from the Archives of Kosovo. In her letter, the President of the Assembly stated:

"The Assembly of the Republic of Kosovo is not the author of the submitted documents and they have never been dealt with in a regular procedure in the Assembly;
The Assembly of Kosovo has never possessed these documents, until 14 May 2020, when a copy was given to it by the State Archives Agency;
These documents have never been published in the Official Gazette or in other official sources;
The Assembly cannot certify the authenticity of these documents, or whether there has ever been any interference with them;
The Assembly cannot verify who possessed these documents before they were sent to the Kosovo Archives, as well as whether there has been any interference with them during these years;
The Assembly bears no responsibility for the authenticity of the documents submitted, as it has acted only as a facilitator of communication between the Constitutional Court and the State Agency of Archives of Kosovo".

27. On the same date, 18 May 2020, regarding the letter received by the President of the Assembly on the Preparatory Documents for drafting the Constitution, the Court notified the President of the Assembly as follows:

"Honorable President of the Assembly,

Thank you for your cooperation and of the State Agency of Archives of Kosovo for submitting the certified copy of the preparatory documents for drafting of the Constitution of the Republic of Kosovo. On this occasion, we invite you to find attached to a CD - electronic version in PDF a copy of all the preparatory documentation for the drafting of the Constitution submitted to the Court by the Assembly on 14 May 2020. We confirm that this is the entire material that has been forwarded to the Court in an official

manner by the Assembly and as such has been recorded, evidenced and archived in the Court.

We respectfully recall that the Constitutional Court cannot speculate on the authenticity of this material nor engage in such discussions. This material was submitted as a public document in an official way to the Court and it was submitted as a certified copy of the original material found in the State Archives of the Republic of Kosovo. Consequently, the Court will deal with these documents in accordance with international practices and standards for their treatment".

28. Through this letter addressed to the President of the Assembly, the Court also clarified the entire process of how to obtain the certified copy of the Preparatory Documents for drafting the Constitution in the Court and which is reflected above, including the fact that on 20 June 2014, the Court during the review of case KO103/14 (see, the Applicant, *the President of the Republic of Kosovo*, Judgment of 30 June 2014 - hereinafter: Judgment KO103/14, requested the Assembly to submit to the Court a copy of *"Travaux Preparatoires"* but was notified by the Secretary General of the Assembly that *"they did not have Travaux Preparatoires"*. The Court also clarified that on 8 May 2020, the Ombudsperson submitted a letter to the Court stating that there were no comments on case KO72/20, but it has information that "*the files of the preparatory works for the drafting of the Constitution are in the State Agency of Archives of Kosovo"*.

29. On 28 May 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

30. On the same date, on 28 May 2020, the Court decided: (i) unanimously that the Applicants' Referral is admissible; (ii) unanimously that the challenged Decree of the President is in compliance with paragraph 2 of Article 82 [Dissolution of the Assembly] of the Constitution, thereby finding that the successful vote of a no-confidence motion by the Assembly against the Government does not result in mandatory dissolution of the Assembly and enables the formation of a new Government in accordance with Article 95 [Election of the Government] of the Constitution; (iii) by a majority that the challenged Decree of the President is in accordance with paragraph (14) of Article 84 [Competencies of the President] of the Constitution in conjunction with paragraph 4 of Article 95 of the Constitution; (iv) unanimously to repeal the interim measure established by the Decision of 1 May 2020; and (v) unanimously reject the request for a hearing. The main conclusions of the Court were published on the same date.

31. On 1 June 2020, the Court published full Judgment in case KO72/20.

Summary of facts

32. On 6 October 2019, the early elections for the Assembly were held.

33. On 27 November 2019, the CEC certified the election results for the Assembly, based on the following list of the election results:

(i) VETËVENDOSJE! Movement (hereinafter: the LVV), 29 deputies;
(ii) Democratic League of Kosovo, 28 deputies;
(iii) Democratic Party of Kosovo, 24 deputies;
(iv) AAK-PSD Coalition 100% Kosovo, 13 deputies;
(v) Srpska Lista, 10 deputies;
(vi) Social Democratic Initiative – Alliance Kosova e Re, Justice Party, 6 deputies;
(vii) "Vakat" Coalition, 2 deputies;
(viii) Kosova Demokratik Tyrk Partisi, 2 deputies;
(ix) Egyptian Liberal Party, 1 deputy;
(x) Nova Demokratska Stranka, 1 deputy;
(xi) Ashkali Party for Integration, 1 deputy;
(xii) New Democratic Initiative of Kosovo, 1 deputy;
(xiii) Jedinstvena Goranska Partija, 1 deputy;
(xiv) Kosovo United Roma Party, 1 deputy.

34. On 26 December 2019, the Assembly was constituted.

35. On 20 January 2020, the LVV proposed its candidate for Prime Minister to the President.

36. On 20 January 2020, on the same date, the President issued the Decree by which Mr. Albin Kurti was proposed to the Assembly as a candidate for Prime Minister to form the Government.

37. On 3 February 2020, the Assembly elected the Government with Prime Minister Mr. Albin Kurti.

38. On 20 March 2020, a number of deputies of the Assembly submitted to the Presidency of the Assembly the No-Confidence Motion against the Government.

39. On 25 March 2020, the Assembly [Decision No. 07-V-013] approved the No-confidence Motion in the Government. The voted motion contained, among other things, the following reasoning:

"[...]
we call on the deputies of the Assembly of the Republic of Kosovo to vote for this motion through a vote of no confidence. By this action, the Assembly creates the possibility of forming a stability government with a limited duration, which would address the immediate challenges facing the country, both in the position of foreign policy and in the dynamics created within the country".

40. On 30 March 2020, the President sent special letters to the presidents of all political entities represented in the Assembly, which had the following content *"Following the no-confidence motion against the Government [...] it will*

take the steps set out in the Constitution. […] In this regard, I invite you to attend the consultative meeting to discuss further steps".

41. On 1 April 2020, the President had separate consultative meetings with the presidents of all political entities represented in the Assembly.

42. On 1 April 2020, Mr. Albin Kurti, in his capacity as Prime Minister, by the letter [Ref: 108/2020], expressed readiness to meet with the President, following the motion of no confidence in the Government. In his letter to the President, he also stressed that *"The Constitution, as well as your previous practice in 2017, makes it clear that, after the successful motion of no confidence, the only way forward is to dissolve the Assembly. […], in accordance with Article 82.2 of the Constitution, and the announcement of the early elections"*. He added that "*the only issue I will discuss with you is when will be the most appropriate time for the dissolution of the Assembly, taking into account in particular the state of emergency of public health that the Republic of Kosovo is currently facing",*

43. On 1 April 2020, Mr. Albin Kurti, in his capacity as Prime Minister, by the letter [Ref.1 09/2020] stressed among other things as follows: *"[…] Regarding your notification that you are carrying out "consultations" with the leaders of other political parties […] I would like to emphasize my position that such consultations have no basis in any provision of the Constitution. […]. I would also like to reiterate my readiness to stay in touch with our fight against the COVID-19 virus, as well as your duty to dissolve the Assembly […] after the motion of no confidence. While, for any other issue outside these two topics, I reiterate my position expressed in today's meeting, that the inter-institutional communication between the Office of the President and the Office of the Prime Minister, continue in written form"*.

44. On 2 April 2020, the President addressed a letter [No. Prot. 353] to Mr. Albin Kurti, in the capacity of President of the LVV with the following content: *"[…] Yesterday's meeting with you (01.04.2020), after the motion of no confidence in the Government […], was a consultative meeting with the President of the Vetëvendosje Movement - the leader of the first party according to the final results of the Early Elections for the Assembly of the Republic. Kosovo, held on 6 October 2019. So, it was a meeting of a formal, legal and procedural nature, for consultation to assess whether it is in the interest of the political party that you represent the formation of the new Government or the dissolution of the Assembly […]"*

45. On the same date, on 2 April 2020, the President through the letter [No. Prot. 354] notified Mr. Albin Kurti, in the capacity of the latter as President of the LVV, that after the motion of no confidence of the Government, in accordance with *"Article 95 of the Constitution […], will take the necessary steps to appoint the candidate for Prime Minister for the formation of the Government"*. The President further emphasized: *"Taking into account Article 95 of the Constitution, the Decision of the Constitutional Court KO103/14, of 1 July 2014, and the Decision of the Central Election Commission for the certification of the final election results […] held on 6 October 2019 (CEC Protocol No. 1845-2029, 27.11.20 19), Vetëvendosje Movement is the political*

entity that has won the majority in the Assembly to form the Government and has the right to propose a new candidate, to form the Government. Please, on behalf of the Vetëvendosje Movement, propose the new candidate, who I will mandate for the formation of the Government of the Republic of Kosovo".

46. On 10 April 2020, the President by the letter [No. Prot. 354/1] addressed Mr. Albin Kurti, in the capacity of the latter as the President of the LVV:

"Honorable Mr. Kurti,

I am waiting for your response to the request I forwarded to you on 2 April 2020 (Ref 354, 02.04.2020), to nominate the candidate for Prime Minister and form the Government [...] after the no-confidence motion in the Government [...]

I remind you that [the LVV] [...] is the political entity that has won the majority in the Assembly to form the Government and has the right to propose a new candidate to form the Government.

As you know, after the motion of no confidence in the Government on 25.03.2020, I held consultative meetings with all political parties represented in the Assembly to assess whether it is in the interest of political parties to form a new Government or to dissolve the Assembly. Most political parties have stated they are in favor of forming a new Government.

[...]

Once again, I must remind you that my constitutional mandate obliges me to guarantee the democratic functioning of the institutions of the Republic of Kosovo, including ensuring the appointment of a new candidate for Prime Minister to form the Government. [...]. As President of the Republic of Kosovo, I will take this action, following all the constitutional steps for the citizens of the Republic of Kosovo to have their new Government as soon as possible.

Please, on behalf of [the LVV], propose a new candidate for Prime Minister, whom I will nominate for the formation of the Government [...]".

47. On 13 April 2020, Mr. Albin Kurti, in his capacity as Prime Minister by the letter [Ref: 120/2020] addressed the President, emphasizing, among other things,

"[...] let me express my deep regret after your last letter, in which you openly state your intention to bypass your constitutional duty to dissolve the Assembly and call new elections, after the end of the battle against COVID-19

In your letter dated 10.04.2020, you emphasize that you held consultative meetings with the representatives of all political parties represented in the Assembly in order to assess the interest of political parties in relation to the new elections or the formation of the new Government. Let me remind you that it is not in the competence of the President of the Republic of Kosovo to assess the interests of political parties, but to protect the state interest.

Furthermore, the Constitutional Court in paragraph 84 of its Judgment in case KO 103/14 expressly found that "The Court reiterates that the President of the Republic can only consult with the political party or coalition that has won the majority in the Assembly be it absolute or relative".
Therefore, by holding such consultative meetings, You have acted contrary to the Constitution of the Republic of Kosovo, because the judgments of the Constitutional Court are legal acts through which the constitutionality is realized and are considered a source of the Constitutional Law. To be even clearer, as you know, before the meeting and after the meeting with you, You were officially informed by me that the meetings with you are taking place in the capacity of the caretaker Prime Minister and I was accompanied by my two external advisors, who are not members of [the LVV]. I was in a meeting where the topic of discussion was the state of health emergency and the issue of announcing the elections after the motion of no confidence.

Also let me remind you that after the successful motion of no confidence [...] the president is not given space to play the role of a political actor trying to impose his will on political life. To the President of the Republic of Kosovo, as a constitutional authority, a motion of no confidence gives him the right to fulfill only one action determined by the Constitution. Thus, the dissolution of the Assembly in accordance with Article 82.2 of the Constitution [...]"

That this is the only procedure provided by the Constitution [...] it has never been questioned even in the current constitutional practice. It has been a notorious fact that there have never been consultative meetings with the political party that has won the majority in the Assembly. That the Presidency has always considered necessary the immediate announcement of the elections, in addition to being confirmed by the fact that in 2010 and 2017 the Assembly was dissolved and the elections were announced on the same day when the no-confidence motion was voted, it is also confirmed by the interview of Acting President Mr. Jakup Krasniqi [of 2 February 2010]. [...].

[...] that the elections are the only option after a successful motion of no confidence, it was also emphasized by You in 2010, in the extraordinary meeting of the Assembly of Kosovo dated 02.11.2010, when you asked for votes in favor of the no-confidence motion [...]

Therefore, in the spirit of this factual and legal situation, I believe that it is now clear to You that it is not the duty of the President to impose letters by requesting the names of candidates for Prime Minister. Especially, not in a period of health emergency. But let me emphasize that this letter is not a refusal to give you a name of the candidate for Prime Minister. It is a reminder of the framework of your powers and constitutional obligations that fall on the institution of the President [...], after a successful motion of no confidence, because it is not at your discretion to impose unconstitutional scenarios".

48. On 15 April 2020, the President by letter [Prot. No. 370/1] addressed Mr. Albin Kurti, in the capacity of the latter as the President of LVV, emphasizing:

"On 13.04.2020 (Ref.: 120/2020) I have received a letter from you, in which you have referred to the letters I have sent to you as the President of the Vetevendosje Movement. In this letter you have not proposed the candidate for Prime Minister, but you have neither refused such a thing. Considering the requests I forwarded to you on 2 April 2020. (Ref. 354, 02.04.2020) and on 10 April 2020 (Ref. 354/1, 10.04.2020), I remind you again that I am waiting for your answer to propose the candidate for Prime Minister to form the Government of the Republic of Kosovo, after the motion of no confidence in the Government (Decision of the Assembly of the Republic of Kosovo Nr. 07-V-013, of 25.03.2020).

I remind you that my constitutional mandate obliges me to guarantee the democratic functioning of the institutions of the Republic of Kosovo, including ensuring the appointment of a candidate for Prime Minister to form the Government of the Republic of Kosovo. The citizens of the Republic of Kosovo and the political parties represented in the Assembly of the Republic of Kosovo, rightly expect the functioning of the new Government, as well as expect the President to appoint a candidate for Prime Minister for the formation of the Government.

Taking into account item 87 of the Judgment of the Constitutional Court in case no. KO103/14, the Constitutional Court "notes that it is not excluded that the party or coalition concerned will refuse to receive the mandate", then you should keep in mind that if you do not propose the candidate for Prime Minister, then your actions may reflect hesitation in taking the mandate, respectively the refusal of taking the mandate.
Finally, I urge you again to make the proposal for the candidate for Prime Minister without wasting time and in accordance with Article 95 of the Constitution and the Judgment of the Constitutional Court in case No. KO 103/14. I assure you that within a reasonable period of time, in accordance with the urgency to give the country a new Government with legitimacy by the Assembly [...], I will propose the candidate for Prime Minister to form the Government."

49. On 17 April 2020, Mr. Albin Kurti in his capacity of the Prime Minister, by the letter [Ref. 122/2020] addressed the President, emphasizing:

"Honorable President,

No, we do not hesitate to answer you.

No, we do not reject your request.

But I am obliged to repeat what I asked in my last letter, for which I have not received an answer. I have explicitly stated: It is clear that the current situation does not allow holding elections, and this is something we are not seeking to do now, before the conditions are created after the passage of pandemics. But what I am not clear about is the double standard that you and the political parties are trying to impose in an unconstitutional way, after this motion of no confidence which does not differ formally and materially from previous practices. Maybe you can explain that to us?

I have sought clarification on this, and I am still awaiting your response.

Also, please specify the legal basis on which you are acting, because Article 95 to which you refer has six paragraphs which regulate, different issues from each other, and the non-verbal reference in Article 95 is not justifiable at this time.

I look forward to your clarification, in the hope that you will use the same standard you expect from me. After your answer, I may have a clearer reason behind this insistence on dealing with secondary and tertiary issues, at a time when we all need to unite in the fight against the common enemy - COVID-19".

50. On the same date, the President by letter [Prot. No. 370/3] addressed Mr. Albin Kurti, in the capacity of the latter as President of the LVV, emphasizing*:*

"Dear Mr. Kurti,

On 17.04.2020 (Ref, 122/2020), I have also received a letter from you, where you have referred to the letters that I have sent to you in the capacity of the President of the Vetëvendosje Movement, despite the requests sent on 2 April 2020 (Ref. 354), on 10 April 2020 (Ref, 354/1) and on 15 April 2020 (Ref. 370/1), also in your letter sent on 17 April 2020 (Ref. 122/2020), you have not proposed a candidate for Prime Minister, but you have stated that you are not refusing to propose a candidate for Prime Minister. Let me emphasize that your non-refusal means that you send the name of the candidate for Prime Minister. But you have not yet done so, despite the fact that I have sent you three requests for this purpose.

Therefore, once again, in accordance with Article 95 of the Constitution and the Judgment of the Constitutional Court in case No. KO103/14, I ask you to send the name of the candidate for Prime Minister without wasting time".

51. On 22 April 2020, Mr. Albin Kurti in his capacity as Prime Minister, by letter [Ref. 135/2020] addressed to the President emphasizing:

"Honorable President,

Despite the fact that in no case we have rejected either the request or the proposal of the candidate for Prime Minister, today, on 22.04.2020, I have received a letter from you, by which you ascertain out of your constitutional competencies as President, that I have not exercised the right to the proposal of the new candidate to form the Government.

The Constitution of the Republic does not provide for such a competence of the President to assess or ascertain the use or non-use of the right to propose a candidate for Prime Minister. In addition, the Constitution and Judgment No. 103/14 have not even set a deadline for such a thing. What the Constitution provides in this case is the appointment of the candidate for Prime Minister only after the proposal by the party or coalition that has won

the absolute or relative majority, as defined in item 84 of the Judgment of the Constitutional Court.

Therefore, based on the role and function as President, you have neither the right nor the constitutional authorization to ascertain that we have rejected the nomination of the candidate for Prime Minister when we have not done so; you do not have the mandate and competence to determine beyond the Constitution how and what the Government will be, as you have done these days in public statements; and, we regret to say that you have not yet responded to us on the basis of which point of Article 95 you are acting and addressing us".

52. On 22 April 2020, the President by letter [Prot. No. 380] addressed again Mr. Albin Kurti, in the capacity of the latter as the President of the LVV emphasizing that:

"Dear Mr. Kurti,

Despite the requests I sent to you on 2 April 2020 (Ref. 354), on 10 April 2020 (Ref. 354/1), on 15 April 2020 (Ref. 370/1) and on 17 April 2020 (Ref: 370/3), you have not proposed that candidate for Prime Minister.

I regret to conclude that with your actions you have not exercised your right to propose a new candidate to form the Government, in accordance with the Decision of the Central Election Commission [...] for the Assembly [...].

I have to remind you that in accordance with the constitutional mandate of the President of the Republic of Kosovo, it is my responsibility to maintain the stability of the country and to guarantee the democratic functioning of the country's institutions.

Therefore, in accordance with Article 95 of the Constitution and the Judgment of the Constitutional Court in case no. KO 103/14 I will hold joint consultations with all leaders of parliamentary political entities about further steps".

53. On the same date, on 22 April 2020, the President sent separate letters to the presidents of all political entities represented in the Assembly inviting them to participate *"in the joint consultative meeting with the leaders of the parliamentary parties to discuss the next steps in order to give the Government a full legitimacy".*

54. On the same date, thus on 22 April, 2020, a meeting was held with the presidents of all political entities represented in the Assembly, starting at 16:30. The President sought the opinion of political entities as to whether they were in favor of the early elections or the formation of a new government. Most political parties stated they were in favor of forming a new Government. Whereas, the representative of LVV referred to and read the letter [Ref. 135/2020] of 22 April 2020, which Mr. Albin Kurti had sent to the President, cited widely above in paragraph 51. At the meeting, the President also presented the prevailing criteria for the formation of the new Government, as

the criterion that the proposal for the candidate for Prime Minister be derived from the political party or coalition which will be more likely to form the Government, and to receive the necessary votes in the Assembly to maintain the stability of the country, as well as for the Government to adhere to the following principles: the principle of constitutionality; the principle of equal treatment; the principle of political stability, the principles regarding dialogue and foreign policy, the principle of transparency, the principle of integrity, the principle of availability, and the principle of merits (hereinafter: Prevailing Criteria).

55. On the same date, the President by letter [Prot. No. 382/1] addressed Mr. Isa Mustafa, in the capacity of the latter as President of the LDK, with this content:

"Dear Mr. Mustafa,

In accordance with my constitutional mandate and in compliance with the Judgment of the Constitutional Court in case no. KO103/14,

in order to avoid early elections, to maintain the stability of the country and in accordance with the urgency to give the country a new Government with legitimacy by the Assembly of the Republic of Kosovo,

after consulting with all parliamentary political parties and agreeing with their absolute majority to form a new Government,

after not sending the candidate to form the Government by Vetëvendosje Movement, as a political entity that has won the relative majority in the early elections for the Assembly of the Republic of Kosovo on 6 October 2019, despite the requests sent on 2 April 2020 (Ref. 354), on 10 April 2020 (Ref. 354/1), on 15 April 2020 (Refl 370/1), on 17 April 2020 (Ref. 370/3), and on 22 April 2020 (Ref. 380),

in accordance with the Prevailing Criteria for the formation of the new Government, please propose the potential candidate for Prime Minister for the formation of the Government of the Republic of Kosovo, who should ensure that he will have the right number of votes in the Assembly of Kosovo and pledge that he will establish a stable and inclusive Government. […]"

56. On 29 April 2020, the President by the letter [Prot. No. 382/2] again addressed the President of the LDK, Mr. Isa Mustafa, asking him again, without wasting time, to propose the potential candidate for the formation of the Government, who must ensure that he will have the right number of votes in the Assembly and pledge to create a stable and inclusive Government.

57. On the same date, on 29 April 2020, the President of LDK, Mr. Isa Mustafa, by the letter [Prot. No. 408], addressed the President, emphasizing that they are:

"about to conclude the agreements with potential partners of the ruling coalition, in line with prevailing criteria. These days we have had many

intensive meetings, dealing with the governing program and the sharing of governing responsibilities.

We are working intensively, and we hope that in the very near future we will create a parliamentary majority and propose a candidate for Prime Minister of Kosovo".

58. On 30 April 2020, the President of LDK, Mr. Isa Mustafa, by the letter [Prot. No. 409], addressed the President with this content:

"Honorable President Thaçi,

In accordance with the Prevailing Criteria for the formation of the new Government, presented by you at the meeting of 22 April 2020, after public consultation with all leaders of political parties represented in the Assembly, and comprehensive consultations with entities AAK, NISMA Social Democrats, AKR and other entities representing the non-majority community in the Assembly of Kosovo, in order to avoid early elections, maintaining the stability of the country and in accordance with the urgency to give the country a new Government with legitimacy by the Assembly of the Republic of Kosovo, we propose to the President of the Republic of Kosovo, Mr. Avdullah Hoti, as candidate for Prime Minister to form the Government of the Republic of Kosovo".

59. On the same date, on 30 April 2020, the President issued the challenged Decree which contains three points, as follows:

"*1. Mr. Avdullah Hoti, is proposed to the Assembly of the Republic of Kosovo as a candidate for Prime Minister to form the Government of the Republic of Kosovo.*

2. The candidate under item I of this Decree, no later than fifteen (15) days after the appointment, submits the composition of the Government to the Assembly of the Republic of Kosovo and requests the approval by the Assembly.

3. The Decree enters into force on the date of signing".

60. The abovementioned Decree of the President is stated to have been issued based on:

(i) paragraphs (4) and (14) of Article 84 [Competencies of the President] of the Constitution and Article 95 [Election of the Government] of the Constitution;
(ii) Article 6 of Law No. 03/L-094 on the President of the Republic of Kosovo;
(iii) Judgment of the Constitutional Court in case KO103/14 Applicant the President of the Republic of Kosovo, Judgment of 1 July 2014 ; and
(iv) in the course of the proposal of the LDK, accepted by the Office of the President on 30 April 2020.

61. On 30 April 2020 a number of the deputies of the Assembly submitted to the Presidency of the Assembly a request for convening an extraordinary session to vote on the composition of the Government.

Applicants' allegations

62. The Applicants allege that the challenged Decree of the President is not in compliance with paragraph 1 of Article 4 [Form of Government and Separation of Power], paragraph 2 of Article 82 [Dissolution of the Assembly], paragraph 14 of Article 84 [Competencies of the President] as well as Article 95 [Election of the Government] of the Constitution.

63. With regard to the admissibility of the Referral, the Applicants state that all formal-constitutional, legal and sub-legal criteria have been met for the Referral to be considered admissible for review of merits.

64. Regarding the merits of the referral, the Applicants allege that through the challenged Decree, the President violated the constitutional provisions as: (i) after the successful motion of no confidence, the President had a constitutional obligation to announce early elections for the Assembly and not to mandate a candidate for Prime Minister; and (ii) during the procedure that resulted in the issuance of the Decree on the appointment of the candidate for Prime Minister for the formation of the Government, the President acted in contradiction with the procedures foreseen in the Constitution and in the Judgment of the Court KO103/14, as well as with the current practice regarding the dissolution of the Assembly after the motion of no confidence of the Government.

65. More specifically, regarding the procedure, they stated that: (i) consultation without a constitutional basis with all parties represented in the Assembly was held, and the winning party of the elections of 6 October 2019 on the occasion of the appointment of the candidate for Prime Minister for the formation of the Government was bypassed; (ii) the determination without constitutional basis of the timeframe for the winning party of the elections to nominate the candidate for the formation of the Government and the claim by the President that LVV, as a winning party of the elections, has rejected the nomination of the candidate for Prime Minister in a non-expressive manner.

    (i) Allegations of constitutional violation as a result of the issuance of the challenged Decree and the obligation of the President to declare early elections after the successful motion of no confidence in the Government.

66. The Applicants initially state that under Article 83 [Status of the President] which stipulates that the President is the head of state and represents the unity of the people of the Republic of Kosovo, the President is not allowed to represent group or political party interests. The President is out of separation of powers, and he is prohibited to exercise active functions in the political direction of the country. Therefore, according to them, the exercise of the powers of the President "*must be in compliance with his function in terms of concrete, accurate and fair exercise of constitutional powers which correspond to the created constitutional situation*".

67. Regarding the role of the President after the vote of no confidence, the Applicants hold the view that in that case, *"The government is considered resigned, and the President through the decree should have dissolved the Assembly pursuant to Article 82. para. 2 of the Constitution of the Republic of Kosovo. So, the President has no constitutional basis to activate Article 95 of the Constitution [...], and much less Article 95 para.4 of the Constitution, due to the fact that between Article 100 para.6 and Article 95 lacks the connecting bridge covered by the explicitly expressed constitutional norm".*

68. The Applicants argue that in the event of a vote of no confidence in the Government, the situation is not the same as after the elections in terms of the procedures for appointing a candidate for Prime Minister for the formation of the Government. There is no express norm in the Constitution that stipulates that after a successful motion of no confidence, the President begins the procedure under Articles 95.4 of the Constitution, through Article 84.4 after the application of Article 100.6 of the Constitution. This procedure followed by the President makes the challenged Decree unconstitutional.

69. To support these arguments, the Applicants referred also to the constitutions of other countries, namely the provisions governing the issue of the motion of no confidence, such as the Constitution of Croatia, Slovenia, Germany, Greece, Serbia, Albania and the Constitutional Framework for Provisional Government in Kosovo (hereinafter: the Constitutional Framework), which was in force until the entry into force of the Constitution of the Republic of Kosovo. They argue that if in the constitutions of the above countries, "*are explicitly provided the further steps which are to be taken by the Assembly for the deputies to exercise their right to prevent the dissolution of the Assembly, no other procedure is provided for in the Constitution of Kosovo after a successful motion of no confidence, but only the dissolution of the Assembly".*

70. Therefore, the lack of these concrete constitutional provisions, as provided in the constitutions of other countries, made the Decree contrary to the Constitution. In the absence of this connecting provision that after the successful motion of no confidence to appoint the candidate for Prime Minister for the formation of the Government, Article 95 of the Constitution is not allowed to be activated, "*as what is not provided for in the Constitution cannot be applied".*

71. Consequently, according to the Applicants, as there is no possibility of electing the Government after the vote of no confidence, the Constitution provides clear norms to resolve the current constitutional situation to protect democratic legitimacy, thus dissolving the Assembly. Therefore, the President, by issuing the Decree to mandate a candidate to form the Government, after the successful motion of no confidence, acted contrary to Article 82.2 of the Constitution, which article is naturally related to Article 100.6 of the Constitution.

72. The Applicants for support of their arguments are also referred to the decrees issued in similar previous situations regarding the dissolution of the Assembly, specifically in 2010 and 2017, where after the vote of no confidence, the

Assembly was dissolved by Article 82.2 of the Constitution. They point out that *"in this regard, the practice of issuing decrees by Jakup Krasniqi, the Acting President of the Republic of Kosovo in 2010, and President Hashim Thaçi in 2017, clearly confirms that after the motion of no confidence in the government, the only constitutional way of action is the dissolution of the Assembly through Article 82.2 of the Constitution".*

73. In this respect, they further emphasize that *"The practice of issuing decrees in the proper constitutional way following the successful voting of the no-confidence motion is about respecting democracy vox populi (the voice of the people), which will be represented in the legislation body. So this body elects the government (see Article 65.8 of the Constitution), which derives from the dominant and political power within the parliament and is rooted into the political force that wins the elections"*. This can also be an absolute or relative victory, according to the Court's Judgment in case KO103/14. Thus, this democratic legitimacy cannot be transferred to the parties that are ranked after the first place in the elections of 6 October 2019, to form a government without the winner of the elections.

74. They also argue that Article 82.2 does not contain an alternative provision for the dissolution of the Assembly, this provision expresses the only possible way to create the opportunity to maintain the constitutional order set out in Article 7 [Values] of the Constitution. "*The modal verb "may", stipulated in this constitutional provision, does not constitute an alternative to its application, but provides the only possible (most adequate) constitutional solution to enforce the will of the people, by holding parliamentary elections [...]".* Therefore, for these reasons, they consider that the challenged Decree is also contrary to Article 84.4 in conjunction with Article 82.2, and Articles 4 and 7 of the Constitution.

75. Regarding the content of Article 95.5 of the Constitution, they further argue that Article 95.5 cannot be activated as in this case the Prime Minister has not resigned as provided in Article 95. 5 of the Constitution. Therefore, resignation and dismissal are not synonyms. And precisely because of this difference, according to them *"in this way, also the chains of the implementation of constitutional norms are separated".* If the Prime Minister had resigned then the President would be obliged in consultation with the political parties or the coalition that has won the majority in the Assembly, to mandate the new candidate to form the Government.

76. Another case when paragraph 5 of Article 95 of the Constitution could be activated according to the Applicants, is the case of death, or permanent inability to exercise the function of Prime Minister. But the Constitution does not stipulate that in case of a vote of no confidence in the Government, Article 95. 5 of the Constitution is applied.

ii) Allegations of violation of the constitutional provisions during the procedure for the appointment of the candidate for Prime Minister for the formation of the Government through challenged Decree

77. Following their allegation that the President was obliged to announce the elections for the Assembly, the Applicants claim that other constitutional violations have been identified with the President's Decree, where the President, according to them, has unconstitutionally activated Article 95 of the Constitution, but after doing so, in an unconstitutional way has continued with other violations within Article 95 of the Constitution.

78. They emphasize that paragraph 5 of Article 95 of the Constitution consists of the following elements: (i) if the Prime Minister resigns or; (ii) for other reasons, his/her position remains vacant, the Government falls, and (iii) the President, in consultation with the political parties or the coalition that has won the majority in the Assembly, mandates the new candidate to form the Government.

79. First, regarding item (iii) mentioned above, the Applicants complain that the President has invited to consultations all parliamentary political parties as participants in the elections of 6 October 2019, thus violating Article 84.14 of the Constitution, which provision according to the interpretation of the Court in case KO103/14 requires that the President regarding the candidate for Prime Minister for the formation of the Government should consult only with the party or coalition that has won the majority in the Assembly and not with other parties.

80. Second, the Applicants complain that *"after the successful vote of no confidence in the government as a whole, [...], under Article 84 par. 14 in conjunction with Article 95 par. 4, without waiting for the mandate of the political party that won the elections [6 October 2019], has appointed as a candidate for prime minister from the ranks of the political party which was ranked second in the early parliamentary elections of 6 October 2019. This unconstitutional decree preceded the exchange of letters dated 22 April 2020 and 29 April 2020 (The letters were not made public) between the President and the LDK. Thus, the issuance of this decree is in complete contradiction with Article 84 par. 4 in conjunction with Article 82 par. 2 and Article 84 par. 14 of the Constitution [...] "which stipulates that the President" appoints the mandate holder for the formation of the Government, upon the proposal of the political party or coalition, which constitutes the majority of the Assembly"*.

81. In this line of reasoning, the Applicants state that the President's Decree is contrary to the Constitution, as the party or coalition that won the elections of 6 October, 2019, namely the LVV, (i) is the only political party that should consult for the formation of the new Government according to Article 95.5 of the Constitution, and (ii) it is the only political party that has the right to propose the candidate for the formation of the new Government under Article 84.14 and Article 95 of the Constitution and Judgment of the Court in case KO103/14.

82. The Applicants also complain about the time limit for proposing a candidate for Prime Minister, stating that neither the Constitution, nor any law, nor any judgment of the Constitutional Court provides for a deadline for proposing a candidate by the winning party. Consequently, the President according to the

Constitution has no right to set deadlines arbitrarily if they are not defined in the Constitution and the legislation in force. According to them, the constitutional deadlines start to flow only when to the President is nominated a candidate for Prime Minister. This is because the President only mandates the proposed candidate in accordance with the political will.

83. Therefore, according to the Applicants, *"the exclusivity of sending the name remains at the discretion of the winning party, and this discretion is unlimited"* and gives the winning party the opportunity to send *"the name of the candidate at the most appropriate moment that it considers that all political, administrative and technical requirements for sending such a name have been met"*. They point out that this is also evidenced by the creation of constitutional institutions in 2014 when the formation of the government lasted six (6) months, only and exclusively as a result of not sending the name of the candidate for Prime Minister from the winning party to the President.

84. They further emphasize, citing the Commentary, the Constitution of the Republic of Kosovo *Hasani, Enver and Ivan, Čukalović (2013)* GIZ, Prishtina (hereinafter: the Commentary on the Constitution) that the President cannot invoke the constitutional jurisdiction "*ensuring the functioning of institutions"* to arbitrarily set constitutional deadlines, which were not by the Constitution itself. Therefore, his function as a guarantor of the constitutional functioning of the institutions defined by the Constitution does not *"seeks to give any additional competence to the President, but only to impose the obligation that the President has to guarantee the constitutional functioning of the institutions within his specific competencies"*.

85. They also point out that the lack of a deadline to propose a candidate for the winning party in the elections is intended to give the winning party room to negotiate the formation of a government, reasoning that *"the constitution-makers"* intended to set deadlines, they did so in concrete provisions of the Constitution, referring to the concrete provisions of the Constitution which set deadlines such as Article 66, paragraphs 1 and 2; Article 70.2; Article 82, paragraph 1; Article 86, paragraphs 2 and 6; Article 95, paragraphs 2 and 4; Article 100, paragraphs 3 and 5; Article 115, paragraph 5 of the Constitution. Therefore, allowing the President to set such a deadline that is not provided for in either the Constitution or other applicable legislation, means that the President is given the right of the "*constitution-maker"* which is the sole responsibility of the Assembly.

86. Therefore, they hold the position that setting the deadline through the President's letters, which in this case was the deadline of twenty (20) days for LVV to propose the candidate for Prime Minister, or any other time limit is arbitrary and is not provided for in the Constitution and applicable law, and this makes the Decree of the President unconstitutional, as well.

87. Furthermore, the Applicants reason that the drafters of the Constitution, by not setting a deadline for the proposal of the candidate for Prime Minister by the winning party, intended to give the election winner enough space to form a Government through the political process, thus deliberately leaving it open deadline and not giving the right to any institution to limit it. In this regard,

they refer to the Court case KO119/14, where according to them the Court had found that although the winning party had *"delayed the proposing of the name to the Speaker of the Assembly for 6 consecutive months, the Court nevertheless did not limit any deadline but simply found that the right to propose the name for the Speaker of the Assembly belongs only to the first ranked party in the elections, So even though the delay in that case was 6 months (in contrast of 20 days in the present case) and the non-sending of the name for the President of the Assembly had blocked the constitution of the Assembly, and the formation of the Government, too, the Court again did not terminate the right of the first party to send the name of the Speaker of the Assembly."* They also hold the position that the deadline is not consumed with the exchange of letters, especially when in these letters the LVV has stated that it does not reject the proposal of the candidate for Prime Minister.

88. The Applicants also challenge the President's position that by not nominating the candidate to form the Government, the LVV has waived their right to make such a proposal. They claim that the rejection of the proposal to nominate the candidate for the formation of the Government by the winning party of the elections, should be done explicitly and not considering that by not proposing the candidate according to the President's requests in exchange for letters with Mr. Albin Kurti, the winning party of the election has refused to submit such a proposal.

89. They consider that in certain cases the winner of the elections may notify the President that he does not want to exercise his right to propose a candidate for prime minister. According to them, there is such a practice in Kosovo, referring to *"The refusal of Mr. Veseli to nominate a new candidate for Prime Minister in 2019 following the resignation of Mr. Haradinaj"*. And according to them in this case, even though it was a matter of resignation and not a motion of no confidence, the President did not proceed further with the formation of the new Government with the political forces but dissolved the Assembly. According to them, the Judgment of the Court itself in the case KO103/14, in paragraph 87 provides for the possibility of the party to refuse to send the name for candidate for Prime Minister.

90. Therefore, they allege that the President in the present case, violated the Constitution when he considered that LVV has waived the right to nominate a candidate for Prime Minister, as LVV has never made an express refusal to nominate a candidate for Prime Minister. On the contrary, according to them, LVV had explicitly stated in the correspondence with the President that they are not rejecting the proposal for the candidate for Prime Minister for the formation of the Government.

91. Finally, the Applicants point out that the actions taken in connection with the proposal of the candidate for Prime Minister for the formation of the Government, in addition to constituting procedural violations of the Constitution, with the granting of the candidate for Prime Minister to form the Government to the second party that emerged from the elections, by this action *"democratic legitimacy will change; it would violate the will of the citizens through the creation of artificial party conjunctures to create the government contrary to democratic legitimacy, respectively the voice of the people; would*

lose the meaning of the democratic race to win the parliamentary elections; it would be possible for the fall and formation of the new government through the creation of party parliamentary conjunctures to be very common (frequent); the functioning of the entire state apparatus under the management and control of the executive power would be disrupted as a result of the frequent alternation of political parties in the participation of the executive branch. In this way, the constitutional order of the Republic of Kosovo would be overturned".

92. As a summary of the allegations of the Applicants, for the reasons mentioned above, the Applicants consider that the Decree of the President is unconstitutional, as: (i) The President had the obligation to announce early elections for the Assembly after the successful motion of no confidence in the Government in accordance with Article 82, paragraph 2 of the Constitution and not to appoint a candidate for the formation of the Government; (ii) The President violated the Constitutional provisions during the procedure for the appointment of the candidate for Prime Minister for the formation of the Government through the challenged Decree, more specifically: (iii) The President has exceeded his powers provided by Article 95 of the Constitution when he invited consultations of all political parties represented in the Assembly (first and second consultative meeting with political parties) although with the Constitution he was obliged to consult only with the winning party of elections 6 October 2019, in this case only the LVV; (iv) The President bypassed the winning party of the elections of 6 October 2019 on the occasion of the appointment of the candidate for Prime Minister for the formation of the Government in violation of Article 84, paragraph 14 and Article 95 of the Constitution and Judgment KO103/19 of the Constitutional Court, as the right to propose a candidate for Prime Minister belongs only to the winning party of the elections, in this case only to the LVV; (v) neither the Constitution nor the Judgment KO103/14 provide a deadline for the winning party to propose a candidate for the formation of the Government, so setting any deadline, in this case the 20-day deadline, in which case the LVV to propose the candidate for prime minister to form the Government, was arbitrary and without constitutional basis; (vi) neither the Constitution nor the Judgment KO103/14 foresee the possibility of rejection of the candidate's proposal for Prime Minister by the winning party in a non-expressive manner, therefore, the winning party may reject the proposal for the mandate only in an expressive manner.

Comments submitted by the interested parties regarding the merits of the referral

Comments of the President of the Republic of Kosovo, Mr. Hashim Thaçi

93. The President initially stressed that *"the referral in case KO72/20 should be declared inadmissible by the Constitutional Court, for the fact that it is unclear both in its accuracy and in its reasoning".*

94. Regarding the role and the competencies of the President, after counting the articles of the Constitution that are related to his competencies as articles: 4, 18, 60, 66, 69, 79, 80, 82, 83, 93, 94, 95, 103, 104, 109, 113, 114, 118, 126, 127,

129, 131, 136, 139 and 144 of the Constitution state that "*Applicants are not clear about the role and functions of the President [...], based primarily on the abovementioned articles of the Constitution, Law No. 03/L-094 on the President [...], the case law of the Constitutional Court, especially in the present case of the Judgment of the Constitutional Court in the case number KO103/14*".

95. The President emphasizes that his mandate is also of a political in nature, as the President participates in the management of public affairs. In this regard he refers to the Judgment KO28/12 and KO48/12 stating that "The Constitutional Court notes that the expression *"participate in the conduct of public affairs " Article 25 (a) of the ICCPR [International Covenant on Civil and Political Rights] is key to the exercise of the mandate of a President elected in a fair and legitimate manner under the Constitution as part of his/her duties, as provided by Article 4, [...]"* of the Constitution. While, "*Article 4 [Form of Government and Separation of Power] of the Constitution states that "The President of the Republic of Kosovo represents the unity of the people.... [and] ... is the legitimate representative of the country, internally and - 1 - externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution*".

96. According to the President *"This wording regarding the role of the President is key to one of the fundamental principles of the Constitution of Kosovo, namely the doctrine of separation of powers"*. Some of the powers of the President very clearly affect the political life of the country, such as when making the appointment/proposal of the candidate for Prime Minister for the formation of the Government. In this regard, he also refers to the case of the Court KO12/18, stating that *"The Court considers that the constitutional bodies are obliged to respect each other's competencies in the exercise of their constitutional functions"*.

97. Therefore, he adds that "*The President is the main factor that has the duty to maintain the unity of the people and the stability, as well as to guarantee the democratic functioning of the institutions of the Republic of Kosovo, in the concrete case, of the Government [...]. The President thus performs special functions and in no way can he be prohibited from performing these functions, because this contradicts the representation of the unity of the people as President. [...] Therefore, the duty of the President to guarantee the democratic functioning of the institutions is a permanent and continuous duty, which is performed by always taking into account the representation of the people and the protection of the interests of the citizens.*

98. Regarding the legal basis of the challenged Decree, the President emphasizes that it is fully in line with the constitutional scope and powers of the President, "*in particular with regard to Article 4 (1) and (3), Article 82, Article 83, Article 84 (2), (4) and (14) and Article 95 of the Constitution*".

99. After the President cites the abovementioned articles of the Constitution, he emphasizes that the link between the abovementioned articles of the Constitution has been confirmed in the practice of this Court, specifically

referring to the paragraph 61, 66, 67, 68, 73, 80, 8, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95 and 95 of the Judgment in case KO103/14.

100. In this regard, he states that the provisions of Article 4 paragraphs 1 and 3, Article 82, Article 83, Article 84 (2), (4) and (14) and Article 95 of the Constitution as well as the Judgment of the Court KO103/14 constitute the main axis according to which the President proposed to the Assembly the candidate for Prime Minister and consequently has followed the procedures for the formation of the Government.

101. As for the no-confidence motion against the Government, the President points out, among other things, that the reason for the motion of no confidence was *" […] the creation of the possibility of forming a new Government was in the request for motion, which would address the immediate challenges facing the country, both in the position of foreign policy and in the dynamics created within the country". In the course of this request, the Assembly of the Republic of Kosovo by Decision No. 07-V-013, of 25.03.2020, approved the No Confidence Motion against the Government of the Republic of Kosovo with the votes of more than two thirds (2/3) of the deputies of the Assembly (82 deputies) ".*

102. The President also emphasizes the fact that after the motion of no confidence "*has invited all political parties to the meeting to discuss further steps after the No Confidence Motion against the Government. The meetings were held in the Cabinet of the President of the Republic Kosovo on 01 and 02 April 2020. In these meetings with the leaders of the political parties, the absolute majority of them requested the President to avoid early elections and to form a new Government in the current composition of the Assembly of the Republic of Kosovo".*

103. Regarding the non-proposal of the candidate from the LVV, the President states that he has sent five (5) letters, by which he requested the President of the LVV to propose its candidate to form the Government. In this regard, the President emphasized that the LVV has not responded to any of the President's letters for the appointment of the candidate for Prime Minister. He further states that *"Responses to letters sent by the President have always come from the Caretaker Prime Minister. These letters show the tendency of the Caretaker Prime Minister to interfere with the competencies of the President, seeking clarification and showing him how to act in the concrete case. In this case, the Caretaker Prime Minister disregarded the powers of the President in the exercise of his functions, preventing him from performing his constitutional duties. This contradicts Article 4, Article 83, Article 84, Article 89 of the Constitution and the judgments of the Constitutional Court. The Constitutional Court in the Judgment in case No. K012/18 (11 June 2018) states: "[…] considers that the constitutional bodies are obliged to respect the competences of one-another during the exercise of their constitutional functions […]"*

104. The President, on the basis of the above, also emphasized that *"The values of the constitutional order of the Republic of Kosovo, established not only in Article 7 of the Constitution, are based on the principles of democracy, respect*

for human rights and freedoms and the rule of law, non-discrimination, pluralism, separation of state powers and these require that constitutional norms not to be abused. If such an abuse occurs, as in this case, where the right to nominate a new candidate to form the Government from the Vetëvendosje Movement has not been exercised, the President is authorized to find a solution to overcome this situation, using and always respecting the spirit of the Constitution and the Judgment of the Constitutional Court in case KO103/14.

105. Therefore, the President maintains that *"Failure to declare or not send the name by the President of the Vetëvendosje Movement and his constant public statements in avoiding sending the name (finding all sorts of excuses in letters and statements, especially by reiterating the request for holding the elections and the dissolution of the Assembly sent on behalf of the Caretaker Prime Minister) have been sufficient arguments to show that the Vetëvendosje Movement has waived its right to nominate a candidate for Prime Minister. The Vetëvendosje Movement tried at all costs, to impose the dissolution of the Assembly and the announcement of early elections, and it has tried to do through the Caretaker Prime Minister, as well as in the meeting of 22 April 2020 with the leaders of parliamentary political parties, in which only the representative of Vetëvendosje Movement demanded the dissolution of the Assembly and the announcement of early elections. This situation of non-use of the right to obtain a mandate has been foreseen by the Constitutional Court in paragraph 87 of the Judgment in case No. KO103/14 (1 July 2014): "However, the Court notes that it is not excluded that the party or coalition concerned will refuse to receive the mandate".*

106. Regarding the deadline for proposal of the candidate for the Prime Minister, the President also states that *"it should be appreciated that the President in accordance with the rules, democratic principles, political correctness, predictability and transparency has made continuous efforts to consult with the Vetëvendosje Movement, which has won the largest number of seats in the Assembly and gave it the opportunity to nominate the candidate for Prime Minister from among their ranks. As noted above, the Vetëvendosje Movement has consistently requested the dissolution of the Assembly under Article 82, paragraph 2 of the Constitution".*

107. The President, after emphasizing the steps he has taken after the exchange of letters with the President of LVV and the meetings with the political parties and *"their unanimous declaration, except for the representative of the Vetevendosje Movement, who are for a new Government and for the country not to go to the elections, the President addressed the Democratic League of Kosovo as the second party emerged from the Early Elections for the Assembly of the Republic of Kosovo held on 6 October 2019, to propose the potential candidate for the formation of the Government of the Republic of Kosovo, which should ensure that he will have the right number of votes in the Assembly of Kosovo and pledge to create a stable and inclusive Government in accordance with the prevailing criteria for formation of the new Government".*

108. Referring to Article 95 of the Constitution and paragraph 90 of Judgment KO102/14, the President stated that the challenged Decree *"is issued taking into account the fact that the Constitution gives the President the opportunity for discretion. The President issued this decree based on the meritocracy and actions of political parties and taking into account that the [the LDK] has the opportunity to make the Government without going to new elections [...] Therefore, when the President issued Decree No. 24/2020 on the nomination of the candidate for Prime Minister has acted within the constitutional scope, thus guaranteeing the principle of separation of powers and democratic values of government and representation of the best interest of the people of Kosovo, as a representative of their constitutional unity. But also guaranteeing the non-jeopardy and reduction of human rights and freedoms established in Chapter II and Chapter III of the Constitution".*

109. Regarding the Applicants' allegations that according to previous practices after the no confidence motion the Assembly was dissolved, the President emphasized that *"The claims of the Applicants that the President did not act in accordance with the earlier cases of the dissolution of legislatures do not stand at all. Even in this case, as in previous cases, the President took into account the will of the political parties, namely the will of the people's elected representatives. In the following three cases of dissolution of legislatures (Fourth, Fifth and Sixth Legislatures), the will of the political parties has been explicitly the dissolution of the Assembly and the President has decreed their will. Whereas, in the present case, the will of two thirds (2/3) of the people's representatives is to form a new Government and the country to not go in the elections and, in the course of this will, the President has acted".*

110. The President clarified this aspect by elaborating the course of the dissolution of the Assembly that took place in 2014, 2017 and 2019, adding that "*The Applicants must be clear that the President has in no way acted contrary to the Constitution. The President by Decree no. 24/2020 (30.04.2020) has protected the principle of constitutionality, given that he is representative of the unity of the people. The President, first of all, has taken into account the interest of the citizens of the Republic of Kosovo, as established in the Constitution. In order to overcome this situation, the full functioning and cooperation of vital state institutions of the Republic of Kosovo, such as the Assembly and the Government, is necessary. Paragraph 117 of the Judgment of the Constitutional Court in case no. KO12/18, inter alia reads: "[...] Key decisions in policy-making for the governance of a country must be made by the constitutional bodies who have democratic legitimacy, namely by the Assembly and the Government [...]",* repeating the abovementioned reasons, according to which the President has decided to issue the challenged Decree.

111. Regarding the allegation that the President without waiting for the proposal of the winning party has proposed the candidate from the second party in the elections of 6 October 2019, the President emphasized that *"after the vote of no confidence motion, he has continuously consulted only with the party that has won the majority, in this case with Vetëvendosje Movement."* Adding that the winning party has consistently neglected the President and that "*Article 4 paragraph 3 and Article 84 (2) of the Constitution give him a constitutional competence that aims to ensure the democratic and constitutional functioning*

of institutions. The President emphasizes that his constitutional competence to nominate a candidate for Prime Minister, deriving from Article 84 (14) and Article 95 of the Constitution, is only one of the competencies through which the President can guarantee the democratic and constitutional functioning of institutions".

112. Regarding the application of Articles 82 and 95 of the Constitution, the President stated that: *"the current situation in which the challenged Decree was issued is not "after the elections", as established in Article 95 paragraph 1 of the Constitution, but is after the vote of no confidence motion, where the post of Prime Minister has practically remained vacant. In such a situation, if the challenged Decree were not issued, the democratic principles and the entire constitutional system would be endangered, as the two-thirds (2/3) of the deputies of the Assembly expressed their vote of no confidence in the Government".*

113. Regarding the Applicants' allegation that the President should not activate Article 95 of the Constitution after the motion of no confidence, he states that *"Article 100 paragraph 6 and Article 82 paragraph 2 of the Constitution must be read in conjunction with Article 95 paragraph 5 of the Constitution. This is because of the different situations that can be created, as in the case of the current situation".*

114. The President further stated that *"It should be borne in mind that Article 95 paragraph 5 of the Constitution (which the Constitutional Court has not interpreted in previous cases) refers to the procedure of forming the Government after the fall of a previous Government, as we have in the present case. In this case we cannot refer to the procedure of nominating the candidate for Prime Minister after the parliamentary elections, but we refer to the consultations with the political parties or coalitions to establish the Government, in case the Government falls. In this regard, Article 82 paragraph 2 of the Constitution is applied by the President if it is seen that there is no will from the parties represented in the Assembly to form the Government. Whereas, Article 95 paragraph 5 of the Constitution regulates the procedure for the mandate of the candidate for the establishment of the Government, after the fall of the Government. So, there are two completely different situations and we are not dealing with any collision of articles or prevalence of articles".*

115. In this regard, the President considers that *"these elements are related and that Article 95 paragraph 5 of the Constitution should be read in conjunction with Article 100 paragraph 6 of the Constitution, due to the fact that one of the other reasons when the post of Prime Minister remains vacant is when his/her Government is dismissed through the No Confidence Motion. This is strengthened by the argument that Article 95 paragraph 5 of the Constitution mentions the word "resignation of Prime Minister", whereas in Article 100 paragraph 6 of the Constitution mentions the word "...the Government is considered dismissed [...] ".In both these situations there is a legal effect of being resigned. Related analysis means that if the Prime Minister resigns and his Government is resigned, in any case his position remains vacant because in the event of a successful vote of no confidence, the Assembly, in addition to*

the Government, deprives the Prime Minister of legitimacy, leaving the Prime Minister without a constitutional mandate and consequently his position vacant in the legal-constitutional sense. The President considers that both in the case of the resignation of the Prime Minister and in the case of voting of the successful motion of no confidence, the Government falls and is considered resigned. Therefore, this is a new circumstance that puts into operation Article 95 paragraph 5 of the Constitution, which, we reiterate, that has not been interpreted by the Constitutional Court in the Judgment in case KO 103/14, as the fall of the Government and the Prime Minister constitutes a new circumstance from the situation when the Government is formed "after the elections", as established in Article 95 paragraph i of the Constitution".

116. The President further stated that: *"According to Article 95 paragraph 5, hypothetical circumstances when the Government falls may be: Resignation of the Prime Minister; The death of the Prime Minister; Severe illness of the Prime Minister; Punishment of the Prime Minister for a criminal offense, by a final decision and voting on the dismissal of the Government and the Prime Minister (Motion of No Confidence of the Government) [...] the Prime Minister and the Government are connected to each other in terms of legitimacy and the Assembly, when votes for the Government, also votes for the Prime Minister. On the other hand, when the Assembly takes the confidence of the Government through no confidence, it takes the latter also from the Prime Minister, because there is no logic for the post of Prime Minister to exist when a Government led by him/her has been given a vote of no confidence".*

117. Pertaining to the Applicants' references regarding the constitutions of other countries, the President emphasizes that *"these constitutional solutions differ from the context of the Republic of Kosovo in all respects. The Applicants should note that they only refer to articles that are appropriate for their arguments",* giving some examples in this regard. For example the President emphasized that *"there are Constitutions that do not specify exactly what actions the President can take after voting on the successful motion of no confidence in the Government, always in terms of action to create a new Government. In the Republic of Kosovo, however, the case is clear. Article 95 is the article that authorizes the President to act after the vote of no confidence motion in the Government of the Republic of Kosovo, as it is considered that the successful voting of the motion results in the legal-constitutional effect that the post of Prime Minister remains vacant (resigned Prime Minister).*

118. Regarding the content of Article 82 of the Constitution, the President argues that *Article 82 of the Constitution has two paragraphs. Paragraph 1 has three subparagraphs. Paragraph 1 defines three situations when the Assembly is dissolved automatically, if these situations occur. In the case of paragraph 2 of Article 82 of the Constitution, the matter is entirely different, because it is determined that "The Assembly may be dissolved by the President…."*, the *expression "may" does not constitute an explicit obligation for the President, but obliges the President to make an assessment of the circumstances of whether or not the Assembly may be dissolved, after voting on the successful motion of no confidence in the Government. Thus, the verb "may" shows that the dissolution or not of the Assembly is in the will of the President's*

assessment, after consulting with the political parties represented in the Assembly, which he did in this case. This is the reason why Article 82 of the Constitution is divided into two paragraphs, where the first paragraph defines the situations when the Assembly is necessarily dissolved, while the other paragraph defines the situation when the Assembly may be dissolved."

119. Regarding the Applicants' allegation that the President did not mention the paragraphs of Article 95 according to which he issued the Decree, the President clarified that *"in this case the preamble of the Decree stipulates Article 95 of the Constitution, without specifying the paragraphs, due to the fact that the President has activated Article 95 of the Constitution in entirety, including paragraph 5 of this article (Article 95 paragraph 5), as he considers that the post of Prime Minister has remained vacant and that the Government has fallen after the successful motion of no confidence. Another reason why in the preamble of the challenged Decree is Article 95 of the Constitution has to do with the fact that the President could not specify the paragraphs, because we are now in a different constitutional situation and not "after the elections". […]"*

120. Regarding the Applicants' allegation that the President is not "constitution-maker", the President emphasizes that *"he is clear about his function assigned by the Constitution, the laws and some Judgments of the Constitutional Court, which are already a constitutional norm. Therefore, the President reminds the Applicants that he has never played the role of a constitution-maker, but has only adhered to his powers set out in Articles 4, paragraph 3; 83, 84 (2) and (14) and 95 of the Constitution"* and Judgment KO103/14.

121. Finally, the President states that *"based on these arguments, Referral K072/20 should be declared inadmissible, because it is incompatible ratione materiae with the Constitution"*.

Comments of the caretaker Prime Minister Mr. Albin Kurti submitted on behalf of the caretaker Government

122. Regarding the dissolution of the Assembly, in accordance with Article 82.2 of the Constitution, the Prime Minister cites the Albanian and English version of paragraph 2 of Article 82 of the Constitution, emphasizing that: *"A comparison of the linguistic versions reveals the fact that during the translation of the text of the Constitution from English into Albanian, the verb "may" was translated as if the verb "can" had been used. In this way, the constitutional norm which in the original version (in English language) approved by the ICR [International Civilian Representative] has an authorizing/permitting provision, so it is a norm that recognizes to the President a competence and that in fact obliges the President to dissolve the Assembly, is being misinterpreted by the President and several political forces as an alternative norm, which leaves the matter of the dissolution of the Assembly to the discretion of the President. However, referring to hitherto constitutional practice and testimonies of the members of the Constitutional Commission, which will be elaborated below, it will be seen that there have never been any doubts about the obligation of the President to dissolve the parliament after a successful motion of no confidence"*.

123. The Prime Minister further added that *"In legal theory and practice, the character of the norm is determined not only by a verb in the sentence, but by the way it has been constructed. Consequently, the use of the verb "may" does not in itself determine that the norm has an alternative character. For the norm to be considered an alternative, it must include in the wording of its text at least another alternative that may be chosen by the body to which the discretion of assessment and selection between alternatives has been recognized".*

124. He added that *"examples of alternative norms we have in the Constitution of Kosovo, too. Thus, Article 62, paragraph 4 leaves it to the discretion of the Vice President of Municipality to refer a matter to the Constitutional Court, even after assessing the compliance of a municipal act with the freedoms and rights guaranteed to communities by the municipal assembly." […] "In comparative constitutional law, alternative norms which leave to the discretion of a constitutional body the choice between alternatives are those after a motion of confidence or after voting a minority government. Such examples of wording of norms are for example: "If the Parliament votes a minority government, the President may appoint the Prime Minister/Chancellor or may announce elections*"; or "*If the Parliament withdraws its confidence from the Prime Minister, the latter may seek another governing partner, may request the declaration of emergency lawmaking, or may request the President to announce elections".*

125. Therefore, the Prime Minister maintained that *"Based on the wording of Article 82.2 "The Assembly may be dissolved by the President of the Republic of Kosovo following a successful vote of no confidence against the Government", it is noted that the Constitution-maker has provided no other alternative for the President. Therefore, this norm has always been understood in the context of a destructive motion of no confidence which, in addition to the dismissal of the Government, also results in the dissolution of the Assembly and the announcement of elections".*

126. In this regard, the Prime Minister stated that *"the Constitutional Court of the Republic of Kosovo, in relation to the alternative character of constitutional norms, has concluded that if the Constitution-maker had intended to provide an alternative in the Constitution, it would have done so explicitly. For this reason, what has not been provided for in the Constitution cannot be considered as a hypothetical alternative".* He supports this argument based on paragraph 71 of the Court Judgment in case KO29/11, stating that *"If it had been the intention of the drafters of the Constitution to provide for an alternative election procedure, with only one candidate nominated, the Constitution would have expressly provided for such a procedure."* Therefore, according to him, "*In the same spirit, if the Constitution-makers had intended to present another alternative to the dissolution of the Assembly, then they would have done so in the Constitution".*

127. Regarding the Applicants' allegation that the Court should be based on the constitutional document that preceded the Constitution of the Republic of Kosovo, specifically the Constitutional Framework, the Prime Minister states

that *", the Constitutional Court has used the Constitutional Framework to compare the amendment in constitutional arrangement of state bodies. Therefore, based on reading the decisions of the Constitutional Court, the comparison of the Constitution of Kosovo with the Constitutional Framework can be clearly seen"*. In this regard, he referred to *"paragraphs 69, 70 and 71 of case No. KO19/11, in order to understand the reasons why the Constitution-maker has changed the constitutional arrangement regarding a certain situation, through the method of historical comparison of constitutional acts has achieved to bring to the surface the intent and the will of the legislator"*.

128. In this respect, the Prime Minister emphasized that *"Prior to the declaration of Independence, in Kosovo was known the so-called "constructive motion of no confidence" based on which a government can only be dismissed if a new parliamentary majority immediately elects the successor to the Prime Minister of the dismissed Government. In such a situation, the Assembly is not dissolved but continues to function until the end of the term of the mandate provided by the Constitution"*.

129. In the comparative aspect, the Prime Minister cited, among other things, the Constitution of Albania, emphasizing that *"Article 104 of the Constitution of Albania provides for the right of the Prime Minister to request a motion of confidence in the Assembly. Voting of a motion of confidence by less than half of the members of the Assembly leads to the dissolution of the Assembly by the President of the Republic within 10 days, more or less as in the case of Article 82.2 of the Constitution of Kosovo. [...] Article 105 of the Constitution of Albania stipulates the constitutional procedure of the motion of no confidence. Here, the voting of no confidence is conditioned with the election of more than half of the members of the Assembly of a new Prime Minister, as in the case of the Constitutional Framework"*.

130. Regarding the Constitution of Germany, the Prime Minister emphasizes that "*The German Constitution provides for a motion of confidence in two provisions, Article 67 and Article 68 thereof. Article 67 provides for the possibility of a motion of no confidence requested by the parliament (Bundestag) only with the election of his successor. The President in this case only dismisses the Prime Minister and appoints the new election of the Bundestag for Kanzler. [...] While Article 68 provides for the possibility of a request for a vote of confidence by the Prime Minister (Bundeskanzler) himself and the obligation of the President, in case of failure of this request, to dissolve the parliament. [...] Both in the case of Article 67 and Article 68, the German Constitution leaves no room for the President's discretionary power, but in both cases clearly provides for his obligation to act in the manner set forth by the Constitution"*.

131. The Prime Minister also emphasized that the comparative law, leads *"to the conclusion that except that in states where the right to try to form a new Government, after the overthrow of the previous composition of the cabinet, is expressly provided for in the Constitution, in those states, in contrast to Kosovo"* (i) the election of a deputy to the position of prime minister or minister does not result in the loss of his term as a member of Parliament; (ii) there are no guaranteed seats for minority representatives in parliament; (iii)

there are no guaranteed seats for minority representatives in the composition of the Government*;*

132. Regarding the point (i) mentioned above, in the comments of the Prime Minister it is emphasized that *"The fact that upon his election to the position of Prime Minister or Minister, the deputy ends his term as a member of the Assembly of Kosovo, means his separation from the sovereign who legitimizes him directly. In the event of the fall of the Government, through a motion of no confidence, then all deputies elected to the Government would be excluded from institutional life. In this situation, they would be placed in an unequal position with other deputies, who could continue the term until the end. Detachment of the chain of constitutional legitimacy, which represents the essence of the principle of constitutional democracy, implies the undoing of the democratic order".*

133. Regarding the constitutional and parliamentary procedures in Kosovo after the motion of no confidence, the Prime Minister also refers to practice in 2010 and 2017 where after the successful motion of no confidence the Assembly was dissolved, stating that in the interview of Acting President Mr. Jakup Krasniqi, *"who in an interview on 02.11.2010 had stated that "Perhaps it is good to clarify that this motion occurs according to the constitutional provision where the Assembly is discussed and at the end of this chapter, Article 82 provides that if the motion of no confidence is supported by 61 deputies, then there are no other procedures in the Assembly. The only procedure remains the dissolution of the Assembly and setting the date of the elections".* He added that *"Same findings as those of Mr. Jakup Krasniqi, who was a member of the Constitutional Commission, were publicly presented by the other member of this Commission, Prof. Dr. Arsim Bajrami […]".*

134. The Prime Minister also referred to the speech of the current President who in his previous capacity of Prime Minister *"In the extraordinary meeting of the Assembly of Kosovo dated 02.11.2010, in the capacity of Prime Minister and initiator of the motion of no confidence, he requested for a vote in favor of the motion of no confidence, stressing that, "Today, I believe you will vote righteously by ending the institutional and political crisis and then going out to the citizens in new elections to regain their confidence. By taking action, which is fully in line with our Constitution, you pave the way for the creation of new, more powerful institutions of our state with a new legitimacy".*

135. Regarding the above, the Prime Minister concluded that "*In 2010, the first motion of no confidence was developed in Kosovo, with 66 votes in favor. On the same day, the Assembly was dissolved and the elections were announced. In 2017, a motion of no confidence was also held and on the same day the Assembly was dissolved and elections were announced, without any consultation with any of the political parties and coalitions represented in the Assembly",* adding that *"The argument used that there is a difference between the current motion of no confidence from the previous ones, because in 2010 and 2017 the political forces agreed to dissolve the Assembly and announce the elections does not stand. The Government reiterates that apart that such a consensus did not exist, the Constitution cannot be bypassed by political agreements".*

136. Regarding paragraph 1 of Article 95 of the Constitution, the Prime Minister states that "*the President consults only with the political party or parliamentary group that has won the majority in the elections, whether absolute or relative (paragraph 84 of the Judgment). According to the Court, the right to propose a candidate belongs only to the winner of the elections, whether the absolute or relative winner. In this sense, the Court has emphasized that the President can bypass the winner of the election only if the winner expressly waives its right. But under no other circumstances".*

137. As to paragraph 2 of Article 95 of the Constitution, he stated that *"the Constitution has determined the flow of the time limit only after the candidate for Prime Minister has been appointed by the President. So, no deadline has been set in any moment earlier. This is in compliance with the examples of constitutions where the parliament elects the government, and where no deadlines have been set within which political forces are obliged to form a Government",* as well as in the parliamentary practice of Kosovo when the election of the Government has lasted up to six (6) months.

138. Then, according to the Prime Minister, paragraphs 3 and 4 of Article 95 provide for the procedures to be followed in the event that the proposed candidate fails to win the majority in the Assembly.

139. Regarding paragraph 5 of Article 95 of the Constitution, the Prime Minister stated that *"this paragraph leaves no doubt that it speaks for another situation, other than that after the resignation of the Prime Minister or the vacancy of his position due to death, inability to exercise the function or conviction for a criminal offense. Under no circumstances did the Constitution-maker equate such a situation with the situation after a successful motion of no confidence. However, even if this provision (paragraph 5) applied, or paragraph 4, the emphasis of the Constitution-maker, as considered by the Constitutional Court, is on the political party or coalition that has won the majority in the Assembly. According to the Constitutional Court "The requirement of "holding the majority in the Assembly" under Article 84 (14) of the Constitution must be read in conjunction with the provision of Article 95, paragraph 1, of the Constitution, i.e. the political party or coalition that has won the majority of seats in the Assembly, i.e. the highest number of seats".*

140. The Prime Minister added that *"It is important to note that in the same Judgment, the Court emphasized that the President is not allowed to impose himself in the process of formation of the Government, therefore, even if Article 95 of the Constitution applied, after a successful motion of no confidence, the President should adhere to his constitutional role and wait for the proposal from the political party. For more, see paragraph 68 of the Judgment in case KO 103/14 "As to point (b) After proposal by the political party or coalition, the Court is of the view that the proposal for the appointment must stem from a political party or coalition which will forward the name of the person for candidate for Prime Minister to the President of the Republic".*

141. He also emphasized that if Article 95, paragraph 5 of the Constitution was applicable after a successful motion of no confidence, then this would mean that the Acting President Jakup Krasniqi and President Hashim Thaçi violated the Constitution in 2010 and 2017, respectively, without inviting the winning party to propose a new candidate for Prime Minister.

142. The Prime Minster stated that the LVV has never waived its constitutional right and has consistently asked the President to clarify the legal basis for his actions under Article 95, as this article has 6 paragraphs but the President did not respond to these requests of the election winner interpreting this as a refusal to nominate the candidate for Prime Minister.

143. In sum, regarding this part, the Prime Minister stated that: *"the Government concludes that the President of the Republic of Kosovo, even if Article 95 applied after a successful motion of no confidence, has acted in violation of the Constitution because:* (i) has undertaken self-initiative in forming the Government; (ii) has consulted other political parties, in addition to the election winner (iii) has imposed a deadline contrary to the Constitution; (iv) has interpreted the request of the Prime Minister, Mr. Albin Kurti, to specify the legal basis of the actions of the President, as a waiver of the right to propose a candidate for Prime Minister; (v) has requested the second party to propose a candidate for Prime Minister, who he has mandated by the challenged Decree.

144. As regards the structure and the challenged Decree, the Prime Minister stated that "*while the preamble of the decree of the President does not specify what the concrete constitutional basis of his actions is, the decree has shortcomings regarding its structure and content. Thus, it is a legally invalid act, because public institutions, including the President, must reason the legal basis of his actions. […] Article 95 of the Constitution of Kosovo has six (6) paragraphs which regulate different issues from each other. For this reason, the President cannot invoke a general provision regulating several matters, to justify a concrete action. But he must present a concrete constitutional basis to reason the constitutionality of his decree".*

145. Furthermore, after reiterating some of the arguments mentioned above regarding the steps to be taken after the vote of no confidence, the Prime Minister explained that regarding the Judgment of the Court No. KO103/14 *"has interpreted paragraph 4 of Article 95 of the Constitution, which, as stated several times, regulates the procedure of formation of the Government immediately after the general elections and the constitution of the Assembly. For this reason, this Judgment cannot justify the actions and the Decree of the President".*

146. The Prime Minister also emphasized that the challenged Decree *"provides for a 15-day deadline for the candidate proposed for Prime Minister. From the comparative law it was understood that when after a motion of no confidence the right to attempt to elect a new Government is provided, then it enables only one attempt. Thus, when a Government is elected immediately after the elections and in a constitutional way loses the confidence in the Parliament, then only one attempt is allowed. From the challenged act it is noticed that the President considered the fact that all procedures for the legitimacy and*

election of a new Government start from point zero, similar to the one immediately after the elections, valid".

147. Also regarding the challenged Decree, he states that *"The challenged act is the result of a completely unconstitutional path which has been manifested by the unconstitutional self-initiative of the President to form the Government. That he has exceeded his competences in this regard is proved by his statement in which he also dictates the composition of the government cabinet that he will decree, otherwise he would not do so. He explicitly stated that, "On the issue of integrity, I want to be even more direct. I think and we will not tolerate having members of the government with indictments filed nor in other executive departments".*

148. Regarding the need for a Government with democratic legitimacy by the Assembly, the Prime Minister states that the President has based his unconstitutional self-initiative to form a Government by declaring that the country needs a Government which can take decisions to fight COVID-19 pandemic. In this respect, he states that *"With regard to decision-making regarding the public health emergency situation, it should be noted that at no stage, neither before nor after the motion of no confidence, has there been a failure of the Government to take the necessary measures to fight COVID-19 pandemic"*

149. Therefore, the Prime Minister alleges that *"the allegation of the President regarding the representation of the interests of the Republic of Kosovo inside and abroad is ungrounded, because neither the Constitution nor any parliamentary law limits any of the competencies of the Government after the motion of no confidence. Moreover, the Constitutional Court has considered the Government to be functional even after the resignation of former Prime Minister Ramush Haradinaj".*

150. Finally, the Prime Minister proposed to the Court to render a Judgment by which declares the referral admissible and to declare the challenged Decree contrary to the Constitution as alleged by the Applicants.

Comments of the President of the Assembly, Mrs. Vjosa Osmani

151. In the comments regarding the Referral, the President of the Assembly initially stated that the President through the challenged Decree, has violated the principle of the separation of power, guaranteed by Article 4 [Form of Government and Separation of Powers].

152. She further noted that the principle of separation of powers is also elaborated in the Commentary of the Constitution and in the case law of the Constitutional Court, referring to paragraph 54 in case KO104/14 and case KO98/11 where the principle of separation of powers and the checks and balances between them was emphasized.

153. In this respect and by emphasizing the role of the Assembly regarding the constitution-making and obligation that the implementation of the Constitution brings, she states that "*The Constitution of the Republic of Kosovo*

originates from the people and has been implemented through voting by the necessary majority of deputies of the Assembly of Kosovo, being listed as the basis of the legal-political functioning of the country. Each article and paragraph of the Constitution is inviolable and unamendable, as long as the representatives of the sovereign do not decide otherwise, through the stipulated constitutional procedures for the amendment of the highest legal act of the Republic of Kosovo. As such, all the constitutional provisions are directly applicable by each institution and body in the Republic of Kosovo, as stipulated under paragraph 4 of Article 16 of the Constitution, that highlights that "Every person and entity in the Republic of Kosovo is subject to the provisions of the Constitution". She added that *"Thus, the Constitution has expressively given the right to make the constitution only to the Assembly of Kosovo, namely to the deputies who have won the mandate in accordance with the Constitution and laws in force.*

154. Therefore, the President of the Assembly held the position that "*In this sense, the Constitution does not recognize in any way the competence of the constitution-making to the President of the Republic of Kosovo. And in the present case, the President does not enjoy this right even in terms of setting deadlines regarding the appointment of the candidate for Prime Minister of the country, as long as there is no such constitutional norm.* This is, according to her, because, "*According to the Constitution, in the process of forming institutions, namely the election of the government, the President has the sole competence to propose to the Assembly the name of the candidate determined by the political entity that has won the relative majority in the election. Until this name is sent to the President by that political entity, the Constitution has not given the President any competence or active role".*

155. In relation to the present case, she stated that "*based on the above-mentioned arguments, as well as on the letters sent by the President to the winning entity of the elections where he [the President] states that "[…] I regret to conclude that with your actions, you have not exercised the right to propose the new candidate to form the government, in accordance with the CEC Decision on certification of final results of the early elections for the Assembly of Kosovo, namely his Decree, it can be concluded that the President has overstepped his constitutional powers in relation to his claims to set constitutional deadlines for nomination by the first entity, or even for ascertaining the rejection of the mandate, without such an expressive statement by the winning entity of the elections".*

156. According to her, *"So, the President of the country, by setting a deadline, has created a new constitutional norm, for an issue for which the constitution remains silent. The Constitution does not set deadlines regarding the time available to the winning entity to send the name of the candidate for Prime Minister. Thus, it should be clarified that the only constitutional deadlines set in this regarding begin to be consumed only after the formal mandate of the mandate holder by the President of the country".*

157. Regarding the meaning of the term "amendment" and her allegation that the Decree of the President has the effect of supplementing or modifying the Constitution, the President of the Assembly states that "*Any supplementation,*

alteration or modification of a text according to the Cambridge Dictionary means the amendment or according to the language of the Constitution of Kosovo, a change [...] In this sense, the President of the Assembly requests the Court to "*assess the fact that the risks of quasi-amendment are of a completely constitutional nature.*" *There are four substantial risks that are manifestly related to the Constitution of Kosovo and its spirit. First, they dim the line that separates the constitutional from the unconstitutional and jeopardize the obscurity of the usual hierarchy of institutions in a constitutional democracy. Second, supporting these non-constitutional strategies for constitutional level change may reveal, or even reinforce, a discrepancy between constitutional design and political practice, which consequently constitutional actors may exploit for political purposes. Third, the avoidance of formal amendment rules damages the Constitution itself and the purpose of codification. And finally, this approach completely eliminates the legal certainty that is vital to the functioning of a democracy with a functional rule of law".*

158. Therefore, the President of the Assembly maintained the position that such a form of amending the Constitution violates the principle of supremacy of the Constitution, guaranteed by Article 16 [Supremacy of the Constitution] of the Constitution. Consequently, according to her, the challenged Decree of the President is incompatible with Article 65 of the Constitution [Competencies of the Assembly] which provides that the Assembly decides to amend the Constitution by 2/3 of votes of all its deputies. Furthermore, according to her, the challenged Decree, "*interfering in the competencies of the Assembly, is contrary to Article 4 of the Constitution [Form of Government and Separation of Power] paragraph 1 of this Article"* and *"an attitude that would legitimize or legalize such a decree would radically change our constitutional system, giving the decrees of the President constitutional supremacy over the Constitution itself*".

159. Therefore, as a conclusion in this regard, she stated that *"The lawmaker deliberately did not set a constitutional deadline before the formal nomination by the political entity that won the election, to create the necessary time space for the political entity to be able to create the parliamentary majority by reaching agreements with other political entities. Such a finding is confirmed by the practice of the Constitutional Court itself, where in case KO29/11, paragraph 71, it is specified that "if the purpose of the drafters of the Constitution would have been to present an alternative procedure for elections, with only one candidate nominated, the Constitution would expressly stipulate such a procedure". Even in the present case, the lack of such a norm proves that if the legislators wanted to set a deadline, they would have done so as they had explicitly done in many other cases in constitutional provisions."*

160. She further added that *"The Constitutional Court, through previously treated cases has created the necessary space for political entities to regulate political interaction on their own, without setting a time limit for such a matter. This is evidenced through paragraph 127 of case KO119/14, where the Court found that "it is the right and duty of all members of the Assembly to find a way to elect the President and Deputy Presidents of the Assembly, in accordance with*

the constitutional provisions in conjunction with the relevant Rules of Procedure of the Assembly and make the Assembly functional". So, even though the Applicants in the present case argued that the first party for months did not send a name for President of the Assembly (keeping the institutions unformed), and that it should not be waited infinitely but the right for proposals to be given to the others, the Court ruled that only the first party could nominate that name. Thus, the Court did not set deadlines, but left such a thing to political life, that is, for the deputies to find a way to create the necessary majority. The court never set to the deputies a deadline to 'find this way".

161. The President of the Assembly also alleged that in relation to the issuance of the challenged Decree, "*The President has self-determined competencies for final interpretation of the Constitution".* In this regard, she states the competence of the final interpretation of constitutional provisions is defined by the Constitution. *"Such competence is given exclusively to the Constitutional Court, which according to the constitutional definition is "[...] an independent organ in protecting the constitutionality and is the final interpreter of the Constitution",* according to Article 112 of the Constitution.

162. She added that *"The concept that the Constitutional Court is the final authority for the interpretation of the Constitution is related to the institutional hierarchical position that this paragraph gives to this Court. In this sense, this paragraph puts the Constitutional Court at the highest point of the institutional hierarchy in terms of the function of interpretation of the Constitution".* This, according to her, in the institutional sense, has four meanings*:* (i) that no other state institution can take or exercise the function of final constitutional interpretation on behalf of the Constitutional Court; (ii) that, even if any other state institution has made the interpretation or referred to the constitution to exercise its competence, this can be considered definitively determined only if it passes through the review filter of the Constitutional Court; (iii) no other state institution may use its factual prerogatives to establish sub-concepts of the meaning of the constitution, and that such prerogatives may be considered constitutional only if they pass through the review of the Constitutional Court, and (iv) No other state institution can evade the obligation to follow the interpretation of the constitution according to the Constitutional Court, since the latter, according to this paragraph, is the last institutional authority for its interpretation.

163. She also claimed that *"Through this form of supplementation of the Constitution by decree, the President has made it impossible for the Constitutional Court to exercise another competence: that of exercising its jurisdiction in assessing the constitutionality of amendments, as provided in Article 113.9 of the Constitution. The decree is an amendment that has set a time limit by reducing a certain right of a subject. So, this means that certain individuals have been denied the right to be elected, as a result of setting a non-constitutional time period. Thus, the Decree in question also is contrary to Article 45 [Freedom of Election and Participation], paragraphs 1. and 2. According to the Constitution, such a right may be restricted only by a Court decision, and not by a Decree of the President as in this case".*

164. In this regard, she also referred to several cases of the Constitutional Court which reviewed the constitutionality of constitutional amendments, such as case KO29/12 and KO48/12, stating that *"the Constitutional Court clarified the following: "The Court considers that the proposed amendment does not change the substance of Article 45.1. Therefore, the Court does not consider it necessary to further assess the constitutionality of the proposed amendment. Therefore, the Court concludes that the proposed amendment to Article 45.1 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution". This interpretation of the Court in the case KO29/12 and KO48/12 is also an additional argument or signal that the determination of such deadlines in the Constitution, what the President has tried to do by the Decree, can only be done by constitutional provisions. At this point, I would like to clarify that the purpose is not to prejudge the interpretation that the Court may make of a constitutional amendment setting deadlines, but to clarify that the practice of the Constitutional Court recognizes the standard of restriction of this right only by constitutional provision and by no means by any other act, as it is now the case of the Decree of the President"*.

165. She also emphasized the role of the President as the representative of unit of the people referring also to paragraph 63 of case KO2013/14, stating that the Court *"had found that "[...] The Court considers that it is reasonable for the public to assume that their president, who "representing the unity of the people" and not a sectional or party political interest, will represent them all. Every citizen of the Republic of Kosovo is entitled to be assured of the impartiality, integrity and independence of their President"*.

166. She further also referred to the Opinion of the Venice Commission CDL-AD(2019)019-e, which addressed the competencies of the President of Albania which, among others, noted that *"the President must to remain outside partisan politics, in order to ensure, among other things, fair competition between the parties and the functioning of the rule of law and other activities of the state"*. She adds that *"since the role of the President in Kosovo is such that it requires the representation of the unity of the people and full political neutrality, thus protecting, as the Venice Commission itself suggests, regular functioning of the form of governing. The form of governing cannot be defended by violating its most fundamental principle, that of separation of powers"*.

167. Finally, the President of the Assembly requested the Court *"to issue a Judgment, whereby it holds that the Decree no. 24/2020, of the President, is incompatible* with *the Constitution because through this Decree, the President of the country has overstepped his powers by interfering in the powers of other institutions and consequently falling in violation to the constitutional principle of separation of powers"*.

Comments of the Parliamentary Group of LDK

168. Regarding the Applicants' allegation, the President was obliged, that in accordance with Article 82.2 to dissolve the Assembly, following the no confidence motion, the Parliamentary Group of LDK stated that *"the President has no right to automatically dissolve the Assembly pursuant to Article 82,*

point 2, after the successful vote of the motion of no confidence against the Government, without having in advance the will of the majority of political entities represented in the Assembly. In the present case, if the President were to dissolve the Assembly without the prior will expressed by the majority of the political entities represented in the Assembly, he would arbitrarily terminate the mandate of the deputies of the Assembly, thus committing a serious violation of the Constitution". They add that dissolution of the Assembly based on Article 82.2, could not have been done by the President, *"not only because of the adverb MAY, but also because the drafters of the Constitution did not define the moment when there is a successful vote of the motion of no confidence against the Government, as a moment when the country automatically goes to the elections, but they left the possibility to avoid the elections, to create a parliamentary majority, and consequently to establish a new Government"*.

169. They state that the verb "may" interpreted by the Applicants as the only option is also contradictory and illogical because "allowing the only option" means an obligation which would best reflected by the word "must" or "obliged" and not by the word "may".

170. They state that about this issue, the Constitutional Court had given its assessment also in Judgment KO130/14, where in point 94 states: *"Since, under the Constitution the President of the Republic represents the state and the unity of the people, it is the President's responsibility to preserve the stability of the country and to find prevailing criteria for the formation of the new government in order for elections to be avoided"*.

171. The Parliamentary Group of LDK, with regard to the allegation of the Applicants that there is no relation between Article 100.6 and Article 95 of the Constitution, stated that *"there is a substantial and functional relation between Article 100, paragraph 6, Article 82, paragraph 2, and Article 95, paragraphs 4 and 5 of the Constitution and that the allegation of the Applicant[s] to prevent the President from exercising his powers in relation to Article 95 is unfounded, because, as such, it limits the President's ability to exercise its function in accordance with Article 84, paragraph 2, of the Constitution, where as one of its main competencies is stated that he "Guarantees the constitutional functioning of institutions defined by this Constitution". Such allegations of the Applicant[s] have a blocking character, because they try at all costs to block the absolute parliamentary majority to establish the Government"*.

172. They add that *"The causal link between these constitutional paragraphs lies in the fact that the Government has fallen (as a result of the motion of no confidence) and that the President of the Republic has continued consultations with political parties represented in the Assembly to mandate the new candidate to form the Government."*

173. Regarding the role of the President as *"representative of the unity of people of the Republic of Kosovo",* the Parliamentary Group of LDK holds the position that "*the competencies of the President very clearly affect the political life in*

the country, he has a leading role of the constitutional procedure in the creation of the Government, which is the subject matter of this Referral."

174. Regarding the time limit for the proposal of the candidate to form the Government, the Parliamentary Group of LDK stated that *"the Constitution of the Republic has not explicitly set a deadline in this phase, but has defined a deadline of 15 days after the mandate by the President, the Prime Minister is obliged to present the composition of the Government before the Assembly. The drafter of the Constitution has left this deadline open, because it has considered that it is in the interest of the political entities represented in the Assembly, and it is in the public interest for the Government to be established as soon as possible. However, it is being confirmed now that not setting a "reasonable deadline" for sending the candidate's candidacy for Prime Minister to be mandated by the President of the Republic could be misused to the point of abuse by the relative winner of the election".*

175. Therefore, they state that *"According to the spirit of the Constitution, it remains in the obligation of the President [...] to exhaust all possibilities, within an optimal time, to enable the relative winner of the elections to propose the candidate for Prime Minister. At the moment when it assesses that the relative winner of the elections does not have the will to propose the candidate for Prime Minister and that under certain conditions it is trying to block the establishment of the new Government, the President should consult the political entities represented in the Assembly, and then to ascertain that the relative winner has no chance of forming a parliamentary majority. In the event that the political entities represented in the Assembly prove the creation of a new parliamentary majority, the President is obliged, in accordance with the constitutional norm, to decree the candidate for Prime Minister from this new parliamentary majority".*

176. Therefore, they state that despite that the President has sent several letters to the LVV, *"except for not sending its candidate for Prime Minister to the President, it has never expressed readiness to establish a new Government".* Therefore, according to them, following the consultations with the political parties, and taking into account that the majority of political parties expressed themselves in favor of the formation of the new government, the President has acted in conformity with paragraphs 90, 92, 92 and 94 of Judgment KO103/14. They also stated that "*allegation* [of the Applicants] *that the President should wait for the winning party "to send the name of the candidate at the most appropriate moment, when it considers that all political, administrative and technical conditions have been fulfilled", is completely erroneous. First of all, it is not clear what is meant by "political, administrative and technical conditions".*

177. Referring to Judgment KO103/14, the Parliamentary Group of LDK stated that *"In paragraph "dh" [of item II of the enacting clause of this Judgment]: "In case the proposed candidate for Prime Minister does not receive the necessary votes, the President of the Republic, at his/ her discretion, pursuant to Article 95, paragraph 4, of the Constitution, appoints another candidate for Prime Minister after consultation with the parties or coalitions (registered in accordance with the Law on General Elections) that meet the above*

mentioned requirements, i.e. a party or coalition that was registered as electoral subject in accordance with the Law on General Elections, has its name on the electoral ballot, participated in the elections and passed the threshold".

178. They further stated that examples of the constitutions of other countries referred to by the Applicants *"are not objective references that help the claimant's arguments. Moreover, the constitutional provisions of our Constitution are very clear and there is no room for constitutional dilemmas. This argument is reinforced by point 95 of Judgment 130/14: "Therefore, the Court concludes that the constitutional provisions are sufficiently clear and compatible to lead to the establishment of a new government in accordance with the will of the voters".*

179. The Parliamentary Group of LDK *"requests the Court to EXCLUDE the review of the Constitution of Serbia from the comparative analysis provided by the Applicant. This is because the examination of a document where the citizenship of Kosovo is EXPRESSIVELY denied, can produce unpredictable constitutional and political consequences for the country."*

180. Regarding the allegation of the Applicants that the democratic legitimacy cannot be transferred to the parties ranked after the first place in the elections of 6 October 2019, the Parliamentary Group of LDK stated that *"such claims are unfounded and even absurd. In a parliamentary reply, even with a proportional electoral system, such as we have it, no relative winner of the election has the monopoly of democratic legitimacy, much less in cases where it abstains/refuses to exercise constitutional rights. The Constitutional Court has tried to respond to this case with Judgment 130/14, namely in point 87 where it states that "However, the Court notes that it is not excluded that the party or coalition concerned* [the winning party] *will refuse to receive the mandate. Therefore, based on these assessments, the Constitutional Court has also provided opportunities to get out of such a situation."*

181. Regarding the allegation of the Applicants that the President made an unconstitutional act when, after the vote of the motion of no confidence in the Assembly he has invited all political parties in consultation for the formation of the Government of Kosovo, the Parliamentary Group of the LDK stated that *"the consultations with parliamentary political entities, after the successful vote of motion of no confidence against the government, fall entirely on the constitutional mandate of the President of the country to take all actions in accordance with the expressed will of the majority of political entities represented in Assembly."*

182. They added that *"The refusal of the caretaker Prime Minister to propose a candidate for Prime Minister from the political entity he leads should be interpreted as an attempt by the caretaker Prime Minister to impose the dissolution of the Assembly, contrary to the expressed will of the Assembly with the motion of no confidence against the Government. Furthermore, the refusal to nominate a candidate for the establishment of the Government by the caretaker Prime Minister, who leads the relative winning party of the elections, may be seen as an attempt to usurp executive power contrary to the*

will of the Assembly, expressed in the motion of no confidence against the Government".

183. Finally, the Parliamentary Group of LDK emphasized that some of the consequences of the lack of the Government with full constitutional competencies may be: (i) the inability to respect the principle of separation of powers and parliamentary control over the executive bodies; (ii) inability to proceed draft laws; inability to have different initiatives to addressing in the Assembly; (iii) inability to propose and approve social and fiscal packages; (iv) inability to make decisions to support certain businesses and social categories; Inability to supplement and amend the Law on Budget. Therefore, they requested the Court to declare the Referral as manifestly ill-founded and to hold that the challenged Decree is in compliance with the Constitution.

Comments of the deputies of the Assembly, Behxhet Pacolli and Mirlindë Sopi–Krasniqi from the AKR, supported by deputies Endrit Shala, Haxhi Shala and Albulena Balaj–Halimaj from NISMA

184. The above-mentioned deputies state that *"in order to assess the challenged decree, the Constitutional Court should take into account the overall role of the President of the Republic of Kosovo and the competencies defined by the constitution, both the competencies of the President under Article 84 and the other competencies which are defined to the President of the Republic of Kosovo outside Article 84. Above all, there are two competencies attributed to the President by the Constitution and which define his role in the constitutional system of Kosovo, through which the President can materialize other constitutional competencies. Article 83 of the Constitution provides that the President is the head of state and represents the unity of the people, while Article 4.3 and Article 82.2 provide that the President guarantees the democratic and constitutional functioning of the institutions".*

185. They further challenge the interpretation made by the Applicants regarding Article 82.2 of the Constitution where the Applicants state that in case of a successful motion of no confidence, the President must announce the elections. In this regard, they consider this interpretation "*completely erroneous for two reasons: firstly, this is in contradiction with the hitherto parliamentary practice, and secondly, this is also incompatible with the constitutional provisions, namely Article 95.5. The Applicants should be clear that in 2010 (a practice they quote in their Referral) the Assembly was dissolved by the President under completely different circumstances, where a coalition partner had left the coalition and that a constitutional crisis had been created because in that time, the former President of Kosovo, Mr. Sejdiu, was found in a serious violation of the constitution. Also, the dissolution of the Assembly was done after a motion of no confidence against the government that had been in the third year of the mandate. This motion of no confidence in 2010 was even demanded by the then Prime Minister himself. Also, the will of the political parties in 2010 was to dissolve the Assembly and not to form a new government, as it was objectively impossible to form that government, which did not have a mandate of more than a year.[…] Even in 2017 the situation was the same, when the Assembly was dissolved after a motion of no confidence, but the legislature at that time had already entered its fourth year*

of the mandate and that political parties had not been willing to form a new government".

186. Therefore, they hold the position that the current circumstances are completely different, emphasizing the fact that the Assembly in in the beginning of its mandate and the absolute majority of the political parties have declared themselves for the formation of the new Government.

187. Regarding the allegation of the Applicants that Article 95 of the Constitution does not define how the President should act following a motion of no confidence, they state that *"for the Applicants it should be clear that there are other cases in the world where the constitutions do not specify how the President will act after a motion of no confidence", adding that "the connecting bridge that determines how the President should act after a vote of no confidence against the government is Article 95.5 of the Constitution."* They allege that "*the expression …. "or for any other reason the post becomes vacant" means cases when the post of Prime Minister remains vacant, except for his/her resignation."* And that this also includes the cases when the confidence in the Government is withdrawn through a motion, as in the present case.

188. Moreover, according to the above-mentioned deputies, verb "may" used in Article 82.2, that the President may dissolve the Assembly means that it *"falls on the right of the President to assess the factual and constitutional circumstances, as representative of unity of the people and guarantor of democratic functioning of institutions, whether the Assembly should be dissolved or not. In this case, when the President assessed the dissolution of the Assembly or not according to Article 82.2, he assessed the will of the absolute majority of parliamentary political parties and the new circumstances of the case, especially the mandate of the Assembly and the need for a new, ethical and non-dismissed government, such as the current government. In the framework of his function as a representative of unity of the people, the President must also take into account the will of the parliamentary political parties, especially when it comes to the dissolution of the Assembly in this case. As mentioned above, the President, assessing the political circumstances and the democratic functioning of the institutions, acted also in 2010 and 2017."*

189. Regarding the allegation of the Applicants that the President should have waited the proposal of LVV for the candidate for Prime Minister, the above-mentioned deputies stated that *"though the right to propose the candidate for prime minister is given to the winning party in Article 84.14 of the Constitution, this does not mean in any way that the winning party may abuse with its right to propose the candidate, in the sense that it may delay the proposal of the candidate for prime minister indefinitely. […] The right of the winning party to propose a candidate for prime minister is not an absolute right, it is even more relativized when the situation and constitutional circumstances, as in this case are not "after the elections" but after the successful motion of no confidence against the government, where clearly the parliamentary majority, or the position of the deputies of the Assembly of the Republic of Kosovo has changed in relation to the position*

which was after the elections of 6 October 2019. In this case, it was the role of the President to assess the situation and act towards guaranteeing the democratic and constitutional functioning of the institutions".

190. Referring to paragraph 94 of Judgment KO113/14, which provides that *"Since, under the Constitution the President of the Republic represents the state and the unity of the people, it is the President's responsibility to preserve the stability of the country and to find prevailing criteria for the formation of the new government in order for elections to be avoided",* the above-mentioned deputies stated that *"In this case, it is clear that the burden of maintaining the country's stability and representing the unity of the people, in terms of forming a new government, falls on the President. According to this paragraph, the Constitutional Court requires the President to find prevailing criteria to enable the formation of the government and thus avoid elections. The requirement of the Constitutional Court for the President to avoid elections is an important criterion that the burden falls on the President that by playing the role of the representative of the unity of the people to form a functional government and not create circumstances to announce the elections".*

191. Finally, considering the Decree of the President compatible with the Constitution, the abovementioned deputies stated that *"assessing the circumstances of the present case, the Constitutional Court should take into account the will of the deputies, the behavior of the winning party of the relative majority during the consultation process with the President and the discretion and role of the President in establishing prevailing criteria, in order to avoid new elections, as provided by the Constitutional Court in case KO103/14".*

Comments of the Deputy President of the Assembly and deputy of LVV Arbërie Nagavci

192. Regarding the allegations that the President was obliged to dissolve the Assembly after the no confidence motion, the Deputy President of the Assembly, Arbërie Nagavci, alleges that the challenged Decree is incompatible with the Constitution because the President, after the motion of no confidence against the Government, was obliged to dissolve the Assembly based on paragraph 2 of Article 82 of the Constitution.

193. In this regard, she emphasized that *"in our constitutional system, first of all, we point out that the President of the Republic of Kosovo as a neutral power or as a representative of neutral power, which is above the parties, does not enter into the separation of powers and does not perform any executive function in the political direction of the country. The concept of the head of state, therefore, is more of a formal constitutional category that belongs to the President of the Republic, but that does not mean that the President of the Republic is vested with governing characteristics. Put in this context, Article 83 illustrates the formal position of the President of the Republic as head of state and not his substantial competencies/authority. It is in this direction that the status of the President of the Republic of Kosovo is exactly defined in the sense that "The President is the head of state and represents the unity of*

the people of the Republic of Kosovo." From this constitutional provision it is understood that the President of Kosovo is not allowed to represent any group or political party interests but represents them all together, which gives substantial meaning to the representation of the unity of the people of a state".

194. In this context, she added that *"in performing the function of the head of state, according to this Article, the President of the Republic must adhere to these four principles: a) expression of neutrality: b) state credibility: [...] c) objectivity: and, d) limiting this function to formal aspects: the definition set out in Article 83 for the President of the Republic as head of state must be interpreted narrowly, excluding any space that implies a substantial authority of governance to the benefit of the President of the Republic".*

195. Therefore, she claimed that *"the President of the Republic, on 30 April 2020, issued Decree no. 24/2020 in full contradiction with Article 84 para. 4 in conjunction with Article 82 para. 2 and Article 84 para. 14 in conjunction with Article 95 of the Constitution of Kosovo, by decreeing a new candidate for prime minister, who has not been proposed by the political party or coalition that won the elections."*

196. Also, she emphasized that *"the Constitution of the Republic does not provide for any active step or responsibility of the President to assess or consider in advance the political will of political entities, such as consultation with political parties or parliamentary groups regarding the dissolution of the Assembly or not. However, within the logic of the President to take into account the will of political entities to declare the elections or not, the two political entities that make up about 50% of voters from the elections of 6 October 2019, have declared to be for elections. In addition to VETËVENDOSJE! Movement, PDK also demands elections after the pandemic".* And in this case, the only constitutional requirement for the dissolution of the Assembly is the successful vote of the motion of no confidence against the Government.

197. She added that *"in exercising this competence [dissolving the Assembly], the President of the Republic does not enjoy the discretion to decide, as the decision to dissolve the Assembly is preceded by another condition, such as the successful vote of the motion of no confidence, as well as the lack of an alternative defined by the Constitution for another action.*

198. The Deputy President Arbërie Nagavci, also alleged that *"If the interpretation of the President would be correct that the Assembly is not dissolved after the successful vote of no confidence, but only after the failure to elect the Government and the President, then the provision in Article 82 paragraph 2 is completely unnecessary and without any function. Because, the Assembly, in case of failure to elect the government or the president within the deadline set by the Constitution, is automatically and by itself dissolved in accordance with Article 82, paragraph 1.1, and Article 82 paragraph 1.3, but also in accordance with Article 95, paragraph 4. Even after the successful voting of the no-confidence motion, if the voting of the motion was related to the*

election of the new Government, the Assembly would be dissolved without activating Article 82 paragraph 2".

199. She further adds that *"various states through constitutional regulation have limited the constitutional effects of the no-confidence motion to avoid the dissolution of the Assembly, and this has usually been done through two general models: first, a prime minister or government can be dismissed by a vote of no confidence, only by electing another prime minister or government at the same time. Secondly, after the vote of no confidence, there is a definite possibility and deadline that the Assembly can elect a new Government. The Constitution of Kosovo does not provide for either the first option or the second option, except for the action for the dissolution of the Assembly".*

200. She supported this argument also based on the parliamentary practice of 2010 and 2017 when after the motion of no confidence, early elections where announced and no new Government was formed.

201. Moreover, regarding the right of the President for consultations with the political parties to decide on the dissolution of the Assembly, she emphasizes that the Constitution specifies accurately the cases when the President may consult various parties regarding his competencies, referring to concrete cases such as "*appointing the candidate for prime minister after consultations with the party or coalition that has won the required majority, or when declaring a state of emergency in consultation with the Prime Minister, or when deciding for the formation of diplomatic and consular missions of the Republic of Kosovo, based on consultation with the Prime Minister, as well as for various appointments, the President of the Republic of Kosovo and the Prime Minister, after consulting with the Government, jointly appoint Director, Deputy Director and General Inspector of the Kosovo Intelligence Agency".*

202. As a result, she considered that the President was obliged to dissolve the Assembly after the motion of no confidence rather than to issue the Decree on appointing the candidate for the formation of the Government.

203. Regarding Article 95 of the Constitution, the Deputy President of the Assembly emphasizes that the President, in the challenged Decree *"does not specify in what paragraph of Article 95 of the Constitution he bases his decree to appoint Mr. Avdullah Hoti as a candidate for Prime Minister".* In this regard, she added that *"As it is known, Article 95 "Election of the Government" contains six paragraphs which regulate different situations. Article 95 defines at least three different situations from each other in the election of the Government. Respectively, paragraph 1 of Article 95 defines the procedure and criteria of the proposal after the election of the candidate for Prime Minister by the President, in consultation with the party or coalition that has won the necessary majority in the Assembly to form the Government, […] Whereas, paragraph 4 of Article 95, determines the authorization of the President to appoint another candidate according to the same procedure, in case the composition of the Government does not receive the required majority of votes according to Article 95 paragraph 2 and Article 95 paragraph 3. And finally, paragraph 5 of Article 95 stipulates that if the*

Prime Minister resigns or for any other reason the post becomes vacant, the Government ceases and the President of the Republic of Kosovo appoints a new candidate in consultation with the majority party or coalition that has won the majority in the Assembly to establish the Government.

204. Therefore, according to her, *"By not specifying in what paragraph of Article 95 it is based, the President manifests that he was aware of the unconstitutionality of the decree, but tried to make it impossible to identify the incompatibility of the decree with the Constitution, without defining a clear constitutional basis. He acted exactly opposite when he decreed Mr. Albin Kurti as a candidate for Prime Minister, where he accurately referred to paragraphs 1 and 2 of Article 95 of the Constitution of the Republic of Kosovo, in the Decree No. 05-2020, of 20.01.2020. [...] However, in the manner in which the President has acted, Decree No. 24/2020 would be incompatible with paragraph l of Article 95, paragraph 2 of Article 95, paragraph 4 of Article 95, and paragraph 5 of Article 95".*

205. In the same line with the Applicants, the Deputy President, also emphasizes that *"The President of the Republic of Kosovo does not have the constitutional authorization to arbitrarily set deadlines that the Constitution does not provide as to when the political party or coalition that has won the required majority must submit a proposal."* She added that *"With this, the President has taken the role of interpreter, and moreover, the one to supplement the Constitution."* She also emphasizes that the President may not consider that LVV has refused to submit the candidate for Prime Minister in the absence of a constitutional deadline and in the absence of an expressively refusal. In this regard, she also refers to the previous practice when in 2014, the formation of the government lasted 6 months as a consequence of not forwarding the name of the candidate by the winning party. In conclusion, the Deputy President of the Assembly considered that the challenged Decree is not compatible with the Constitution.

Comments of deputy Arban Abrashi

206. Regarding the Applicants' allegations that the President was obliged to dissolve the Assembly, the deputy Arban Abrashi stated that paragraph 2 of Article 82, the dissolution of the Assembly is left only as an option of the President, which is taken into consideration by the President after the successful motion of no confidence against the Government. Regarding this argument, he also bases it on the Commentary on the Constitution.

207. According to him, *"there is nothing that stops him, moreover the President must create opportunities for the election of the new Government, when for this there is political will expressed by the majority of parliamentary political parties, and especially when the Assembly of Kosovo continues to further have a mandate, and in particular by taking into account the well-known practices in the world (in states with a parliamentary system) where, the creation of a new government, following the motion of no confidence in the government, is taken into consideration after the motion of no-confidence (destructive motion of no confidence) or even alongside it (constructive motion of no confidence)".*

208. He further stated that if the purpose of the drafters of the Constitution was to make the dissolution of the Assembly mandatory in the event of a vote of no confidence against the Government, then this would be included in paragraph 1 of Article 82 and would continue as sub-paragraph 4 of paragraph 1 which provides for the cases when the dissolution of the Assembly is mandatory.

209. To support his argument that the dissolution of the Assembly after the motion of no confidence is not mandatory, he refers to the *Travaux Preparatoires* of the Constitution, where according to him, the preliminary draft has explicitly stated that the Assembly "must" be dissolved. Therefore, according to him, the drafters of the Constitution, by not approving such proposals with full awareness and purpose had formulated this provision with alternative content, where the dissolution of the Assembly would come into question only if the Assembly would be unable to form the new government.

    He also referred to the practice of Sweden, Canada and Germany, emphasizing that when a motion of no confidence against the Government is submitted, this is seen as an opportunity to change the Government and not necessarily to go to new elections. Deputy Arban Abrashi also emphasizes that unlike 2019, when the Assembly with 89 votes "for" has decided to dissolve the Assembly, in the current circumstances most political entities have declared in favor of creating a new Government.

210. Regarding the delays of six (6) months in the formation of the Government in 2014, the deputy in question emphasized that the delays at that time occurred as a result of not constituting the Assembly, and not because of non-appointing the candidate for Prime Minister, as alleged by the Applicants.

211. Regarding the allegation of the Applicants, that the Decree is unconstitutional, as only the first party has the right to propose the candidate for Prime Minister, the deputy Arban Abrashi emphasized that *"The Decree of the President [...] is in full compliance with the Constitution, more specifically with Article 84, paragraph 4 and 14, and Article 95 and based on and considering Judgment [...] KO103/14. This is because, according to the Constitution, the President is allowed to issue Decrees, as he is authorized by the Constitution (84.14) to appoint a candidate for Prime Minister for the formation of the government, as in Article 82.2 of the Constitution it is stipulated that he may (not necessarily) dissolve the Assembly, as it is also implied that if he does not do so, the President may proceed with the procedure for appointing a new candidate for Prime Minister".*

212. He emphasized that according to the interpretation of the Applicants, the parliamentary majority *"is completely unnecessary in our pluralistic system, because the first, always according to their* [the Applicants'] *interpretations, in addition to priorities recognized by the Constitution, has the absolute right to decide and to impose the decision on the parliamentary majority but also to other authorities, which as in this case, could be the President".* In the present case, according to deputy Arban Abrashi, regardless of numerous meetings and correspondence, LVV had not proposed the candidate for Prime Minister. Therefore, it is not a matter of the actions of the President which

contradict Article 84.14 of the Constitution but rather of intentional inaction of the first political entity (relative winner) in the elections.

213. Deputy Arban Abrashi emphasized that despite the priority that the first political party has in the procedure constructed clearly by the Constitution, this right is not absolute and unlimited in time and the allegation that this matter has been left intentionally without a deadline with the purpose of leaving sufficient time to the first political entity to build coalitions is unfounded because, according to him, eventual consultations for the formation of the Government are conducted after appointing the candidate for Prime Minister through Decree by the President and not before it as the Applicants allege.

214. Therefore, he considers that "*the President has acted correctly when, after five (5) letters and two (2) meetings which he has had in a period of about twenty (20) days with the first political party that emerged from the elections, which had not been successful in the sense of proposing the name of the candidate for Prime Minister with the public justification that "we are in favor of elections", by Decree No. 24/2020, has proposed to the Assembly of Kosovo the candidate for Prime Minister from the ranks of another (second) political party who has proved to have the sufficient majority in the Assembly of Kosovo to form the Government".*

215. Therefore, the President, in accordance with Judgment KO103/14, has proposed to the Assembly the candidate for Prime Minister from an entity which has the greatest likelihood of forming the Government. He adds that the President, through the appointment of the candidate for prime minister, "participates", is involved, by acting concretely in the formation of the Government. In every case that the President would not act in accordance with his constitutional authorizations, thus "allowing" the disruption of the functioning of certain institutions in discrepancy with the Constitution, in this case allowing for a long time the non-establishment of the new Government but for the country to be governed by a Government which has been dismissed through the motion of no confidence.

216. Based on the foregoing, deputy Arban Abrashi requested the Court to hold that the challenged Decree is compatible with the Constitution.

Comments of the Ombudsperson

217. The Ombudsperson, in his comments regarding the Referral, emphasizes that he does not find a basis to submit *Amicus Curiae* to this Referral given that the European Court of Human Rights leaves margin of appreciation to states and this is acceptable in cases where the matter is addressed within the constitutional order. He emphasizes that the text of the Constitution has an "objectively identifiable" meaning and has not changed over time. Therefore, he adds that referral K0 72/20 is exclusively concentrated in constitutional provisions, for the analysis and interpretation of which the Constitutional Court is the final authority.

218. In this respect, according to the Ombudsperson, the Constitution "*should be seen in the authentic purpose of the Commission for Drafting of the*

Constitution to determine what is the constitutional spirit that this Commission has reflected in its text". In this regard, he stated that "*considering the interpretation that the Constitutional Court will make regarding this case of a special importance for the constitutional order in the country, the Ombudsperson emphasizes the value of the authenticity of the spirit conveyed by the Constitution of the country, displayed through the [Travaux preparatoires] of the Constitutional Commission which has worked on its drafting*."

219. Moreover, in the letter of the Ombudsperson addressed to the Court, it was stated that "*the Ombudsperson would like to remind that the files of the preparatory works for the drafting of the Constitution are in the State Archives Agency of Kosovo".*

Regarding the allegations for the request for imposition of interim measure

220. The Court clarifies that all allegations and counter allegations regarding the request for imposition of interim measure have been elaborated in the Decision on Interim Measure in Case KO72/20, of 1 May 2020. As a result, the Court does not find it necessary to repeat the latter in this Judgment.

Practices hitherto regarding the dissolution of the Assembly

221. The Court will further elaborate all the practices hitherto regarding the dissolution of the Assembly since the entry into force of the Constitution on 15 June 2008, including the procedure followed and the legal basis for the dissolution of the Assembly.

The third legislature of the Assembly of the Republic of Kosovo – Motion of no confidence against the Government

222. On 17 November 2007, the elections for the Assembly were held.

223. On 4 and 9 January 2008, the constitutive session of the Assembly was held, in which Mr. Jakup Krasniqi was elected President of the Assembly.

224. On 9 January 2008, the Assembly voted the Government with Prime Minister Mr. Hashim Thaçi.

225. On 2 November 2010, the Presidency of the Assembly reviewed and put on the agenda for the Plenary Session the motion of no confidence against the Government proposed by 40 deputies of the Assembly.

226. On the same day, the Assembly, in its plenary session reviewed the motion of no confidence against the Government. The proposers justified the Motion as follows:

"The institutional crisis, caused after the decision of the Constitutional Court of the Republic of Kosovo, where it found serious violations of the Constitution by the President, which resulted in resignation of the President of the Republic

of Kosovo, and the withdrawal of the Democratic League of Kosovo from the government coalition, risks to derive into a general institutional crisis in the country. To exit from this crisis, the Parliamentary Group of AKR, supported by 40 deputies, submits a Motion of No Confidence against the Government and requests the Assembly to take other actions pursuant to the Constitution.
[…]
The citizens of Kosovo today turned their eyes to this temple, which has in its hands whether it will stop the misgovernment and further degradation of the country's institutions or will allow this crisis to deepen further.
[…]
We invite you to support this motion, as the only way out of this institutional crisis that has engulfed the country and to condemn this bad governance.
[…].

227. On the same date, the Assembly, in conformity with Article 100 of the Constitution, issued a Decision on the approval of the motion of no confidence against the Government of Kosovo.

228. On the same date, the caretaker President, Mr. Jakup Krasniqi, pursuant to Article 82.2, Article 84.4 and Article 90 of the Constitution, issued a Decree on the dissolution of the third legislature of the Assembly.

The fourth legislature of the Assembly of the Republic of Kosovo – Dissolution of the Assembly by 2/3 of the deputies

229. On 12 December 2010, the elections for the Assembly were held.

230. On 2011 February 2008, the constitutive session of the Assembly was held, in which Mr. Jakup Krasniqi was reelected President of the Assembly.

231. On 22 February 2011, the Assembly voted the Government with Prime Minister Mr. Hashim Thaçi.

232. On 7 May 2014, the Assembly in an extraordinary session, upon the proposal of a group of 57 deputies of the Assembly, in conformity with Article 69, paragraph 4, Article 82, paragraph 1, point 2 of the Constitution issued a Decision [No. 04-V-841] for the dissolution of the fourth legislature of the Assembly.

233. On the same day, the President of the Assembly, Mr. Jakup Krasniqi, through a letter [Prot. No. 415] informed President Ms. Atifete Jahjaga for the above-mentioned Decision, stating, *"You are kindly asked, in accordance with [Article 82, paragraph 1, point 2] of the Constitution […] to take the necessary actions to Decree the Decision of the Assembly […] for the dissolution of the fourth Legislature of the Assembly […] "*

234. On the same day, President Ms. Atifete Jahjaga, pursuant to Article 82, paragraph 1, point 2, and Article 84, point 4 of the Constitution, issued a Decree [DV-001-2014] on the dissolution of the fourth legislature of the Assembly.

The fifth legislature of the Assembly of the Republic of Kosovo – Motion of no confidence against the Government

235. On 8 June 2014, the elections for the Assembly were held.

236. On 8 December 2014, the constitutive session of the Assembly was held, in which Mr. Kadri Veseli was elected President of the Assembly.

237. On 9 January 2015, the Assembly voted the Government with Prime Minister Mr. Isa Mustafa.

238. On 5 May 2017, a group of 42 deputies of the Assembly submitted a motion of no confidence against the Government, with the following reasoning: *"The government cabinet has created deep public distrust and reflects signs of a total dysfunction within itself. In this sense, a significant part of the country's institutions are completely non-functional. [...] The Parliament has repeatedly failed to have a quorum even for voting of laws sponsored by the government. There are also many deputies from the ranks of this coalition who have already declared themselves against the continuation of this government coalition.*
[...]
We consider that the only solution to get the country out of this situation, in which practically all institutions are dysfunctional, is free and democratic elections."

239. On 10 May 2017, the Assembly in a plenary session, in conformity with Article 100, paragraph 6 the Constitution, issued Decision [no.05.V-465] on the Approval of the Motion of No Confidence against the Government of Kosovo.

240. On the same date, the President of the Assembly, Mr. Kadri Veseli, through a letter [Prot. No. 544] notified President Mr. Hashim Thaçi for the above-mentioned Decision whereby the motion of no confidence against the Government was voted.

241. On the same date, President Mr. Hashim Thaçi, in conformity with Article 82, paragraph 2, and Article 84, point 4 of the Constitution, issued Decree [DV-001-2017] on the dissolution of the fifth legislature of the Assembly.

The sixth legislature of the Assembly of the Republic of Kosovo – Dissolution of the Assembly by 2/3 of the deputies

242. On 11 June 2017, the elections for the Assembly were held.

243. On 7 September 2017, the constitutive session of the Assembly was held, in which Mr. Kadri Veseli was elected President of the Assembly.

244. On 9 September 2017, the Assembly voted the Government with Prime Minister Mr. Ramush Haradinaj.

245. On 19 July 2019, the Prime Minister Mr. Ramush Haradinaj resigned.

246. On 2 August 2019, President Mr. Hashim Thaçi, through a letter [Prot.No.1246] requested Mr. Kadri Veseli from the coalition of Democratic Party of Kosovo, Alliance for the Future of Kosovo, Initiative for Kosovo, Justice Party, Movement for Unity, Albanian Demo-Christian Party of Kosovo, Conservative Party of Kosovo, Democratic Alternative of Kosovo, Republicans of Kosovo, Partia e Ballit, Social Democratic Party, Balli Kombëtar of Kosovo, in a capacity of a winner, according to the results of the elections of 11 June 2017, to propose the new candidate for the formation of the Government.

247. On the same date, Mr. Kadri Veseli through a letter [Prot.No.1246/1] notified President Mr. Hashim Thaçi that "*based on the current political circumstances, the political will expressed publicly by the parties of the winning coalition, as well as in my judgment of what is best now for the citizens and the Republic of Kosovo, I will not propose a new candidate as mandate holder to form a new government.*" He also notified the President that he has convened a meeting of the Presidency of the Assembly for 5 August 2019 to discuss together with parliamentary groups the convening of an extraordinary session for the dissolution of the current legislature of the Assembly.

248. On 22 August 2019, the Assembly in the plenary session, upon the proposal of a group of 98 deputies of the Assembly, in conformity with Article 82, paragraph 1, point 2 of the Constitution issued a Decision [No. 06-V-378] for the dissolution of the sixth legislature of the Assembly.

249. On the same day, the President of the Assembly, Mr. Kadri Veseli, through a letter [Prot.No. 06/35531] notified President Hashim Thaçi for the above-mentioned Decision, emphasizing *"You are kindly asked, in accordance with* [Article 82, paragraph 1, point 2] *of the Constitution [...] to take the necessary actions to Decree the Decision of the Assembly [...] for the dissolution of the sixth Legislature of the Assembly [...] "*

250. On the same day, President Mr. Hashim Thaçi, in conformity with Article 82, paragraph 1, point 2, and Article 84, point 4 of the Constitution, issued a Decree [193/ 2019] on the dissolution of the sixth legislature of the Assembly.

Relevant provisions of the Constitution

Constitution of the Republic of Kosovo

"*Article 4*
[Form of Government and Separation of Power]

1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.
2. The Assembly of the Republic of Kosovo exercises the legislative 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.
4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control.
5. The judicial power is unique and independent and is exercised by courts.
6. The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution.
7. The Republic of Kosovo has institutions for the protection of the constitutional order and territorial integrity, public order and safety, which operate under the constitutional authority of the democratic institutions of the Republic of Kosovo.

Article 7
[Values]

1. *The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.*

2. *The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.*

Article 65
[Competencies of the Assembly]

The Assembly of the Republic of Kosovo:

(1) adopts laws, resolutions and other general acts;
(2) decides to amend the Constitution by two thirds (2/3) of all its deputies including two thirds (2/3) of all deputies holding seats reserved and guaranteed for representatives of communities that are not in the majority in Kosovo;
(7) elects and may dismiss the President of the Republic of Kosovo in accordance with this Constitution;
(8) elects the Government and expresses no confidence in it;
(9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law;
[…]

Article 82
[Dissolution of the Assembly]

1. *The Assembly shall be dissolved in the following cases:*

(1) if the government cannot be established within sixty (60) days from the date when the President of the Republic of Kosovo appoints the candidate for Prime Minister;
(2) if two thirds (2/3) of all deputies vote in favor of dissolution, the Assembly shall be dissolved by a decree of the President of the Republic of Kosovo;
(3) if the President of the Republic of Kosovo is not elected within sixty (60) days from the date of the beginning of the president's election procedure.

2. *The Assembly may be dissolved by the President of the Republic of Kosovo following a successful vote of no confidence against the Government.*

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:

[…]
(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;
[…]
(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;
[…]
(30) addresses the Assembly of Kosovo at least once a year in regard to her/his scope of authority.

Article 95
[Election of the Government]

1. After elections, the President of the Republic of Kosovo proposes to the Assembly a candidate for Prime Minister, in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government.
2. The candidate for Prime Minister, not later than fifteen (15) days from appointment, presents the composition of the Government to the Assembly and asks for Assembly approval.
3. The Government is considered elected when it receives the majority vote of all deputies of the Assembly of Kosovo.

4. If the proposed composition of the Government does not receive the necessary majority of votes, the President of the Republic of Kosovo appoints another candidate with the same procedure within ten (10) days. If the Government is not elected for the second time, the President of the Republic of Kosovo announces elections, which shall be held not later than forty (40) days from the date of announcement.
5. If the Prime Minister resigns or for any other reason the post becomes vacant, the Government ceases and the President of the Republic of Kosovo appoints a new candidate in consultation with the majority party or coalition that has won the majority in the Assembly to establish the Government.
6. After being elected, members of the Government shall take an Oath before the Assembly. The text of the Oath will be provided by law.

Article 100 [Motion of No Confidence]

1. A motion of no confidence may be presented against the Government on the proposal of one third (1/3) of all the deputies of the Assembly.
2. A vote of confidence for the Government may be requested by the Prime Minister.
3. The motion of no confidence shall be placed on the Assembly agenda no later than five (5) days nor earlier than two (2) days from the date it was presented.
4. The motion of no confidence is considered accepted when adopted by a majority vote of all deputies of the Assembly of Kosovo.
5. If a motion of no confidence fails, a subsequent motion for no confidence may not be raised during the next ninety (90) days.
6. If a motion of no confidence against the Government prevails, the Government is considered dismissed.

The assessment of the admissibility of the Referral

251. In order for the Court to adjudicate the Applicant's Referral, it is necessary to examine first whether the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure have been fulfilled

252. In this respect, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides: *"The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties".*

253. In addition, the Court refers to paragraph 2 (1) of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides:

"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;
[...].”

254. In this regard, the Court also refers to Article 29 [Accuracy of the Referral] and 30 [Deadlines] which provide:

Article 29
Accuracy of the Referral

1. A referral pursuant to Article 113, Paragraph 2 of the Constitution, shall be filed by either one fourth (¼) of the deputies of the Assembly of the Republic of Kosovo, [...].

2. A referral that a contested act by virtue of Article 113, Paragraph 2 of the Constitution shall indicate, inter alia, whether the full content of the challenged act or certain parts of the said act are deemed to be incompatible with the Constitution;

3. A referral shall specify the objections put forward against the constitutionality of the contested act.

Article 30
Deadline

A referral made pursuant to Article 29 of this Law shall be filed within a period of six (6) months from the day upon which the contested act enters into force.

255. The Court also refers to Rule 67 [Referral pursuant to Article 113.2 (1) and (2) of the Constitution and Article 29 and 30 of the Law] of the Rules of Procedure, which provides:

“(1) A referral filed under this Rule must fulfill the criteria established under Article 113.2 (1) and (2) of the Constitution and Articles 29 and 30 of the Law.

(2) When filling a referral pursuant to Article 113. 2 of the Constitution, an authorized party shall indicate, inter alia, whether the full content of the challenged act or which parts of the said act are deemed to be incompatible with the Constitution.

(3) The referral shall specify the objections put forward against the constitutionality of the contested act.

(4) The referral under this Rule must be filed within a period of six (6) months from the day of entry into force of the contested act.”

256. Below, the Court will assess: (i) if the Referral has been filed by an authorized party, as provided in subparagraph (1) of paragraph 2 of Article 113 of the

Constitution and paragraph 1 of Article 29 of the Law; (ii) the nature of the challenged act; (iii) the accuracy of the Referral, as required by paragraphs 2 and 3 of Article 29 of the Law and paragraphs (2) and (3) of Rule 67 of the Rules of Procedure; and (iv) if the Referral has been filed within six (6) months after the entry into force of the challenged act, as defined in Article 30 of the Law and paragraph (4) of Rule 67 of the Rules of Procedure.

(i) Regarding the Authorized Party

257. The Assembly, pursuant to Article 113.2 (1) of the Constitution, is authorized to refer before the Court the question of compatibility with the Constitution of (i) laws; (ii) decrees of the President; (iii) decrees of the Prime Minister; and (iv) of regulations of the Government. Article 29 of the Law specifies that the Assembly is an authorized party before the Court, if the relevant referral has been filed by one fourth (1/4) of the deputies of the Assembly. The same requirement is specified in paragraph 1 of Rule 67 of the Rules of Procedure.

258. In the circumstances of the present case, the Court notes that the Referral was signed by 30 (thirty) deputies of the Assembly. Therefore, the Court considers that the Referral was filed by one fourth (1/4) of the deputies of the Assembly, pursuant to Article 113, paragraph 2, subparagraph 1 of the Constitution in conjunction with Article 29, paragraph 1 of the Law. Consequently, the Applicants are an authorized party.

(ii) Regarding the challenged act

259. In this respect, the Court emphasizes that based on Article 113.2 (1) of the Constitution, the Assembly, namely one fourth (1/4) of its deputies, as explained above, may challenge the compatibility of *"laws"*, *"decrees of the President*", "*decrees of the Prime Minister*", and "*regulations of the Government*" with the Constitution.

260. In this regard, the Court notes that the Applicants specified the act, the constitutionality of which they challenged before the Court, namely the Decree of the President, no. 24/2020, dated 30 April 2020. Consequently, the Court finds that the challenged Decree meets the requirements to be considered by the Court under Article 113.2 (1) of the Constitution.

(iii) Regarding the accuracy of the Referral and the specification of the objections

261. The Court recalls that Article 29 of the Law and Rule 67 of the Rules of Procedure, provide that (i) a referral filed under Article 113.2 (1) of the Constitution shall specify whether the full content of the challenged act or certain parts of the said act are deemed to be incompatible with Constitution; and (ii) shall specify the objections put forward against the constitutionality of the challenged act.

262. In the present case, the Applicants (i) object the challenged act - the Decree of the President of the Republic of Kosovo, no. 24/2020, of 30 April 2020, in entirety, and (ii) submitted the referred objections against the constitutionality

of the challenged act in accordance with Article 113, paragraph 2, subparagraph 1 of the Constitution, Article 29, paragraphs 2 and 3 of Law, and Rule 67, paragraphs (2) and (3) of the Rules of Procedure.

(iv) Regarding the deadline

263. The Court recalls that Article 30 of the Law and Rule 67 of the Rules of Procedure provide that a referral filed under Article 113.2 (1) of the Constitution shall be filed within six (6) months after the entry into force of the challenged act.

264. The Court emphasizes that the challenged Decree was issued on 30 April 2020, while it was challenged before the Court on the same day. Consequently, the Referral was filed within the time limit provided in Article 30 of the Law and Rule 67, paragraph (4) of the Rules of Procedure.

Conclusion regarding the admissibility of the Referral

265. The Court finds that the Applicants: (i) are an authorized party before the Court; (ii) challenge an act which they have the right to challenge; (iii) have specified that they challenge the act in its entirety; (iv) have filed the constitutional objections against the challenged act; and, (v) have challenged the relevant acts within the deadline.

266. Therefore, the Court declares the Referral admissible and will further review its merits.

MERITS OF THE REFERRAL

I. Introduction

267. The Court initially recalls that the Applicants, namely one-fourth (1/4) of the deputies of the Assembly, specifically thirty (30) Members of Parliament, request the constitutional review of Decree no. 24/2020 of 30 April 2020 of the President of the Republic of Kosovo, claiming that the latter is contrary to paragraph 4 of Article 84; paragraph 2 of Article 82; paragraph 1 of Article 4; paragraph 14 of Article 84; and Article 95 of the Constitution. These claims have been supported by the caretaker Prime Minister and the President and the Deputy President of the Assembly. The same claims have been opposed by the President, the Parliamentary Group of LDK and its deputy, Arban Abrashi, as well as the deputies of the parliamentary political entities AKR and NISMA. The latter claim that the challenged Decree of the President is in compliance with the aforementioned articles of the Constitution.

268. The Court emphasizes that the constitutional matter entailed by this Judgment is compatibility with the Constitution of the President's challenged Decree, whereby Mr. Avdullah Hoti was proposed to the Assembly as a candidate for Prime Minister. In the context of the constitutional review of the aforementioned Decree, and based on the claims of the Applicants and the objections of the respective parties, the Court will initially assess whether after the successful vote of no confidence in the Government, as defined in Article

100 of the Constitution, the President, pursuant to paragraph 2 of Article 82 of the Constitution, is obliged to dissolve the Assembly, namely if the successful vote of no confidence prevents the election of a new Government. In connection and subject to this analysis, the Court will further assess what is the procedure to be followed for the formation of a new government, after a successful vote of no confidence by the Assembly, and more precisely the interconnection of Article 100 of the Constitution regarding the Motion of No Confidence in Article 95 of the Constitution regarding the Election of the Government. And finally, the Court will assess whether under the circumstances of the present case, namely after the motion of no confidence voted by two-thirds (2/3) of all the deputies of the Assembly on 25 March 2020, the procedure followed for the formation of the new government and the appointment of the candidate for Prime Minister, has resulted in a constitutional Decree or not.

269. The Court emphasizes that in the course of the constitutional review of this Decree, it will focus on the analysis of the applicable provisions of the Constitution, but also on its Judgment in Case KO103/14, whereby paragraph 14 of Article 84 of the Constitution in conjunction with paragraphs 1 and 4 of Article 95 of the Constitution, were interpreted. Furthermore, based on the hitherto practice, in the course of its assessment, the Court will also take into account: (i) the comparative analysis of the relevant provisions for the circumstances of the present case of a number of Constitutions, including those referred to the Court by the Applicants and other interested parties; (ii) the contributions of the Forum of the Venice Commission regarding the circumstances of the present case; and (iii) Relevant opinions of the Venice Commission. Finally, the Court will also consider the preparatory documents for drafting the Constitution of Kosovo which, as explained in the proceedings before the Court, were made available to the Court for the first time by the State Archives of the Republic of Kosovo, through the Assembly. The Court will present the findings of the comparative analysis, the contribution of the Forum of the Venice Commission and the preparatory documents for the drafting of the Constitution, in the following section entitled Preliminary Matters and will refer to them to the extent it is necessary and relevant, during the constitutional review of the challenged Decree.

270. The analysis of the constitutional review of the challenged Decree will be divided into three parts, according to the following structure: (i) Article 82 of the Constitution regarding the Dissolution of the Assembly; (ii) Article 100 of the Constitution regarding the Motion of No Confidence and Article 95 of the Constitution regarding the Election of the Government and the relevant interconnection between them; and (iii) implementation of the constitutional procedure set out in Article 95 of the Constitution resulting in the challenged Decree; and finally (iv) the Court will present the Conclusions regarding the constitutionality of the challenged Decree.

271. In the necessary assessments concerning points (i), (ii) and (iii) explained above, and for each of them, the Court will present: (i) the essence of the claims of the Applicants and the parties supporting these claims; (ii) the essence of the arguments of the opposing party and the supporting parties; and (iii) the Response of the Court, which will include the general principles relating to the

case under review and their application under the circumstances of the present case.

272. Lastly, the Court will also address: (i) the interim measure; (iii) the request of the Applicants for hearing session; and finally, the Court will present (iv) the Conclusions of the Court and the respective Enacting Clause.

II. Preliminary Matters

273. As noted above, in order to facilitate and support the necessary analysis to assess the constitutionality of the challenged Decree, the Court will present below: (i) the findings of the comparative analysis of the various Constitutions concerning the dissolution of Assemblies in cases of successful vote of no confidence and/or election of new Governments; (ii) the contribution of the Forum of the Venice Commission concerning the same matters; and (iii) an overview of the evolution of articles relevant to the circumstances of the present case, namely Articles 82, 95 and 100 of the Constitution, as reflected in the preparatory documents for the drafting of the Constitution.

(i) Comparative Analysis

274. The claims of the Applicants, as well as of the other interested parties, have included references to a number of Constitutions in support of their arguments and counter-arguments. The Applicants, through their respective comments submitted to the Court, referred to the Constitutions of Croatia, Slovenia, Germany, Greece, Serbia, Albania and the Constitutional Framework, while on the other hand, the President referred to the Constitutions of North Macedonia, Montenegro and Austria. Despite specific claims and counterclaims of the Applicants and the interested parties regarding the relevant provisions of these Constitutions, the Court engaged in a comparative analysis of the constitutional provisions governing the motion of confidence and no confidence in these Constitutions and others in the region and beyond, in order to determine whether there is a common denominator throughout all these Constitutions relating to the procedures to be followed after a successful vote of no confidence by the respective Assemblies. Below, the Court will present this comparative analysis, focusing only on the provisions of the respective Constitutions relating to the formation of the Government, the motion of no confidence and the dissolution of the Assembly in the event of a successful vote of the motion of no confidence and only until to the extent that it is relevant to the circumstances of this case.

275. The Constitution of Albania, with regard to the election of the Prime Minister/Government, in Article 96, provides that: (i) The President of the Republic, at the beginning of the legislature, as well as when the post of the Prime Minister remains vacant, appoints the Prime Minister on the proposal of the party or coalition of parties that have the majority of seats in the Assembly. This article does not specify the time limit within which the President appoints the candidate for Prime Minister for the first time, however it sets a period of ten (10) days for each subsequent appointment; (ii) provides for three attempts to elect the Prime Minister, in accordance with the procedure provided in this article, before the Assembly is dissolved. In its articles 104 and 105, the

Constitution provides for the procedure of the motion of confidence and no confidence. In the event of a successful vote of no confidence, the Assembly elects another Prime Minister within fifteen (15) days. If this process fails, the President of the Republic dissolves the Assembly.

276. The Constitution of Montenegro, in Article 103 provides that the President proposes the candidate for the Prime Minister within thirty (30) days from the day of constitution of the Assembly. Articles 106 and 107 provide for the matters of no confidence and confidence, respectively. According to Article 110 of this Constitution, the mandate of the Government shall cease when the Prime Minister resigns or on the occasion of the loss of confidence by the Assembly. The same article specifically provides that the Government whose mandate has ceased shall not dissolve the Assembly. Article 105 specifies that the resignation of the Prime Minister shall be considered resignation of the Government.

277. The Constitution of Northern Macedonia, in Article 90, provides that the President is obliged, within ten (12) days of the constitution of the Assembly, to entrust the mandate for the formation of the Government to a candidate of the party or parties which has/have the majority in the Assembly. This article does not specify the consequences of not electing the Prime Minister. In its Article 92, on the other hand, it defines the procedure related to a vote of no confidence. The same article provides that if this vote is successful, the Government is obliged to submit its resignation. Further, Article 93 sets out that the resignation of the Prime Minister, his/her death or permanent inability to perform his/her duties, results in the resignation of the Government, and that the latter remains on duty until the election of a new Government. Despite the fact that the Constitution does not explicitly provide that another government shall be elected after a motion of no confidence, based on the response of the North Macedonia submitted to the Court through the Forum of the Venice Commission (see paragraph 302 of this Judgment), such a practice is applicable in the constitutional system of the North Macedonia.

278. According to Article 98 of the Constitution of Croatia, the President shall entrust the mandate to form the Government to a person who, based on the distribution of seats in the Croatian Parliament and completed consultations, enjoys the confidence of the majority of all Members of the Parliament. The Constitution does not specify the time limit within which this mandate is entrusted. Based on Articles 109 and 109a, if the first process of formation of the Government, according to the procedure provided in these articles, fails, the President shall confer the mandate to another candidate. If event the second attempt fails, according to Article 109b, the President shall appoint an interim non-partisan government and simultaneously call for an early election for the Croatian Parliament. Article 113 of this Constitution defines the procedure of vote of confidence. Among others, it specifies that if a vote of no confidence is passed against the Prime Minister or the entire Government, the Prime Minister and the Government shall resign. If a vote of confidence in the new Prime Minister-Designate and the members put forward as members of the Government is not passed within thirty (30) days, the Speaker of the Croatian Parliament shall notify the President and the latter shall immediately

dissolve the Assembly and simultaneously call a parliamentary election. Finally, according to Article 104, the President may, on the proposal of the Government, with the countersignature of the Prime Minister and after consultations with representatives of parliamentary parties, dissolve the Croatian Assembly if the latter passes a vote of no confidence in the Government or fails to adopt the state budget within 120 days from the date on which it is proposed.

279. According to Article 111 of the Constitution of Slovenia, after consultation with the leaders of parliamentary groups, the President proposes to the National Assembly a candidate for President of the Government. If the election process fails, according to the process and deadlines set out in this Article, the President but also groups of deputies may propose candidates for Prime Minister. Therefore, several candidates for Prime Minister may be proposed. If all of them fail to get the required votes, the President shall dissolve the Assembly and call elections, unless the Assembly proves with a sufficient number of votes that it will be able to elect another candidate. The vote of no confidence and the vote of confidence are provided for in Articles 116 and 117. In relation to the first, it specifically provides that the National Assembly may pass a vote of no confidence in the Government only by electing a new Prime Minister on the proposal of at least ten (10) deputies and by a majority vote of all deputies. While in relation to the second, it provides that if the Government does not receive the support of a majority vote of all deputies within thirty (30) days, the National Assembly must elect a new Prime Minister or in a new vote to express confidence in the caretaker Prime Minister, and if this fails, the President of the Republic dissolves the National Assembly and calls new elections.

280. The Constitution of Greece in Article 37 provides that the President shall appoint the candidate for Prime Minister from the party having the absolute majority of seats in the Parliament. It does not specify the time limit within which this appointment takes place, however, it sets three-day deadlines for each subsequent candidate for Prime Minister if the first fails, making three additional attempts before the Assembly is dissolved. On the other hand, Article 38 of this Constitution provides that the President relieves the Cabinet from its duties if the Cabinet resigns, or if the Parliament withdraws its confidence, as defined in Article 84, and that in such circumstances, the relevant paragraphs of Article 37, for the election of the Prime Minister, are analogously applied. This Constitution does not provide for the dissolution of the Parliament after a successful vote of no confidence, but under Article 41 thereof, and as far as the circumstances of the case are relevant, it determines the dissolution of the Assembly only upon the condition that two consecutive governments have resigned or have been voted against by the Assembly and if the composition of this Government does not guarantee its stability.

281. The Constitution of Germany, on the other hand, provides for the so-called constructive vote of no confidence in Article 67 thereof. It provides that the Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. It provides that the Federal President must comply with the request and appoint the person

elected. While Article 68 of the Constitution defines the vote of confidence and the dissolution of the Bundestag, whereby it provides that if a motion of the Federal Chancellor for a vote of confidence is not supported by a majority of the Members of the Bundestag, the Federal President may, upon the proposal of the Federal Chancellor, dissolve the Bundestag within twenty-one (21) days. Once the Bundestag elects another Federal Chancellor by a majority of its Members, the right of dissolution shall lapse.

282. Otherwise, the Constitution of Austria, in Article 74 only provides that if the National Council withdraws its confidence from the Government or from individual members thereof, through a motion, the Federal Government or the concerned Federal Minister shall be removed from office. However, through the response provided to the Court through the Forum of the Venice Commission, Austria had emphasized that if the Federal President appoints a new Government in which the required majority of Parliament has confidence, the mandate of the Assembly may continue regardless of the changes in Government.

283. Beyond the references submitted by the Applicants, the Prime Minister and the President, the Court has also analyzed relevant provisions in a number of other Constitutions which reflect diverse solutions regarding the procedures followed for the election of new governments, after a successful vote of the motion of no confidence in the Government by the Assembly.

284. The Constitution of Bulgaria regulates the procedure of formation of the Government in Article 99, which provides that following consultations with parliamentary groups, the President shall appoint the Prime Minister-designate nominated by the party holding the highest number of seats in the National Assembly to form a government. It does not specify the time limit within which the President appoints the Prime Minister. If this process fails, it provides for three additional attempts to form a government, within the time limits and according to the procedure provided in this Article, before the process of dissolving the National Assembly begins. Article 89 of this Constitution provides for the process of a motion of no confidence in the Prime Minister or the Council of Ministers which, if successful, results in the resignation of the Government. Article 111 of the same Constitution also provides that the authority of the Council of Ministers shall expire, inter alia, upon passing a motion of no confidence, and that the respective resignation results in a process of electing a new Council of Ministers.

285. In the Czech Republic, Article 68 of the Constitution provides that the President of the Republic appoints the candidate for Prime Minister and that latter fails to receive the required votes, the process is repeated, resulting in another candidate for Prime Minister. If this process fails, the same article provides for two additional attempts to elect a Prime Minister, according to the procedure and time limits set out in the same article. According to Article 35 of this Constitution, only if all attempts to elect a Prime Minister fail, the President dissolves the Assembly. Articles 71 and 72 of the Constitution provide for the vote of confidence and the vote of no confidence, respectively. Successful passing of the latter results in the resignation of the Government, according to Article 73 of the Constitution. The Constitution does not provide

for a specific procedure as to how the Assembly acts to elect a new government following a successful motion of no confidence, but it only determines that the Assembly is dissolved only after the failure of the third attempt to elect a Prime Minister, as provided in Article 35 in conjunction with Article 68 of the Constitution.

286. The Constitution of Hungary, in Article 16 thereof, defines the procedure for the formation of the Government. It provides that the Prime Minister shall be elected by the Parliament on the recommendation of the President of the Republic. If this process fails, an additional effort is foreseen to elect a Prime Minister, according to the procedure set out in this article. In Article 21, the Constitution regulates the process of motion of no confidence, whereby it is required to propose another person to serve as Prime Minister. Therefore, the Hungarian Parliament simultaneously expresses its lack of confidence in the Prime Minister and elects as Prime Minister the person proposed through the motion of no confidence. Article 3 of this Constitution provides that the President may dissolve the Parliament and simultaneously announce elections if and when, *inter alia*, the Parliament fails to elect the person proposed by the President to serve as Prime Minister within forty (40) days of presentation of the first nomination, but also requires of him/her to ask the Prime Minister, the Speaker of the House and the heads of the parliamentary groups for their opinions, before doing so.

287. The Constitution of Estonia, in Article 89 thereof, provides that the President of the Republic shall, within fourteen (14) days after the resignation of the Government, designate a candidate for Prime Minister. If this process fails, this article provides for two additional attempts to elect a Prime Minister, through the procedure and time limits provided for in this article, before calling early elections. Article 92 of the Constitution provides that the Government shall resign, *inter alia*, even in the event of the expression of no confidence in the Government or the Prime Minister by Riigikogu (equivalent of the Assembly). The motion of no confidence is provided for in Article 94 of this Constitution and it provides that if no confidence is expressed in the Government or the Prime Minister, the President of the Republic may, upon the proposal of the Government and within three days, announce extraordinary elections for the Riigikogu.

288. The Constitution of Lithuania in Article 92 thereof provides that the Prime Minister shall, with the approval of Seimas (equivalent of the Assembly), be appointed and dismissed by the President of the Republic. Article 101, on the other hand, provides that the Government must resign when Seimas, by a majority vote of all members of Seimas, expresses no confidence in the Government or the Prime Minister. That said, Article 84 of the Constitution of Lithuania also gives the President the competence to submit to Seimas the candidature of a new Prime Minister for consideration, within fifteen (15) days of the resignation of the Government. However, Article 58 of the Constitution of Lithuania provides that pre-term elections to the Seimas may also be announced by the President, *inter alia*, upon the proposal of the Government, in cases where a motion of no confidence has been successfully voted.

289. The Constitution of Georgia provides for both a vote of confidence and a vote of no confidence in Articles 56 and 57, respectively, thereof. The first regulates the process of formation of the Government after resignation of the Prime Minister and provides that the Parliament will hold a vote of confidence in the Government proposed by a candidate for the office of the Prime Minister nominated by the political party which has secured the best results in the parliamentary elections. Failure to elect the Government enables the Parliament to dissolve the Assembly, however the dissolution will not be possible if the Parliament passes by a majority of its members the vote of confidence in the Government proposed by a candidate for the office Prime Minister appointed by more than one-third of the total number of the Members, according to the time limits and the process provided in this article. On the other hand, based on Article 57 of the Constitution, it is required that after a vote of no confidence, the initiators propose a candidate for the office of the Prime Minister, and the candidate for the office of the Prime Minister to propose a new composition of the Government to the Parliament.

290. The Constitution of Armenia, in Article 149 provides that immediately after commencement of the term of the newly-elected National Assembly, the President shall appoint as Prime Minister the candidate nominated by the parliamentary majority formed under the procedure prescribed by Article 89 of the Constitution. In case this election fails, a new election for the Prime Minister is held, according to the process provided in this article, where the candidates for Prime Minister, nominated by at least one-third of the total number of Deputies, are entitled to participate. If even this process with more than one candidate fails, the National Assembly shall be dissolved by virtue of law. Otherwise, this article also provides that if the Prime Minister submits a resignation or in other cases when the office of the Prime Minister becomes vacant, the factions of the National Assembly shall be entitled to nominate candidates for Prime Minister within a period of seven (7) days after accepting the resignation of the Government. Article 115 of the Constitution provides for the non-confidence against the Prime Minister. It specifies that the process is allowed only if a candidate for new Prime Minister is simultaneously nominated. If adopted successfully, the Prime Minister is considered to have submitted resignation. If the election of the Prime Minister fails, then, based on Article 92 of this Constitution, extraordinary elections are announced.

(ii) The Contribution of the Forum of the Venice Commission

291. The Court will present below the responses of the Forum of the Venice Commission. As explained in the Procedure before the Court section (see paragraphs 19 and 20 of this Judgment), the Court had addressed questions pertaining to the motion of no confidence and the dissolution of respective parliaments to the members of the Forum of the Venice Commission. Responses have been received from the United Kingdom, Germany, Austria, Sweden, Liechtenstein, the Czech Republic, Slovakia, Bulgaria, Croatia, North Macedonia, South Africa, Moldova and Brazil.

292. The response from the United Kingdom specifies that (i) where two/thirds (2/3) of the House of Commons passes a motion requiring a general election to take place on the basis that it has no confidence in the government, a general

election must take place before any party can try to form a government; and (ii) if a motion of no confidence passes otherwise than as above and after fourteen (14) days no new government is able to command the confidence of the House of Commons, the present government is able to seek to form a new government e.g., if they were under a new leader, and the official opposition to try to form a government as well. If a new government commands the confidence of the House, there will be no general election until the scheduled time (or a further no confidence motion). If it does not, there must be a general election.

293. The response from Germany specifies that (i) pursuant to Article 62 of the Basic Law, the Federal Government consists of the Federal Chancellor and the Federal Ministers. Pursuant to Article 67 of the Basic Law, the *Bundestag* may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected. This provision is aimed at ensuring democratic legitimation and the functioning of the Federal Government. Pursuant to Article 65 of the Basic Law, the Federal Chancellor determines and is responsible for the general guidelines of policy. The *Bundestag* itself is not dissolved given that citizens elect its Members for a four-year period and new elections are to be avoided; (ii) pursuant to Article 68 of the Basic Law, the Federal President may dissolve the *Bundestag* upon the proposal of the Federal Chancellor within 21 days if a motion of the Federal Chancellor for a vote of confidence is not supported by the majority of the Members of the *Bundestag*. This right of dissolution lapses as soon as the *Bundestag* elects another Federal Chancellor by the vote of a majority of its Members; and (iii) the Federal Constitutional Court decided on the dissolution of the *Bundestag* in the context of a motion of confidence pursuant to Article 68 of the Basic Law in 2005 and in 1983. In these two decisions, the Federal Constitutional Court emphasized that the vote of confidence aiming at dissolution is only justified if the viability of a Federal Government which is anchored in Parliament has been lost. Viability means that the Federal Chancellor determines the general guidelines of policy, and is supported by a majority of Members of the *Bundestag*. Furthermore, "*three constitutional organs – the Federal Chancellor, the Bundestag and the Federal President – may each prevent a dissolution of the Bundestag according to their free political assessment. This helps to ensure the reliability of the presumption that the Federal Government has lost its parliamentary viability*".

294. The response from Austria specifies that, (i) if a vote of no confidence in Government (or in a minister) has been adopted by Parliament, the Federal President is obliged to remove Government (or the minister concerned) from office (Article 74, paragraph 1, of the Federal Constitutional Act); and (ii) that in a parliamentary system, "*this is a quite extraordinary event normally leading to snap elections which, in turn, end Parliament's term before time*". However, from a legal point of view, this consequence is not mandatory: if the Federal President appoints a new Government (or a new minister) in whom Parliament (or, more specifically, the majority of the members of Parliament) has full confidence, Parliament's legislative term may be continued regardless of the change in the Government.

295. The response from Sweden specifies that (i) the Swedish Constitution states that if the Parliament lacks confidence in the Prime Minister, the Government or any other minister, it may force the Government or the minister to resign by deciding on a motion of no confidence. At least thirty-five (35) members of the Parliament must propose such a motion for a vote to take place, while a majority of the members (175) of the Parliament must vote in favor of the proposal in order for the Parliament to declare its distrust of the Government or a minister. If the Parliament concludes that it does not have confidence in the Prime Minister, the entire Government must resign or call an extraordinary election to the Parliament within a week; (ii) if no extraordinary election is called upon, the Government will hold their former positions until a new government has taken office. Theoretically a new government would take office within the same legislature and rule until the next ordinary election. But if the Government had to resign after a motion of no confidence, the Parliament would probably not be capable to find a new Government supported by the whole Parliament, and therefore a new extraordinary election would take place. The new Parliament and Government will only rule until the next ordinary election, which is a set year, every fourth year. A Government has never resigned in Sweden in modern time, due to a motion of no confidence.; and (iii) according to the Swedish Constitution the dissolvent of the Parliament can only happen if the Government calls for an extraordinary election. Such an election can be the result of motion of no confidence on the Government as mentioned above.

296. The response from Liechtenstein specifies that, (i) according to article 80 of the Constitution, if the Government should lose the confidence of the Reigning Prince or of Parliament, its authority to exercise its functions shall expire. Until a new Government takes office, the Reigning Prince shall appoint a transitional Government to manage the entire National Administration in the interim (article 78 paragraph 1), in application of the provisions of article 79 paragraphs 1 and 4; (ii) the procedure of forming a new Government is not explicitly addressed in Article 80. That is why Article 79(2) on the general procedure on the formation of a new Government is applicable; (iii) Therefore and within the same legislature, it is upon the Reigning Prince to form a Government once the Government loses the confidence of either Parliament or the Reigning Prince. Subsequently, the Reigning Prince and Parliament may agree on the formation of a new Government according to Article 79(2) of the Constitution; and (iv) there is no obligation to dissolve the Parliament following a motion of no confidence on the Government.

297. The response from the Czech Republic specifies that (i) after the Assembly of Deputies adopts the resolution of no confidence or rejects the Government's request for a vote of confidence, the Government is required to submit its resignation; (ii) following the resignation of the Government, the Constitution does not automatically require the dissolution of the Parliament, but relies on the formation of a new Government within the same Assembly of Deputies; (iii) if the Government receives a vote of no confidence from the Assembly of Deputies, the President of the Czech Republic shall appoint new Prime Minister and, on the basis of their proposal, the other members of the government. If the government appointed on the second attempt does not receive a vote of confidence from the Assembly of Deputies either, the

President of the Republic shall appoint the Prime Minister based on a proposal by the Chairperson of the Assembly of Deputies (Art. 68 para. 4 of the Constitution). The Constitution defines explicitly these three attempts to appoint the government and to receive a vote of confidence by the Assembly of Deputies; (iv) in case that the Assembly of Deputies does not adopt a resolution of confidence in a newly (on the third attempt) appointed government by the Prime Minister (appointed by the President of the Republic on the basis of a proposal of the Chairperson of the Assembly of Deputies), the President of the Czech Republic may, but does not have to, dissolve the Assembly of Deputies (Art. 35 para. 1 letter a) of the Constitution). This condition has been defined strictly so that the dissolution of the Assembly of Deputies follows the exhaustion of political possibilities to appoint a new government from the then Assembly of Deputies.

298. The response from the Slovak Republic specifies that (i) the Constitution allows for the formation of a new Government within the same legislature following the vote of no confidence in the previous Government (see Art. 115); and (ii) the President may dissolve the National Council, if it fails to approve a newly formed Government's programme within a period of six months following the formation of the new Government. Each newly formed Government presents its programme to the National Council, and according to the Constitution this is also a question of confidence in the respective Government (see Art. 102.1.e and Art. 113 of the Constitution); and finally (iii) the President may also dissolve the National Council if the National Council fails to vote within a period of three months on a bill proposed and declared by the Government to be a question of confidence (Art. 102.1.e and Art. 114.3 of the Constitution).

299. The response from Bulgaria specifies that (i) the legal framework is included in the Constitution (Article 89) and in the Rules of Procedure of the National Assembly. The motion of no confidence may be presented to the Council of Ministers and the Prime Minister. However, the motion of no confidence in an individual minister is not envisaged. One-fifth (1/5) of national representatives may initiate a no-confidence motion against the Council of Ministers or the Prime Minister in the National Assembly. The proposal may be for a specific case, as well as for the overall program or for the overall policy of the Government. In any case, the motion for a no-confidence motion must be justified. If the motion of no confidence is directed against the general policy of the Government and is rejected, a subsequent motion of no confidence for any particular case within a period of 6 months is not permitted as it is *"absorbed by the motion rejected by the general policy, with exception of the violation of the Constitution committed during that period"*. The proposal is approved when more than half of all National Representatives have voted for it, namely, the qualified majority. Voting is open. The structured place of the constitutional framework (Article 89) is in the third Chapter "National Assembly", which confirms this institution as the strongest weapon that the National Assembly has against the Government; (ii) the legal consequences of a successful motion of no confidence in the Government or the Prime Minister are the obligatory resignation of the Government and the termination of its powers (in accordance with Article 111, paragraph 1, item 1.). In this case, the current Bulgarian Constitution does not provide for the dissolution of the

National Assembly on the proposal of the Prime Minister, but an attempt to form a new Government during the term of the same Assembly. When the National Assembly approves a no-confidence motion against the Prime Minister or the Council of Ministers, the Prime Minister offers the resignation of the Government. Due to the successful motion of no confidence against the Government, its powers as a regular government end; it becomes a " dismissed government" and continues to perform its functions until the formation of a regular government in accordance with Article 99, paragraph 6 of the Constitution as follows: (i) after consultations with parliamentary groups, the President mandates the candidate for prime minister appointed by the numerically largest parliamentary group, to form a Government; (ii) when the candidate for Prime Minister does not propose the Council of Ministers within seven days, the President entrusts this task to a candidate for Prime Minister appointed by the parliamentary group which numerically the second largest; (iii) if the Council of Ministers is not nominated in this case as well, the President shall mandate some of the other major parliamentary groups to nominate a candidate for Prime Minister within the period referred to in the preceding paragraph; (iv) when the required mandate is successfully completed, the President proposes to the National Assembly to elect the candidate for Prime Minister. The constitution does not specify when does the formation of the new government begin, but the answer lies in the specifics of the situation - as soon as possible; (iii) only when no agreement has been reached on the formation of the Government during the procedure described above, the President shall appoint an interim cabinet, dissolve the National Assembly and schedule new elections within two (2) months after the expiration of the credentials of the previous National Assembly (Article 64, paragraph 3). The act by which the President dissolves the National Assembly and also sets the date for the elections for the new National Assembly. In this case, the President may not dissolve the National Assembly during the last three months of the President's term. If the Parliament is unable to form a Government within that period, the President shall appoint an interim cabinet; and (iv) as stated in the case ("CODICES Research Result: BUL-1994-3-002"), with Decision no. 4 of 1994 for the constitutional case no. 8/1994, the Constitutional Court of Bulgaria interpreted Article 111, paragraph 1 of the Constitution and ruled that the resignation constitutes a free expression of the will of the Government or its leader, and not the fulfillment of a constitutional obligation. The Council of Ministers and the Prime Minister are not obliged to state the reasons for their resignation. However, according to Bulgaria's response, in cases where the Prime Minister is obliged by the Constitution to resign from the Government, the termination of competencies occurs based on the decision of the National Assembly, which votes the motion of no confidence or when the Government does not receive the required confidence. Apart from these two clearly regulated situations with the Constitution, the Prime Minister has no constitutional obligation to resign from the Government. Such an obligation does not arise when the National Assembly rejects proposals made by the Council of Ministers or the Prime Minister, including legislative initiatives. With Decision no. 13 of 1992 for the constitutional case no. 27/1992, the Bulgarian Constitutional Court interpreted Article 89, paragraph 3 of the Constitution, stating that: "*When the National Assembly rejects a motion of no-confidence against the Council of Ministers, the new motion of no confidence for the same reasons shall not be allowed within the next six*

months." When the National Assembly has rejected a motion of no-confidence against the Council of Ministers for its general policy, no new motion of no-confidence may be adopted within six (6) months under Article 89.3 of the Constitution on any grounds other than the violation of the Constitution committed within this period. By Decision no. 20 of 1992 for the constitutional case no. 30/1992, the Constitutional Court of Bulgaria interpreted the Constitution and the rules for the formation of the new Government, the competencies and the term of the interim government and the status of the National Assembly dissolved under the conditions of Article 99.5 of the Constitution, and of the National Representatives of the dissolved National Assembly.

300. The response of Bulgaria also stated that, (i) after the President has given the mandate to the first and second largest parliamentary group to form a Government, the President is no longer limited by the number of parliamentary groups and is not obliged to give the mandate to any of the candidates for Prime Minister appointed by any of them (is not obliged to give the mandate to the third largest parliamentary group). In this case, the President is authorized to decide which parliamentary group to nominate a candidate for Prime Minister. When there are three parliamentary groups, the President is obliged to instruct the third parliamentary group to nominate a candidate for Prime Minister. The mandate ends successfully in the sense of Article 99.4 of the Constitution, when the candidate for Prime Minister, by fulfilling the requirements for admissibility, submits to the President a composition of the Council of Ministers. This does not exclude changes in the composition proposed before the vote by the National Assembly. When the National Assembly elects a Prime Minister but refuses to elect the Council of Ministers proposed in structure and composition, it is considered that the mandate of this candidate has failed and the procedure for electing a government continues by giving the mandate to a candidate from another parliamentary group, or in the manner specified in Article 99.5 of the Constitution. Following the resignation of the elected Government, the formation of a new Government shall be carried out in accordance with the procedure provided for in Article 99 of the Constitution, regardless of the duration of this Government; and (ii) the Provisional Government is temporarily appointed by the President when the constitutional possibilities for the formation of a Government with the confidence of the National Assembly have been exhausted. The term of competencies shall continue until the formation of a Government in accordance with the procedure laid down in Article 99 of the Constitution. Upon the appointment of a Provisional Government, the resigned government ceases to function. The Provisional Government exercises the competencies of the Council of Ministers set out in Chapter Five of the Constitution. Some limitations of its functions stem from the fact that it does not receive its mandate from the Assembly. It is not subject to definition or legislation, but is a consequence of time limitations during which the Provisional Government acts, as a consequence of its intention to manage current domestic and foreign policy issues, towards holding parliamentary elections and forming a Government by the newly elected National Assembly, its nature is a consequence of the limited parliamentary control exercised over it and the absence of parliament when the National Assembly is dissolved and a new National Assembly is not elected, as well as by

the non-parliamentary source of its powers. The Provisional Government is not subject to parliamentary oversight which aims to exercise political responsibility; and (iii) the competencies of the dissolved National Assembly under the conditions of Article 99.5 of the Constitution have ended. Its powers may be renewed only in the circumstances referred to in Article 64.2, and for this purpose it shall be convene by order of Article 78 of the Constitution. Following the dissolution of the National Assembly, also the competencies of the people's representatives have ended. This means that, inter alia, they lose their parliamentary immunity, cease to receive compensation as MPs, cannot exercise parliamentary control and parliamentary committees will finish their action.

301. The response from Croatia specifies that (i) the Constitution regulates two types of procedure regarding a motion of no confidence in the Government (either the Prime Minister or the whole Government): the first one is immediately after the parliamentary elections (Articles 109, 109a and 109b); and the second one (also called the Government's non-confidence and a *real* dissolution of the Croatian Parliament) is not immediately after the parliamentary elections (Article 113). It additionally explains that in the first case, according to Article 109a.1 of the CRC, the deadline for the Government's reshuffling is 60 days (30 days + 30 additional days) while in the second case, according to Article 113.7, the deadline is only 30 days, however, if the attempt of the Government's reshuffling fails, the President of the Republic of Croatia has to call for an early election for Croatian Parliament: according to Article 109b in the first case; and according to Article 113.7 in the second case; (ii) the Croatian Parliament can dissolve itself on its own under Article 77.1 or the Croatian Parliament can be dissolved under Article 104 and Article 113.7 by the President of the Republic of Croatia; (iii) if the no confidence motion is passed through the Parliament, there is no (automatic) mandatory constitutional obligation to dissolve the Parliament. Only if the attempt of the Government's reshuffling fails, the President of the Republic of Croatia has to call for an early election for the Croatian Parliament (Article 113.7 of the Constitution) and the Parliament has to be dissolved either by itself or by the President of the Republic; and finally (iv) according to the Croatian response, "*The facts of your case are as follows: the parliamentary elections were on 6 October 2019; the Government assumed the office on 3 February 2020; the vote of no confidence motion was passed through Parliament on 25 March 2020. If these facts are correct, Article 113.7 of the CRC will be applied in Croatia.*" In the end, the 30-day deadline (under Article 113.7 of the CRC) to prove the formation of a new government was successfully used in 2003 and 2009 in Croatia, but not in 2016 when early parliamentary elections were held and then the new Government took office on 19 October 2016. The Thirteenth Government of the Republic of Croatia was headed by Prime Minister Tihomir Orešković from 22 January to 19 October 2016. It was formed after the 2015 parliamentary elections. The negotiation process that led to its formation was the longest one in the history of Croatia. On 16 June 2016, the Orešković Government lost the motion no-confidence in the Assembly. A subsequent attempt by the Patriotic Coalition to form a new parliamentary majority, with Finance Minister Zdravko Marić as Prime Minister, failed and the Assembly voted for its dissolution on 20 June 2016. The dissolution took effect on 15 July 2016, which enabled the President of the Republic of Croatia to officially call the elections

for 11 September 2016. Orešković's cabinet served in the capacity of caretaker (as a technical government) until the time when the new Government took office after the 2016 elections.

302. The response from North Macedonia specified that (i) there is no specific constitutional provision that allows the formation of a new Government within the same legislature after the vote of no confidence against an elected Government. However, there is a practice in the work of the Assembly on this issue when after voting the motion of no confidence in the current Government, the mandate to form a new Government is given to the other party or coalition; (ii) there is no constitutional provision for the dissolution of the Assembly after a motion of no confidence against the Government. According to Article 63.6 of the Constitution, the Assembly is dissolved when a majority of the total number of representatives votes in favour of dissolution. This dissolution depends only on the decision of the members of the Assembly.

303. The response from the Constitutional Court of South Africa specifies that (i) a motion of no confidence has been held to be a mechanism of fundamental importance to the functioning of South Africa's constitutional democracy. Its primary purpose *is "to ensure that the President and the national executive are accountable to the [National] Assembly made up of elected representatives."* A motion of no confidence thus plays an important role in *"giving effect to the checks and balances element of our separation-of-powers doctrine"* and advancing our "*democratic hygiene"*. As the Constitutional Court observed in *United Democratic Movement*: "*A motion of no confidence constitutes a threat of the ultimate sanction the National Assembly can impose on the President and Cabinet should they fail or be perceived to have failed to carry out their constitutional obligations. It is one of the most effective accountability or consequence-enforcement tools designed to continuously remind the President and Cabinet of what could happen should regular mechanisms prove or appear to be ineffective. This measure would ordinarily be resorted to when the people's representatives have, in a manner of speaking, virtually given up on the President or Cabinet. It constitutes one of the severest political consequences imaginable – a sword that hangs over the head of the President to force him or her to always do the right thing*."; (ii) the right to have a vote of no confidence debated in the National Assembly is recognised as one that is enjoyed by members of both majority and minority parties. Members of the majority party may not frustrate the ability of a member of a minority party to propose a motion of no confidence for debate before the National Assembly, regardless of the prospects of success of such a motion. A motion of no confidence represents a motion, by the South African public, through their elected representatives in the National Assembly acting as a collective, to end the mandate bestowed on an incumbent President or Cabinet. The effect of a successful vote of no confidence in the President is that the President and the entire incumbent Cabinet, as well as all Deputy Ministers, must resign; (iii) The Rules of the National Assembly regulate the exercise of the right flowing from section 102(2) of the Constitution. However, as the Constitutional Court held in the case *Mazibuko*, *the Rules may not "deny, frustrate, unreasonably delay or postpone the exercise of the right."*; (iv) chapter 5 of the Constitution (sections 83 to 102) regulates the executive authority of South Africa, which, as noted above, is vested in the President,

who exercises it together with the Members of his Cabinet. Article 102 of the Constitution provides for two types of motions of no confidence: one in relation to the Cabinet, excluding the President, and one in relation to the President as an individual; (v) the mechanism established in Article 102(1) of the Constitution has not yet been utilised in South Africa. It is clear from the language of this sub-section that a successful motion of no confidence will result in a reconstitution of the Cabinet by the President, while the President himself will remain in office. Moreover, there is no indication that the success of a motion of no confidence in Cabinet will have any effect on Parliament (namely, the National Assembly and the National Council of Provinces). Indeed, the manner in which a motion of no confidence shall amount to constitute an important factor against this: it is the National Assembly itself that is responsible for a motion of no confidence being passed – if the success of the motion resulted in the dissolution of the National Assembly, it would require the Assembly to vote against its own interests. Accordingly, if a motion of no confidence made in terms of Article 102(1) is successful, then there is no requirement for the Parliament to dissolve: the President must simply repeat the process of appointing the members of his Cabinet. There is no South African jurisprudence specifically considering the application of this sub-section. Adopting a purposive interpretation of the sub-section, it is apparent that it does not envisage for the President to simply re-appoint the same Cabinet: this would defeat the clear purpose of the Article and render it as having no effect; (vi) the Constitution provides for two ways in which the President's term of office may come to an end prior to its expiration. The first of these is by resolution supported by at least two thirds of the members of the National Assembly, on grounds of serious violations of the Constitution, serious misconduct, or inability to perform his official functions. The second is via a motion of no confidence, adopted by a majority of the National Assembly, which would compel the President, members of Cabinet and Deputy Ministers to resign. This latter mechanism is provided for in Article 102(2) of the Constitution, which reads: "*If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the President, the President and other members of the Cabinet and any Deputy Ministers must resign*." Like Article 102(1), Article 102(2) does not envision the dissolution of Parliament, or preclude the formation of a new executive, absent the dissolution of Parliament. However, the dissolution of Parliament due to a vacancy in the office of the President is expressly addressed in Article 50(2) of the Constitution, which provides that: "*The Acting President must dissolve the National Assembly if— a) there is a vacancy in the office of the President; and b) the Assembly fails to elect a new President within 30 days after the vacancy occurred*." Accordingly, to the extent that the President and the Cabinet are removed as a result of a successful motion of no confidence, the National Assembly has 30 days during which it should elect a new President, who must, in turn, elect a new Cabinet. Rule 15 of the National Assembly Rules provides that: "*At the first sitting, after its election of a Speaker and Deputy Speaker, the House must, in accordance with section 86(1) and (2), read with Schedule 3 to the Constitution, elect one of its members as the President of the Republic*."; (vii) Article 86 of the Constitution provides that: "*(1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President; . . . (3) An election to fill a vacancy in the office of the*

President must be held . . . no later than 30 days after the vacancy occurs." Accordingly, based on the above, there does not appear to be any law precluding the election of new members of the executive from within the National Assembly, which will not dissolve as a result of the removal from office of the Cabinet, or the President and the Cabinet. However, interpreted purposively, it is assumed that the same individuals could not simply be re-elected from the ranks of the members of the National Assembly. The alternative would, moreover, undermine the principle of legality, which is a component of the rule of law in South Africa. Legality requires persons exercising public power to, amongst other things, do so rationally, that is, in a manner that demonstrates a rational connection between the purpose for which the power was given and the evidence before the person(s) exercising the power and follows a rational process; (viii) There is no requirement to dissolve the Assembly, however, as noted above, the Acting President is required, in terms of Article 50 (2) of the Constitution, to dissolve the National Assembly if there is a vacancy in the office of the President and the National Assembly fails to elect a new President within 30 days of the vacancy occurring; and (viii) there has not yet been a successful motion of no confidence in South Africa. Accordingly, South African jurisprudence has not directly engaged in the questions posed. However, the South African Constitutional Court has addressed adjacent issues that have arisen in relation to the application of Article 102(2) of the Constitution. First, in the *Mazibuko case*, the applicant gave notice of a motion of no confidence against the President. Due to a lack of consensus amongst the internal committees of the National Assembly, the motion was not brought before the Assembly. The applicant was unsuccessful in her application to the High Court for an order directing the Speaker to take the necessary steps to have the motion of no confidence presented. The applicant took the High Court judgment on appeal to the Constitutional Court, which held that Article 102(2) of the Constitution confers on a member of the Assembly the entitlement to give notice of and have a motion of no confidence in the President tabled and voted on in the Assembly within a reasonable time. The Court held that the primary purpose of a motion of no confidence is to ensure that the President and the national executive are accountable to the Assembly, which is made up of democratically elected representatives of the people. To the extent that the Rules of the National Assembly did not vindicate the rights of members of the Assembly to have a motion of no confidence formulated, discussed and voted for in the Assembly within a reasonable time, the Court found that they were inconsistent with Article 102(2) of the Constitution and invalid. Second, the legal issue raised in *United Democratic Movement* was whether the Constitution requires, permits, or prohibits votes by secret ballot in motions of no confidence against the President. The Constitutional Court held that a motion of no confidence fundamentally serves the purpose of enhancing the effectiveness of regular accountability mechanisms and of safeguarding the best interests of the South African people. It also held that the Speaker does have the power to prescribe that a motion of no confidence in the President be conducted by secret ballot under appropriate circumstances. The decision to determine the voting procedure in conducting a motion of no confidence, in terms of its constitutional powers under Article 57 of the Constitution, was held to remain with the National Assembly. Finally, the South African response maintains that to the extent that the term "government" is interpreted narrowly, to refer to the Cabinet and/or the

President, then the position appears to be that of a new Cabinet, or a new President *and* Cabinet (as the case may be), must be appointed following a successful motion of no confidence. As explained above, if the majority of members of the National Assembly pass a motion of no confidence in the Cabinet, then the President is required to appoint a new Cabinet. If that majority passes a motion of no confidence in the President, then the President, his or her Cabinet and all Deputy Ministers are required to resign. There is no requirement that Parliament dissolve in either event - save for a situation in which the President has resigned on the ground of a successful motion of no confidence and a new President is not appointed within 30 days. Outside of this eventuality, there is no legal obligation to dissolve Parliament following a motion of no confidence.

304. The response of Moldova specifies that, (i) Yes, it is possible to form new Government within the same legislature, following a motion of no confidence. According to Article 103 para. 2 of the Constitution of Republic of Moldova, in cases where Parliament has passed a vote of no confidence in the current Government, or the Prime Minister has been removed from office, or as provided for by para. (1) above [the Government shall exercise its mandate up to the date of validation of the election of the new Parliament], the Government shall only exercise the administration of the public affairs until the new Government will be sworn in. Moreover, Article 85 para.1 provides the power of the President to dissolve the Parliament in the event of impossibility to form the Government for a period of three(3) months; (ii) Article 85 of the Constitution of the Republic of Moldova, which provides the dissolution of Parliament, provides the following: (1) In the event of impossibility to form the Government or in case of blocking up the procedure of adopting the laws for a period of three months, the President of the Republic of Moldova, following consultations with parliamentary fractions, may dissolve the Parliament; (2) The Parliament may be dissolved, if it has not received the vote of confidence for setting up of the new Government within 45 days following the first request and only upon declining at least two requests of investiture; (3) The Parliament may be dissolved only once in the course of one year; and (4) The Parliament may not be dissolved within the last 6 months of the term of office of the President of the Republic of Moldova nor during a state of emergency, martial law or war.

305. The Constitutional Court of Moldova has interpreted whether the first and the second paragraph of this article establishes a discretionary power or a mandatory obligation in its Judgment no. 30 of 1 October 2013 on the interpretation of the Article 85 para. 1 and para. 2 of the Constitution; (iii) the relevant findings from the Constitutional Court Judgement no. 30 of 1 October 2013 on the interpretation of Article 85 para. 1 and para. 2 of the Constitution, include that the Court notes that, as a whole, Article 85 has the status of a balancing mechanism, a mechanism which is applied in order to avoid or overcome an institutional crisis or a conflict between the legislature and the executive; that the Head of State's discretionary power to dissolve or not Parliament in the event of a no confidence vote to form the Government occurs after the expiration of forty five (45) days from the first request and the rejection of at least two investiture requests until the expiration of the term of 3 months; if the Parliament has failed to invest the Government within three

months, the Head of State is obliged to dissolve the Parliament, thus his discretionary power to dissolve Parliament becomes an obligation imposed by the will of the constituent legislator. Also, from the tenor of the collaboration and mutual control between the legislative and the executive power, the Head of State duty is to concur to overcome the political crisis and the conflict between the powers, and not to keep the crisis situation indefinite, fact that does not correspond to the general interests of the citizens, holders of national sovereignty; and regardless of the circumstances that led to the absence of the confidence vote, the failure to form the new Government within three months will inevitably lead to the dissolution of Parliament; and (iv) the Constitutional Court also found that the President of Republic of Moldova is obliged to dissolve the Parliament after three (3) months, if it fails to form the Government, inclusively if the confidence vote to form a Government is not accepted.

306. Finally, the response of Brazil specifies that Brazil's presidential system does not provide for motions of no confidence or dissolution of Parliament, as set out in the Constitution proclaimed in 1988.

(iii) Preparatory Documents for the Drafting of the Constitution

307. As reflected in the proceedings before the Court, the Court has received the preparatory documents for the drafting of the Constitution of the Republic of Kosovo. These documents, to which the Court has access for the first time, are analyzed solely with the aim of determining the purpose of the drafters of the Constitution regarding the Dissolution of the Assembly, the Election of the Government, and the Motion of No Confidence/Confidence, reflected in the Constitution as Articles 82, 95 and 100, which reflect the essence of the case before the Court. The same are not determinant for the decision of the Court.

308. The Court also emphasizes the fact that it has received this documentation from the State Archive of the Republic of Kosovo as a certified copy of the original documentation found in the Kosovo Archive, following a proposal made by the Ombudsperson and following a request from the Court addressed to the Assembly. On the basis of this documentation, and especially on all draft drafts of the Constitution that are part of this material, the Court, in the following, will reflect the evolution of the above articles, during the drafting of the Constitution, starting with Article 82, 95 and 100, respectively. The Court also emphasizes the fact that the language used in the preparation of the drafts of the Constitution does not always reflect harmonized terminology and also contains eventual technical errors. The court will present this language exactly as it is reflected in these preparatory drafts.

In relation to the dissolution of the Assembly

309. The earliest draft of the Constitution that is part of this documentation is that of 21 May 2007. At this stage of drafting, in addition to the numbers of the articles, the draft Constitutions do not contain the titles of the articles nor the numeration of the relevant paragraphs. The dissolution of the Assembly, in Article 80 of this draft, had five paragraphs, which stipulated that the Assembly is dissolved in the following cases: (i) when within the period 60 days

from the day of the appointment of the candidate for Prime Minister by the President, the Government cannot be formed; (ii) when 2/3 of the deputies vote for dissolution; (iii) when within 60 days from the day of the beginning of the procedure, the President of Kosovo is not elected; (iv) by decision of the President after consultations with the parliamentary groups represented in the Assembly; and (v) the dissolution of Parliament shall be made by a decree of the President.

310. A document, entitled "*Questionnaire on Constitutional Issues: Points on Political Guidelines"*, of 1 June 2007, which, based on the minutes being an integral part of the preparatory documents, turns out to have been prepared by the Constitutional Commission for the Political and Strategic Group and the Unity Team, includes, to the extent relevant the circumstances of the case, also the following questions: (i) in question 11, respectively *"Who should be able to dissolve the Assembly and call early elections"*, had listed the following alternatives : a) self-dissolution by 2/3 of the votes; b) the President of Kosovo; c) by the proposal of the Government; d) any of the above; and e) no possibility of dissolution of the Assembly; and (ii) in question 26, respectively "*Resignation - if the Prime Minister resigns will the whole government fall?"*. In the same document, entitled "Questionnaire on Constitutional Issues" but three weeks older, respectively of 20 June 2007, beyond the above two questions, there is also question 30, respectively *"Should the current system of motion of no confidence vote (positive vote of no confidence) continue"*. The same questions are reflected in another document *"Questionnaire on Constitutional Issues"* bearing no date.

311. The next draft included in the preparatory documents is the one of 16 October 2007, *entitled "The Final Draft of the Working Group (GR-III) "Kosovo Institutions."* Article 80, respectively, the Dissolution of the Assembly, reflects the same content, with the exception of: (i) the combination of point ii with point v, as explained above; and (ii) point iv, more precisely, the sentence "*by decision of the President following the consultation with the parliamentary groups represented in the Assembly"*, which, unlike the previous draft, is not reflected in this draft.

312. The next draft included in the preparatory documents is of 21 November 2007. Article 80 regarding the Dissolution of the Assembly, already titled, has four items in a single paragraph, marked as a), b), c) and d). Unlike the previous draft, its item d) contains "*The Assembly may be dissolved by the President following a successful vote of no confidence in the Government."* Points a), b) and c) remain the same, with points (i), (ii), and (iii) of the previous draft.

313. The next draft included in the preparatory documents is date 14 December 2007. Article 80, regarding the Dissolution of the Assembly, does not reflect changes, but the draft reflects a number of comments for consideration.

314. The next draft included in the preparatory documents is of 22 December 2007. Article 80, regarding the Dissolution of the Assembly, has four points in the same paragraph, including the dissolution of the Assembly, *"when the Assembly votes on no confidence against the Government",* in its last point.

The document reflects comments, including a comment which recommends that this point be deleted, and a new paragraph be added regarding this point.

315. The next draft included in the preparatory documents is of 2 February 2008. Article 82, regarding the Dissolution of the Assembly, is now already divided into two paragraphs. The first paragraph is structured in three sub-paragraphs, which provide for three circumstances in which the Assembly is distributed: (1) when within a period of sixty (60) days from the date of appointment of the candidate for Prime Minister by the President of the Republic of Kosovo, the Government cannot be formed; (2) when two thirds (2/3) of all deputies vote for the dissolution of the Assembly, the dissolution shall be done by a decree of the President of the Republic of Kosovo; (3) when the President of the Republic of Kosovo is not elected within sixty (60) days from the day of the commencement of the election procedure. Whereas, paragraph two of the same Article, has only one point and it determines that *"The Assembly can be dissolved by the President of the Republic of Kosovo, after the successful vote of no confidence in the Government."*

316. In the following, in the draft documents is included also a draft bearing no date, entitled "*Public Comments on the Draft Constitution of the Republic of Kosovo"*, which based on the minutes of the Constitutional Commission included in the preparatory documents, turns out to be the draft of the last Constitution of February 2008. This document does not reflect that there have been comments regarding Article 82 concerning the Dissolution of the Assembly.

317. The next and final draft included in the preparatory documents is date 13 March 2008. Article 82, regarding the Dissolution of the Assembly, reflects the current content of Article 82 of the Constitution.

In relation to the Election of the Government

318. The draft Constitution of 21 May 2007, in Article 104 defines the way of electing the Government. As explained above, at this stage of drafting, in addition to the numbers of articles, the draft Constitution does not contain titles of articles or enumeration of the relevant paragraphs. This Article specifies as follows: (i) after the elections or when the Prime Minister resigns or for any other reason, his post becomes vacant, the President of Kosovo, after consultation with the political parties represented in the Assembly, proposes to the Assembly a candidate for Prime Minister; (ii) The Prime Minister, no later than 15 days after the appointment, presents the composition of the Government to the Assembly of Kosovo and requests the voting of the Government by the Assembly of Kosovo; (iii) The Government or its member shall be deemed elected when they receive a majority of the votes of the Members of the Assembly of Kosovo; (iv) When the proposed composition of the Government does not receive the necessary majority of votes, the President of Kosovo appoints another candidate with the same procedure within ten(10) days. When the Government is not elected for the second time, then the President of Kosovo announces the early elections which must be held no later than 45 days from their announcement; and (v) the function of the

Government is exercised by the existing Government until the election of the new Government.

319. The next draft, namely that of 16 October 2007, Article 104, concerning the Election of the Government, reflects the following changes: the first point above has been reformulated as follows: (i) The President of Kosovo, after the elections and consultations with political parties or the coalition that has the necessary majority in the Assembly to form the Government, proposes to the Assembly the candidate for Prime Minister; point two is added as follows (ii) With the fall of the Prime Minister the Government falls; the re-formulated point from the previous draft is added (iii) When the Prime Minister resigns or for other reasons, his post becomes vacant, the President of Kosovo mandates the new candidate; the abovementioned point (ii) becomes the next point and contains as follows (iv) The Prime Minister no later than 15 days after the appointment presents the composition of the Government before the Assembly of Kosovo and requests the vote of the Assembly; the above-mentioned point (iii) of the previous draft, becomes the next point and contains as follows (v) The Government is considered elected when it receives the majority of votes of the Members of the Assembly of Kosovo; The above point (iv) of the previous draft becomes the next point with the following content (vi) When the proposed composition of the Government does not receive the required majority of votes, the President of Kosovo appoints another candidate with the same procedure within 10 days. When the Government is not elected for the second time, then the President of Kosovo announces the early elections which must be held no later than 40 days from their announcement; while the last point, remains the same, (vii) the existing Government exercises its duty until the election of the new Government.

320. The next draft, namely that of 21 November 2007, concerning the Election of the Government, already listed as Article 96 and entitled, contains seven paragraphs. They contain exactly the following: 1) The President of Kosovo, after elections and consultations with political parties or the coalition that has the necessary majority in the Assembly to form the Government, proposes to the Assembly the candidate for Prime Minister; 2) The candidate for Prime Minister, no later than 15 days after the appointment, presents the composition of the Government to the Assembly of Kosovo and requests the vote of the Assembly; 3) The Government is considered elected when it receives the majority of votes of the deputies of the Assembly of Kosovo; 4) When the proposed composition of the Government does not receive the required majority of votes, the President of Kosovo, appoints another candidate with the same procedure within 10 days. When the Government is not elected for the second time, then the President of Kosovo announces the early elections which must be held no later than 40 days from their announcement; 5) When the Prime Minister resigns or for any other reason his post becomes vacant, the President of Kosovo appoints a new candidate; 6) The existing Government exercises its duty until the election of the new Government; and 7) With the fall of the Prime Minister, the Government falls.

321. The next draft, respectively that of 14 December 2007, Article 96, regarding the Election of the Government, does not reflect changes, but the draft reflects a number of comments for consideration.

322. The next draft, namely that of 22 December 2007, in its Article 93 concerning the Election of the Government, reflects changes. It already reflects the following five paragraphs: 1) The President of Kosovo, after elections and consultations with political parties or the coalition that has won the majority in the Assembly proposes to the Assembly the candidate for Prime Minister, to form the Government; 2) The candidate for Prime Minister, no later than 15 days after the appointment, presents the composition of the Government before the Assembly of Kosovo and requests the approval of the Assembly; 3) The Government is considered elected if it receives the majority of votes of the deputies of the Assembly of Kosovo; 4) If the proposed composition of the Government does not receive the required majority of votes, the President of Kosovo, appoints another candidate with the same procedure within 10 days. If the Government is not elected for the second time, then the President of Kosovo announces the elections, which must be held no later than 40 days from the day of their announcement; 5) When the Prime Minister resigns or, for other reasons, his / her position becomes vacant, the Government falls, and the President of the Republic of Kosovo, in consultation with the political parties or the coalition that has won the majority in the Assembly, mandates the new candidate, to form the Government.

323. The next draft, namely that of 2 February 2008, in its Article 95 concerning the Election of the Government, reflects the current Article 95 of the Constitution, with three exceptions (i) in its first paragraph, in contrast to the previous draft it refers to the *"party"* in the singular; (ii) the third paragraph requires the vote of *"all deputies"* as opposed to the previous draft in which it refers to "*votes of deputies"* for the approval of the Government; and (iii) does not contain the sixth paragraph of the current article of the Constitution, respectively "*After being elected the members of the Government shall take an oath before the Assembly. The text of the oath will be provided by law"*.

324. The draft entitled "*Public Comments on the Draft Constitution of the Republic of Kosovo"* does not reflect that there have been influential comments on the final content of Article 95.

325. The next and final draft included in the preparatory documents, namely that of 13 March 2008, in Article 95 concerning the Election of the Government, reflects the content of Article 95 of the Constitution, with the exception of the sixth paragraph concerning the oath of the members of Government.

In relation to the Motion of Confidence

326. The draft Constitution of 21 May 2007, in Article 105, defines the Motion of Confidence. As explained above, at this stage of drafting, except for the numbers of articles, the draft Constitution does not contain titles of articles or enumeration of the relevant paragraphs. This article specifies the following: (i) the motion of no confidence may be presented against the Prime Minister or any of the members of the Government on the proposal of one third (1/3) of the deputies of the Assembly; (ii) The vote of confidence of the Government may also be requested by the Prime Minister; (iii) The motion of no confidence shall not be voted before the elapse of three days from its submission. The submitted

motion of no confidence shall be put on the agenda of the Assembly within five days from the day of its submission to the Assembly; (iv) The motion of no confidence shall be deemed to have been accepted if more than half of the members of the Assembly of Kosovo have voted for it; (v) When a motion of no confidence is rejected by a majority of the Members of Parliament, the submitters of the motion may again submit a motion of no-confidence, after a period of three months; (vi) When the no-confidence motion has been voted against the Prime Minister or the Government as a whole, the Government shall be considered dismissed and the President of Kosovo shall appoint a new candidate for Prime Minister within 10 days; (vii) when the motion of no confidence relates to a member of the Government, the Prime Minister makes his replacement within 15 days; and (viii) after the resignation of the Prime Minister the mandate of the Government is considered to have been terminated.

327. The next draft, namely that of 16 October 2007, in its Article 105 concerning the Motion of Confidence, reflects the following changes: points (i) and (ii) remain the same; the next point is amended as follows (iii) the motion of no confidence shall be put on the agenda of the Assembly within five days from the day of submission; points (iv) and (v) remain essentially the same; the next point is modified as follows (vi) When the motion of no confidence is voted against the Prime Minister or the Government as a whole, the Government is considered dismissed; the point (vii) remains the same; while the above-mentioned (viii) of the previous draft is not included in this draft, which reads exactly as follows *"following the resignation of the Prime Minister, the mandate of the Government is considered to have been terminated."*

328. The next draft, namely that of 21 November 2007, concerning the Motion of Confidence, already listed as Article 97 and titled, contains six paragraphs. They contain exactly the following: 1) the motion of no confidence may be presented against the Prime Minister or any of the members of the Government on the proposal of one third (1/3) of the deputies of the Assembly; 2) The Prime Minister may also request the vote of confidence of the Government; 3) The Motion of Confidence shall be put on the agenda of the Assembly within five days from the day of submission; 4) The motion of no confidence is considered to have been voted if more than half of the deputies of the Assembly of Kosovo have voted for it; 5) When the motion of no confidence does not receive the required majority of the votes of the deputies, the submitters of the motion may again submit a motion of no confidence, only after a period of three months; 6) When the motion of no confidence has been voted against the Prime Minister or the Government as a whole, the Government shall be considered dismissed.

329. The next draft, respectively that of 14 December 2007, in Article 97 concerning the Motion of Confidence, does not reflect differently, but the draft reflects a number of comments for consideration.

330. The next draft, namely that of 22 December 2007, in Article 98 concerning the Motion of No Confidence, remains essentially the same, but the draft reflects a number of comments for consideration. The next draft, namely that of 2

February 2008, Article 100, concerning the Motion of Confidence, does not reflect substantive changes.

331. The draft entitled ""*Public Comments on the Draft Constitution of the Republic of Kosovo"*, of the month of February 2008, reflects that there have been specific comments, from a commenter identified as PAI, regarding the Motion of Confidence, recommending, inter alia, but specifically, that this article be amended to include the *"constructive motion"*, respectively the conditioning of the presentation and voting of the motion of no confidence with the proposal of the new candidate for Prime Minister.

332. The next and final draft included in the preparatory documents, namely that of 13 March 2008, in Article 100 concerning the Motion of Confidence, reflects the content of Article 100 of the Constitution, with the exception of its sixth paragraph, respectively *"If the no-confidence motion is voted against the Government as a whole, the Government is considered dismissed"*, and which is not included in this draft and is added to the final draft of the Constitution.

III. In relation to Article 82 [Dissolution of the Assembly] of the Constitution

333. The Court recalls that the constitutional question concerning Article 82.2 of the Constitution relates to the final constitutional interpretation of whether the Constitution obliges the President to dissolve the Assembly following a successful motion of no confidence against the Government or only enables him to dissolve the Assembly.

334. The submitting deputies allege that the President is obliged to dissolve the Assembly according to Article 82.2 of the Constitution; Meanwhile, the President, as an opposing party, claims that this norm does not oblige him to dissolve the Assembly, but gives him the opportunity to dissolve the Assembly, depending on the will of the majority of parties and coalitions represented in the Assembly to form a new Government.

335. For the purposes of dealing with this specific claim, the following, and as explained above, the Court shall present: (1) The essence of the Applicants' claims and the supporting comments submitted by the interested parties (see paragraphs 62- 92, 122-167 and 192-205 of this Judgment for a detailed reflection of these claims and supporting comments); (2) The essence of the arguments of the opposing party and other interested parties which have supported the opposing party (see paragraphs 93-121, 168-191 and 206-216 of this Judgment for a detailed reflection of the objections and comments in favor of such opposition); and (3) the Court's response in respect of this specific claim.

The essence of the Applicants' allegations

336. Applicants, respectively the thirty (30) submitting deputies, in essence, allege that Article 82.2 of the Constitution obliges the President to dissolve the Assembly following a successful motion of no confidence against the Government. Applicants' allegations for the unconstitutionality of the

President's challenged Decree have been supported by the Prime Minister, the Speaker of the Assembly and the Deputy Speaker of the Assembly - always for specific reasons stated by each party concerned in their submissions submitted to the Court and presented in detail in paragraphs 62-92, 122-167 and 191-205 of the present Judgment.

337. According to the Applicants: (i) The President should have dissolved the Assembly by the Decree on the basis of Article 82.2 of the Constitution; (ii) The Constitution, except for the dissolution of the Assembly, does not provide for any other procedure following the motion of no confidence; (iii) Article 82.2 of the Constitution leads to a one-way street and does not allow the application of Article 95 of the Constitution due to the lack of a constitutional provision that can be considered as a constitutional connecting bridge between Article 100 and Article 95 of the Constitution; (iv) the practice of decrees issued in 2010 and 2017 clearly proves that after the motion of no confidence against the Government, the only constitutional path of action is the dissolution of the Assembly through Article 82.2 of the Constitution; (v) The Constitution has clearly defined Article 82.2 as the only constitutional gateway to unblock the constitutional institutions of the Republic of Kosovo; (vi) the transition from a constructive motion of no confidence to a kind of destructive motion of no confidence, has been made in order to make it clear that the dismissal of the Government results in the dissolution of the Assembly and the announcement of new elections; (vii) practice shows that after every motion of no-confidence against the Government, the constitutional provisions have been materialized naturally, followed by the dissolution of the Assembly by the President on the same day; (viii) Article 100.6 of the Constitution is naturally bound by Article 82.2 of the Constitution; (ix) Article 82.2 of the Constitution does not constitute an alternative constitutional provision (of possibility) for the dissolution of the Assembly but constitutes the only possible path; and (x) the modal verb *"may"* used in Article 82.2 of the Constitution does not constitute an alternative to its application, but provides the only (most adequate) constitutional solution possible to enforce the will of the people through parliamentary elections for electing new representatives in constitutional institutions.

338. According to the Prime Minister: (i) The textual content of Article 82.2 constitutes the only constitutional norm applicable to cases following the successful vote of no confidence against the Government; (ii) The Constitution-maker has left no alternative but to have the Assembly dissolved by the President through Article 82.2 of the Constitution; (ii) the verb *"may"* ["may" in English] used in Article 82.2 of the Constitution has an authorizing / permitting provision, so it is a norm that recognizes a President's competence and in fact obliges the President to dissolve the Assembly; (iii) the use of the verb *"may"* in Article 82.2 of the Constitution does not in itself stipulate that the norm has an alternative character, because for a norm to be considered an alternative it must contain in the wording of its text at least one alternative that can be chosen by the body, who has been recognized its discretion in evaluating and choosing between alternatives; (iv) Article 82.2 of the Constitution only provides that the President is authorized/ empowered to dissolve the Assembly following a successful motion of no confidence, but leaves no other alternative at his discretion; and, (v) the interpretation of Article 82.2 of the Constitution

must be made with reference to other methods of constitutional interpretation, so that the true meaning of the norm can be deduced from other sources, other than linguistic formulation.

339. According to the President of the Assembly, there are three main reasons why the President's challenged Decree is unconstitutional, as follows: (i) The President has not respected the constitutional principle of separation of powers; (ii) The President, by his Decree, has intended to amend the country's Constitution, a competence which belongs exclusively to the Assembly; and, (iii) the President has incorporated in himself competencies for the interpretation of the Constitution which, according to positive law, belong to the Constitutional Court. The President of the Assembly, in her comments did not present any specific comments regarding Article 82.2 of the Constitution.

340. According to the arguments of the Deputy President of the Assembly: (i) The Decree of the President was issued in violation of Article 82.2 of the Constitution because he should have decreed the dissolution of the Assembly; (ii) after the motion of no confidence against the Government, the Constitution authorizes the President in accordance with his constitutional role, only to dissolve the Assembly and set an election date; (iii) Article 82.2 of the Constitution, which provides for the dissolution of the Assembly, is related only to Article 100.6 of the Constitution, which deals with the motion of no confidence, and Article 84.3, which deals with the competence of the President to call elections; (iv) if the President's interpretation would be correct that the Assembly is not dissolved after the motion of no confidence against the Government then the norm of Article 82.2 is completely unnecessary and without any function; (v) Article 82.2 of the Constitution exists due to the fact that there is no alternative to establishing a new Government following the successful voting of the motion of no-confidence against the Government, therefore the dissolution of the Assembly and the announcement of elections are envisaged as a constitutional way out; (vi) it is clear that the constitution-maker, through Article 82.2, allows for legitimate government, aiming to restore legitimacy to the Assembly through elections; (vii) the distinction between the Constitution and the Constitutional Framework clearly proves that the constitution-maker transcends the model of constructive motion; and, (viii) the President's action in the circumstances of this case is contrary to the parliamentary practice up to the present in the Republic of Kosovo in similar cases, in 2010 and 2017, when the Government of the country was dismissed by a motion of no confidence.

The essence of the arguments of the opposing party

341. The opposing party, namely the President, in essence, claims that the Constitution does not oblige the President to dissolve the Assembly after the successful motion of no confidence against the Government. In support of the constitutionality of the President's challenged Decree, submissions were submitted by the LDK Parliamentary Group, AKR MPs supported by NISMA MPs, and LDK MP, Arban Abrashi - for the specific reasons mentioned by each interested party in their submissions submitted to the Court and reflected in paragraphs 93-121, 168-191 and 206-216 of the present Judgment.

342. According to the President: (i) Article 82 of the Constitution is divided into two paragraphs, where the first paragraph defines the situations when the Assembly is compulsorily dissolved, while the other paragraph defines the situation when the Assembly *"may"* be dissolved; (ii) when issuing the Decree, the President has taken into account the avoidance of elections and the will of the people's elected representatives; (iii) LVV(Vetëvendosje Movement) has requested the dissolution of the Assembly under Article 82.2 of the Constitution, but the President, taking into account the constitutional competencies, the spirit of the Constitution and the standards of Judgment KO 103/14, had to find a way to form the Government, in order to materialize the will of the political parties through constitutional procedures for the formation of the Government, according to Article 95 of the Constitution; (iv) in all three cases of past legislatures, namely the fourth: 2014 (2014), the fifth (2017) and the sixth (2019), the will of political parties has clearly been the dissolution of the Assembly and the President has decreed this will of theirs, while in this case, the will of two thirds (2/3) of the people's representatives is to form a new Government and the country not to go to early elections; (v) taking into account the will of the political parties, respectively 2/3 of the deputies not to dissolve the Assembly, the President has represented the will of the people's elected representatives, who have deemed it necessary to establish a new Government; (vi) going to new elections, despite the will of all political parties represented in the Assembly not to go to early elections (except for LVV), would constitute a constitutional violation; (viii) citizens in a country with parliamentary democracy do not elect the Government, but elect the Assembly and the citizens, when voting, expect the Assembly to have a four (4) year mandate; (ix) The President, by issuing the challenged Decree, took into account the new constitutional circumstances, namely the passing of the motion of no-confidence with 2/3 of the votes of the deputies, the expressed will of the deputies for the new Government, and the mandate of the Assembly until the end of 2023; (x) Articles 100.6 and 82.2 of the Constitution must be read in conjunction with Article 95.5 of the Constitution due to the various situations that may arise, as in the case of the current situation; (xi) for the first time in constitutional practice, most of the political parties represented in the Assembly have declared and asked the President not to dissolve the Assembly, but to follow the constitutional procedures for the creation of a new Government; (xii) Article 82.2 of the Constitution is applied by the President if it is seen that there is no will on the part of the parties represented in the Assembly to form the Government; (xiii) the expression *"may"* used in paragraph 2 of Article 82 of the Constitution does not constitute an express obligation for the President, but obliges the President to assess whether the Assembly can be dissolved or not, after a successful motion of no confidence against the Government; and, (xiv) the verb *"may"* used in paragraph 2 of Article 82 of the Constitution indicates that the dissolution of the Assembly is at the discretion of the President, after consultation with the political parties and coalitions represented in the Assembly.

343. According to the LDK Parliamentary Group: (i) The President does not have the right to automatically dissolve the Assembly under Article 82.2 of the Constitution after a successful motion of no confidence, without first having the will of the majority of political entities represented in the Assembly. ; (ii) Article 82.2 cannot be used automatically by the President not only because of

the verb "may" but also because the drafters of the Constitution did not define the moment when there is a successful vote of no confidence in the Government as the moment when the country automatically goes to elections, but they have left the possibility to avoid the elections, to create a parliamentary majority, and consequently to establish a new Government; (iii) the most contradictory claim of the Applicants relates exactly to the interpretation of the word "may" used in paragraph 2 of Article 82 as they emphasize that such provision does not have an alternative character, but has the character of allowing only one possibility, because the expression *"allowing the only possibility"* implies an obligation (which would best be reflected by using the word *"should" or "obliged"* and not in the word *"may"*); (iv) Article 82.1 has been intentionally omitted by the Applicants, even though that paragraph has explicitly defined three moments when the country automatically goes to elections, namely three moments when the Assembly is mandatorily dissolved; and, (v) none of the conditions provided for the necessary dissolution of the Assembly provided for in Article 82.1 of the Constitution have been met in the circumstances of the present case.

344. According to AKR deputies supported by NISMA deputies: (i) The court must take into account the new political and constitutional circumstances and the fact that for the first time in Kosovo we have a situation when at the beginning of the Assembly's term we have a change of the parliamentary majority in disfavor of the Government; (ii) the interpretation of the Applicants that Article 82.2 compels the President to dissolve the Assembly is completely wrong, as the dissolution of the Assembly would be contrary to parliamentary practice and contrary to Article 95.5; (iii) in 2010 the Assembly was dissolved by the President in completely different circumstances and this dissolution was made in the third year of the mandate of the Assembly; whereas, in 2017, the Assembly was dissolved following a motion of no confidence, but the legislature at the time had already entered its fourth year of office, and political parties had not been willing to form a new Government; (iv) the present circumstances are quite different because the Assembly is at the beginning of its term and all parliamentary political parties, the absolute majority of them, have declared themselves in favour of formation of a new Government; (v) The President when deciding to take action for dissolving the Assembly or taking constitutional steps to establish a new Government, has taken into account the will of the qualified parliamentary majority who have declared in favour of a new Government and not for the dissolution of the Assembly under Article 82.2; and, (vi) the President, within the framework of his function as a representative of the unity of the people, must also take into account the will of the parliamentary political parties, especially when it comes to the dissolution of the Assembly in this case.

345. According to the MP Arban Abrashi from LDK: (i) the mandate of the Assembly lasts four (4) years, except when this body, after the creation of the circumstances and the constitutional conditions being met, is dissolved prior to the completion of its regular and complete term; (ii) The Assembly shall be dissolved prior to the end of its full term under the conditions laid down in paragraph 1 of Article 82, in cases where the Assembly becomes a body which cannot fulfill its constitutional legal responsibilities, such as the election of other important bodies such as election of the Government or the President;

(iii) according to paragraph 2 of Article 82 the Assembly may be dissolved (optional) even after the successful vote of the no-confidence motion against the Government and here the dissolution of the Assembly is left only as an opportunity for the President; (iv) had the dissolution of the Assembly been mandatory after the motion of no confidence, then the drafters of the Constitution would continue to regulate this situation in Article 82, paragraph 1, precisely by continuing with only one subparagraph 4 of only one paragraph, and not of move to a new paragraph as is the case with paragraph 2 of Article 82 of the Constitution; (v) in other parliamentary practices the motion of no confidence is seen as a possibility for changing the Government and not necessarily going to new elections; (vi) in 2019, the legislature of the Assembly was dissolved as political entities, all without distinction, had declared against the formation of the Government and in favor of new elections; and, (vii) on the basis of the Applicants' claims, it turns out that if through the Decree of the President would have been proposed for Prime Minister a candidate from LVV, then this decree would have not been contrary to Article 82.2 of the Constitution.

RESPONSE OF THE COURT – in relation to Article 82 of the Constitution

General principles related to the dissolution of the Assembly by the President

346. The Constitution of the Republic of Kosovo consists of a unique set of constitutional principles and values on the basis of which the state of the Republic of Kosovo is built and should function. These principles and values embody and reflect the spirit of the Constitution, which is transposed into each of its norms. As such, the Constitution and each of its norms must be interpreted in interdependence with each other and not isolated from each other, and always taking into account its principles and values. No norm of the Constitution can be interpreted separately and isolated from the principles and values proclaimed in the Constitution, including its Preamble. No constitutional norm can be taken out of context and interpreted mechanically and independently of the rest of the Constitution. This is due to the fact that the Constitution has an internal cohesion according to which each part has a connection with its other parts. This approach is also recommended by the Opinions of the Venice Commission, which will be explained below.

347. For the purposes of the interpretation of paragraph 2 of Article 82 of the Constitution which provides that *"the Assembly may be dissolved by the President of the Republic of Kosovo, following a successful vote of no confidence against the Government"*, it is necessary to first analyze the following two basic issues: (i) the role of the Assembly in the constitutional system of the Republic of Kosovo; and, (ii) the role of the President in the constitutional system of the Republic of Kosovo. With regard this essential analysis, the Court will refer to the general principles set out in the Constitution and reflected in its case law up to the present, by taking into account the relevant circumstances of the present case. Subsequently, in the section "Court's Responses", Article 82 of the Constitution will be interpreted in its entirety, and in particular paragraph 2 of Article 82 of the Constitution.

Assembly in the constitutional system of the Republic of Kosovo

348. The sovereignty of the Republic of Kosovo stems from the people, belongs to the people and is exercised in compliance with the Constitution through elected representatives, referendum or other forms in compliance with this Constitution. (See Article 2 of the Constitution).

349. In particular, the elected representatives of the people are the members of the Assembly elected in free and democratic elections. The exercise of sovereignty through the people's elected representatives is the main and most widespread mode of expression of what *"stems from the people"* and to reflect it in concrete actions and decisions through the system of representative democracy.

350. The Assembly as a legislative institution is elected for a mandate of four (4) years. After the regular mandate of the Assembly, the country automatically goes to elections. So the purpose of a constitution-based legislature is to complete its four (4) year mandate. In new elections, the people vote and elect the new legislature, with the conviction that that legislature will represent them for the next four (4) years. This represents the regular election cycle of the people's representatives in the Assembly. Despite this regular cycle of representative democracy, the mandate of the Assembly may end before the end of the regular four (4) year mandate, only according to the regulation defined by Article 82 of the Constitution, which specifically defines three (3) mandatory Assembly dissolution situations and, one (1) possible situation of dissolution of the Assembly. Exceptionally, the mandate of the Assembly may be extended beyond the regular four (4) year constitutional mandate, only under the circumstances of the State of Emergency. (See Article 66 of the Constitution).

351. Among the basic values on which the constitutional order of the Republic of Kosovo is based and which are embodied in the Constitution, among others, are *"democracy'* and *"rule of law"* and *"separation of powers"*. (See Article 7 of the Constitution). Democracy in the Republic of Kosovo is based on the constitutional principle of separation of powers and checks and balances among them. (See Article 4 of the Constitution). Moreover, pursuant to Article 4 of the Constitution concerning the form of government and the separation of powers: (i) The Assembly exercises legislative power; (ii) The government is responsible for implementation of laws and state and policies and is subject to parliamentarian control; and (iii) the Judiciary is unique and independent and exercised by courts. The Constitutional Court and the President also have a special place in the separation of powers. The first protects the constitutionality of the country and makes the final interpretation of the Constitution; while the second represents the unity of the people and is a guarantor of the democratic functioning of the institutions of the Republic of Kosovo.

352. In addition to the Constitution and the obligation to exercise legislative power in accordance with the Constitution, the Assembly is not subject to any other authority, while deputies as representatives of the people are not subject to any binding mandate. As one of the main branches of Government, the Assembly has an obligation to respect the independence of other powers as well as other

branches have an obligation to respect the independence of the Assembly. This interaction represents the core of the value that the separation of powers embodies as a fundamental principle in a democratic system. Respect for this value is a prerequisite for the implementation of the rule of law in the Republic of Kosovo.

353. All powers without exception, be they part of the classical triangle of separation of powers, or other important part of the structure of the state, have a constitutional obligation to co-operate with each other for the common good and in the best interest of all citizens of the Republic of Kosovo. All these powers have the obligation to perform their public duties in order to implement the values and principles on which the Republic of Kosovo is built to function. In this respect, the loyal cooperation between constitutional / public institutions is a constitutional obligation and loyalty to the formal and public oath on the occasion of assuming constitutional responsibilities by each holder of the relevant public function.

354. As a legislative institution directly elected by the people, the Assembly has a range of competencies which are specifically defined in the Constitution. Among the main competencies of the Assembly, in terms of the circumstances of the concrete case, is the competence to *"elect the Government"* and to express *"no confidence"* to it.

355. In this regard, in the case law of this Court it is emphasized that "*Democracy, 'voxpopuli' (the voice of the people), requires the election of those who will represent the voice of the people in the legislative body of the state. In a parliamentary democracy, this [Assembly] is the highest governing entity vested with a variety of powers, which at the same time is subject to the principle of separation of powers and checks and balances among them. One of the main responsibilities of parliament is to decide by voting who should be empowered with executive functions. The Government derives from the prevailing political power within parliament and has its roots in the political force that wins elections. That could be an absolute or a relative win."* (see the Judgment KO 103/14, paragraph 4).

356. The Constitution has provided for different ways of granting consent by the Assembly, for certain issues, depending on the type of action or decision required to be (under)taken by the elected representatives of the people. For decisions of high importance, such as the dissolution of the Assembly by the deputies themselves, it is foreseen the voting by two thirds (2/3) of the votes of all the deputies of the Assembly. For the amendment of the Constitution, the voting is envisaged through two thirds (2/3) of the votes of all the deputies of the Assembly, including two thirds (2/3) of all the deputies who hold the guaranteed seats for the representatives of the communities that are not majority in the Republic of Kosovo. For some other actions or decisions, the simple majority of all members of the Assembly is sufficient, such as the decision to grant or remove the confidence of a Government.

357. With regard to the deputies and their mandate, the Court has already stated that according to Article 74 of the Constitution, *"deputies are obliged to exercise their function in best interest of the Republic of Kosovo"*. (See case

KO98 / 11, submitting the Government of the Republic of Kosovo, Judgment of 20 September 2011, paragraphs 58 and 59). What the deputies consider to be in the best interest of the Republic of Kosovo in political terms and in terms of public policy, is entirely in the hands of the deputies of the Assembly. As long as the Constitution is respected, every solution of the elected representatives and at the same time the representatives of the people must be respected. Deputies are not subject to any binding mandate. The mandate of the deputy ends or becomes invalid only in the situations defined in article 70.3 of the Constitution. Among them, as a reason for the end of the mandate of the deputy, is foreseen the end of the mandate of the Assembly. The termination of the mandate of the Member of Parliament due to the dissolution of the Assembly, as a way of terminating the mandate of the Assembly, can only be done in correct application of Article 82 of the Constitution.

President in the constitutional system of the Republic of Kosovo

358. The President, as the head of state, inter alia, represents the unity of the people and is a guarantor of the democratic functioning of the institutions of the Republic of Kosovo. (See Articles 4 and 83 of the Constitution).

359. The President has a range of competencies which are specifically defined in the Constitution. The Court has already stated that, in addition to the powers of the President set out in Article 84 of the Constitution, *"there are a large number of references to the President in the Constitution" and that "power, functions, duties and competencies"* of the President are set out also in other articles of the Constitution, *"4, 18, 60, 66, 69, 79, 80, 82, 82, 93, 94, 95, 104, 109, 113, 114, 118, 126, 127, 129, 131, 136, 139, 144, 150 and 158."* (See, the case KO47 / 10, Applicant *Naim Rrustemi and 31 other members of the Assembly*, Judgment of 28 September 2010, paragraph 52).

360. Among the main competencies of the President, which are related to the circumstances of the present case, is the competence to propose to the Assembly the candidate for Prime Minister according to the procedure set out in Article 95 of the Constitution and the possibility to dissolve the Assembly in case of a motion no-confidence against the Government under Article 82.2 of the Constitution (see Articles 82, 84, 95 of the Constitution). Within the interaction of constitutional institutions in order to implement their responsibilities, the basic principle of interdependent exercise of constitutional competencies should always be taken into account. Therefore, from this point of view, not all the powers of the President defined by the Constitution are competencies that he can exercise as the sole decision-making actor. For the exercise of certain constitutional powers or authorizations, the President also depends on other constitutional institutions, in the manner prescribed by the Constitution.

361. For such interdependent constitutional authorizations, such as the competence of Article 82.2 of the Constitution, the President is required to act in coordination with the Assembly. Thus, in practice the President exercises his constitutional obligation to represent the unity of the people and to help ensure the democratic functioning of the institutions of the Republic of Kosovo.

362. According to the case law of this Court: *"some of the powers of the President touch very clearly upon the political life of the country."* (See Judgment of the Court KO103 / 14, paragraph 62). A concrete example is paragraph 2 of Article 82 of the Constitution. The competence that the Constitution gives to the President by this specific provision is a competence that the President cannot exercise against the will of the Assembly. The Constitution has provided for the inter-institutional cooperation between the President and the Assembly for the purposes of the completion of the mandate of the Assembly or not, as an unblocking mechanism within the competence of the President.

363. Having in mind Article 83 of the Constitution, according to which the President is the head of state and represents the unity of the people and the considerable powers given to the President of the Republic under the Constitution, the Court has also previously stated that *"it is reasonable for the public to assume that their President, who "represents the unity of the people" and "not group interests or political party interests, will represent them all."* (See paragraphs 63 and 94 of Judgment KO103 / 14 and the reference cited therein). Respecting the will of the people's elected representatives, in the circumstances of a situation following the motion of no confidence, is also done by acting according to the expressed will of the people's elected representatives regarding the termination or non-completion of the mandate of the Assembly.

364. In this respect, the Court has already emphasized that every citizen of the Republic *"has the right to be assured of the impartiality, integrity and independence of their President."* Such a thing becomes even more important in situations when "*the President of the Republic exercises political powers like when he chooses between competing candidates from possible coalitions to become Prime Minister."* Equally important is the exercise of the powers of the President, according to which he can dissolve the Assembly, which is composed of the elected representatives of the people for a four (4) year constitutional term. With respect to the formation of the Government, the Court has also pointed out that the President's duty to represent the state and the unity of the people means "the responsibility of the President to maintain the stability of the country and to find prevailing criteria for the formation of the new government, in order to avoid elections." (See paragraphs 63 and 94 of CO103 / 14 and the reference cited therein).

General principles according to the Venice Commission

365. In the following, the Court will present the content of the six (6) Opinions of the Venice Commission in which are specifically analyzed issues relating to the competencies of a President's to dissolve the Assembly in a democratic parliamentary, presidential or semi-presidential system. Such opinions were given by the Venice Commission on the basis of specific requests of Azerbaijan (1 opinion), Romania (1 opinion), Moldova (3 opinions), Georgia (1 opinion) and Turkey (1 opinion). The Court in the following will present the main points of these Opinions, focusing also on the final recommendations of the Venice Commission regarding the case in question.

(a) Opinion of the Venice Commission no. CDL-AD(2016)029

366. In this Opinion, the Venice Commission analyzed the draft amendments to the Constitution of Azerbaijan. In the relevant part where "*The power of the President to dissolve the Assembly"* was discussed, the Venice Commission had stated the following:

"59. However, this power [of the President to dissolve the Assembly] *should be assessed not in abstracto but in the light of the other powers that the President has within a system. If a very strong President, in a super-presidential regime, has a wide discretion to dissolve the Assembly, such a thing may disturb the balance of power between the two branches. For example, in the period when the Republic of Korea was under an authoritarian regime, the President had the power to dissolve Parliament. However, that power of the President was abolished after the transition to democracy. In the context of Azerbaijan, the extraordinary power of dissolution of parliament adds to other powers accumulated in the hands of an already very powerful President. It weakens Parliament even further"* (See Opinion CDL-AD (2016) 029 of the Venice Commission, of 18 October 2016, for Azerbaijan regarding the Draft-Amendments to the Constitution submitted in the Referendum on 26 September 2016, adopted at the Plenary Session of 14-15 October 2016, Part C. The power of the President to dissolve the Assembly, paragraphs 56-69, in particular paragraph 59).

367. Consequently, in the conclusions of this Opinion, the Venice Commission, *inter alia*, had concluded that: "*The new power of the President to dissolve Parliament makes political dissent in Parliament largely ineffective." In this regard, "the Venice Commission invited the authorities to undertake a constitutional reform which would strengthen and not weaken parliament […]"*. (See Opinion CDL-AD (2016) 029, cited above, paragraphs 87-88).

(b) Amicus Curiae Brief of the Venice Commission no. CDL-AD(2011)014

368. In this Opinion of the "*Amicus Curiae Brief*" character, the Venice Commission evaluated and answered three questions about Article 78 of the Constitution of the Republic of Moldova, which concerned the repeated dissolution of the Assembly as a consequence of failure to elect the President. In the relevant part of this Opinion, the Venice Commission stated the following:

"Constitutions generally provide for certain restrictions on dissolutions of Parliament. The aim of these is to prevent political instability and fight abuses linked to repeated dissolutions. The Moldovan Constitution is not an exception to this rule." (See CDL-AD Opinion (2011) 014 of the Venice Commission, of 4 July 2011 for the Republic of Moldova regarding three questions related to Article 78 of the Constitution, adopted in Venice, at the 87th Plenary Session, held on 17-18 June 2011, paragraph 23 and references in that paragraph; see also the other document cited here by the Venice Commission, CDL-AD (2007) 037add4 prepared by the Secretariat of the Venice Commission, respectively the so-called "Note on the Issue of the Dissolution of the Parliament", in which, among other things, are foreseen specific cases in which the Assembly cannot be dissolved.)

(c) Opinion of the Venice Commission no. CDL-AD(2017)005

369. In this Opinion of the Venice Commission evaluated some amendments to the Constitution of the Republic of Turkey were evaluated. In this case, the Venice Commission had emphasized that even in presidential republics, *"the power to dissolve the legislature is quite rare, as it would undermine the principle of the separation of powers as classically understood."* In explanations related to this finding, the Venice Commission had made it clear that in the United States, as a country with a classic presidential system, the President does not have the power to dissolve the legislature [Congress].

370. The Venice Commission further emphasized that with the constitutional amendments in Turkey, the President was given *"the power to dissolve the Parliament, on any grounds whatsoever, is symmetrical to the power of the Assembly to dissolve itself on any grounds but by 3/5 of vote"*; as well as that with these constitutional amendments "*The President is free to decide whether and when to dissolve parliament, which is undoubtedly a means of pressure on the Parliament."*

371. Consequently, in conclusion, the Venice Commission emphasized that amendments to the Constitution by which the President was allowed to dissolve the Assembly raise particular concern in terms of the separation of powers because *"the President would be given the power to dissolve the Assembly on any grounds, which is completely foreign/unknown in democratic parliamentary systems [...]."* (See the Opinion CDL-AD (2017) 005 of the Venice Commission for Turkey regarding the amendments to the Constitution adopted by the Assembly on 21 January 2017 and submitted in the National Referendum on 16 April 2017, of 13 March 2017, adopted in Venice at the 110th Session Plenary, held on 10-11 March 2017, Part e. the Power to dissolve parliament, paragraphs 84-88 and paragraph 127 of the Conclusions of this Opinion, and references cited in this Opinion; see also Opinion of the Venice Commission CDL-AD (2019) 022 on Peru regarding the linking of constitutional amendments to the question of confidence, of 14 October 2019, adopted in Venice at the 120th Plenary Session, on 11-12 October 2019, paragraph 42).

(d) Opinion of the Venice Commission no. CDL-AD(2012)026

372. In this Opinion, the Venice Commission, in the part where the need for inter-institutional cooperation between state public institutions in Romania was emphasized, had specifically stated the following:

"The Commission is of the opinion that the respect for a Constitution cannot be limited to the literal execution of its operational provisions. The very nature of a Constitution is that, in addition to guaranteeing human rights, it provides a framework for the state institutions, sets out their powers and their obligations. The purpose of these provisions is to enable a smooth functioning of the institutions based on their loyal co-operation. The Head of State, Parliament, Government, the Judiciary, all serve the common purpose of furthering the interests of the country as a whole, not the narrow interests of a single institution or the political party having nominated the office holder. Even if an institution is in a situation of power, when it is able to

influence other state institutions, it has to do so with the interest of the State as a whole in mind, including, as a consequence, the interests of the other institutions and those of the parliamentary minority."

373. Finally, the Venice Commission also emphasized that "*the Romanian state institutions should engage in loyal co-operation between themselves and it is pleased about the statements from both sides expressing their intention to respect their obligations" Romanian state institutions should be involved in faithful cooperation with each other and that it is pleased with the statements of both parties expressing their intention to respect their obligations."* (See the Opinion of the Venice Commission CDL-AD (2012) 026 for Romania regarding the compatibility with principles and the rule of law actions taken by the Government and the Parliament with respect to other institutions, of 17 December 2012, paragraphs 87-88).

(e) Opinion of the Venice Commission no. CDL-AD(2012)026 – Moldova 2017

374. In this Opinion, the Venice Commission responded upon the request of the President of the Republic of Moldova for an opinion on the proposal to add some additional powers to the President for the dissolution of the Assembly. The Venice Commission had deemed it inadvisable to increase additional powers for the President for non-discretionary distribution of the Assembly. In the following, the Court will cite exactly all the relevant parts of this Opinion which reflect the disagreement of the Venice Commission on the addition of additional powers for the President regarding the distribution of the Assembly:

"20. In the majority of parliamentary regimes, the Head of State plays a role of arbiter, or pouvoir neutre, detached from party politics. These are not empty words: while no one can prevent the Head of State from having his or her own political views and sympathies, his or her mandate is limited. The main functions of the Head of State within this model are to represent the State in external relations, to participate in the appointment of certain key State officials, to guarantee the functioning of the state institutions, but not to define the actual political direction of the country – this is the role of Parliament and of the Executive. The President is an important element of the political system, but is not partisan. The dissolution powers of the President in a parliamentary regime are defined by the President's neutral position: in times of institutional crisis, the President assumes the important function of dissolving Parliament in order to overcome the stalemate by appealing to the people and to reinstate the smooth functioning of the constitutional machinery.

21. Dissolution of Parliament can be found in virtually all European parliamentary constitutions. The concrete constitutional designs, however, differ in function of who the holder of the dissolution powers is (the head of state, the head of the government, Parliament itself, the people, etc.) and how much discretion is granted to this holder. From the viewpoint of the legislative technique, there are two options: the Constitution may contain either a general dissolution clause (for example, Article 88 of the Constitution of Italy) or a list of specific cases (amounting to a crisis in the functioning of the democratic institutions) in which dissolution is possible in order to prevent a

political stalemate: a prolonged absence of a Government, nonadoption of a budget, lasting absence of quorum in Parliament, etc.[…]

23. By contrast, by virtue of new § 2 point (a) of Article 85, the President of the Republic of Moldova would be empowered to dissolve Parliament "following the consultations of parliamentary factions". This provision would thus grant the President, in addition to the existing specific powers of dissolution, a general dissolution power, limited only by the procedural obligation to consult parliamentary factions.

24. The President's proposal thus combines two legislative techniques which are otherwise virtually never used cumulatively, those of the discretionary dissolution power (new § 2-1 point (a)) and the right to dissolve in specific cases (existing Article 85 of the Constitution and proposed subsequent points of new § 2-1, plus new Article 85-1). The provision that grants the President a discretionary dissolution power makes the other grounds listed in the proposal entirely superfluous. It could be even taken to mean that the general power of dissolution is not linked to the times of institutional crisis (which are covered by the specific cases of dissolution) but adds the possibility for the President to dissolve Parliament for purely political reasons, for example if s/he disagrees with a policy choice made by Parliament and wants new elections. Such interpretation of the President's power to dissolve Parliament changes the neutral role of the President and turns him into a political player. This is not compatible with the logic of a parliamentary regime.

25. Even outside the case of combination of general clause and specific cases of dissolution, the Venice Commission is of the view that discretional dissolution powers in the hands of the Head of State may be dangerous in countries lacking an established democratic tradition and where it has not been part of the traditional legal order (as is the case in several constitutional monarchies such as Liechtenstein, Luxembourg, Monaco or the Netherlands) and where it is not subject to certain restrictions (as is the case in Denmark or Ireland), precisely because it risks being interpreted as a tool of party politics. The Venice Commission has expressed criticism of broad discretionary dissolution powers even in relation to a semi-presidential regime: "as the deputies of the Verkhovna Rada [Assembly in Romania] get their mandate directly from the voters for a certain period of time, there should be compelling reasons for a pre-term termination. The suggested Article 95 (1) [which was similar to the draft article 85 § 2 (a)] would lead to dissolutions also in situations where dissolution could be avoided."

26. Regarding the argument that popular mandate necessarily calls for broader dissolution powers, the Venice Commission notes that the election of the President by popular vote does not require turning the President into a political counter-player of Parliament. It is true that election by popular vote tends to enhance the position of the President, but there are multiple examples of constitutional regimes where a popularly elected President still plays the role of a pouvoir neutre and does not enjoy wide powers, and where the

necessary checks and balances are provided by parliamentarism. These include Austria, Ireland or Finland, for example. (Reference to French example in the information note 15 is misdirected: the French president indeed enjoys discretionary dissolution powers, but the French system is semipresidential and not parliamentary.)

27. Even more relevant in the context of the Republic of Moldova are those new parliamentary democracies which have more recently joined the EU and have a directly elected President with limited executive prerogatives16 and some additional ones in moments of a parliamentary crisis, namely Bulgaria, Czech Republic, Lithuania, Poland, Romania, Slovakia and Slovenia. In all the above countries the President's dissolution powers are limited to a number of specific situations and are thus not discretionary but semi-automatic. All above constitutions have a closed list of specific situations for dissolution; these situations relate to the inability of Parliament to form a Government, to a vote of non-confidence in the Government (or nonadoption of a law to which the Government attached confidence or a program of the Government), or to the inability of Parliament to exercise law-making functions (absence of quorum, long adjournments, failure to adopt a budget). See, in particular, the Constitution of Bulgaria, Article 99; the Constitution of the Czech Republic, Article 35 § 1; the Constitution of Lithuania, Article 58; the Constitution of Poland, Article 98 § 4, Article 155 § 2; the Constitution of Romania, Article 89; the Constitution of Slovakia, Article 102 and Article 106 (the latter concerns the failure to recall the President at the plebiscite – on this see below); the Constitution of Slovenia, Article 111 and 117. This is a constitutional pattern that has been adopted by more and more (first four, and now by seven altogether) of the countries that in the past quarter of a century had [re]established democratic governments, which gives additional grounds to consider it a recommendable practice. In sum, popular mandate alone does not transform a Head of State into a head of the executive, and does not require conferring on him discretionary dissolution powers.

28. In sum, the Venice Commission is of the opinion that adding a broad discretionary power of the President to dissolve Parliament (Article 85, new § 2-1 point (a)) is ill-advised and should be reconsidered. The proposed discretionary power of dissolution threatens to pose Parliament and the President against each other and provoke unnecessary constitutional and political conflicts."

(f) Opinion of the Venice Commission no. CDL-AD(2019)012 - Moldova 2019

375. In another Opinion for the Republic of Moldova of 2019, the Venice Commission had analyzed Article 85.1 of the Constitution of Moldova on the possibility of the President to dissolve the Assembly and consultations prior to dissolution. The said provision contained the verb "***may*** (in Albanian ***mund***)" or in English "***may***" and in this respect the Venice Commission had stated the following

"This provision sets out expressly that the President "may" ("may" in English language) dissolve parliament, not that he shall" do so. […] In any case, the wording of Article 85 (1) implies a high threshold for dissolution of the

parliament. Moreover, article 85 (1) also requires that parliamentary factions shall be consulted before dissolution, which clearly indicates that dissolution is a discretionary power for the President.(See the Opinion of the Venice Commission CDL-AD (2019) 012 for the Republic of Moldova regarding the Constitutional situation with particular reference to the President's Possibility to Dissolve the Assembly, of 24 June 2019, adopted in Venice at the 119th Plenary Session, Part B. Consultations prior to dissolution of parliament by the President, paragraphs 37-43).

376. Further, in the same Opinion, the Venice Commission emphasized as follows:

"40. That case however, differing from the present situation, concerned the formation of a new government after a vote of no-confidence. It should also be noted that the Court linked the right of dissolution to the President's task "to help overcome the political crisis and the conflict between the powers and not to perpetuate the crisis for an indefinite period, which would not be in the general interests of citizens, holders of national sovereignty". Moreover, the Court related the right to ensuring the functioning of the constitutional bodies and avoiding obstruction of the activity of one of the state powers. From the 2013 ruling, it is clear that dissolution of the Parliament is a last resort in case repeated attempts to form a government have failed. The Constitutional Court limited the President's obligation to dissolve parliament to the repeated failure to form a government in the investiture phase of government formation, and not in the preceding phase of negotiations as in the present case. This approach is logical: unless more than one formal vote of confidence has been made in the Parliament, there is no way of objectively deciding on whether or not it is impossible to form a government. As for the phase of negotiations preceding the investiture, the Constitutional Court emphasised in para. 73 that Article 85 has the function of a balancing mechanism to avoid or overcome an institutional crisis. This purpose of Article 85 explains why the President's powers to dissolve the Parliament are discretionary as this discretion is intended to prevent deadlock and to prevent institutional crisis by political negotiation.

377. The Venice Commission also emphasized the following:

"41. On the other hand, as concerns the wording of Article 85 § that the President "may" and not "shall" dissolve parliament, the Commission stresses that the distinction between "may" and "shall is well-established in law and is undoubtedly intended to provide the President with leeway to exercise his own judgment and discretion taking into account the circumstances of a particular situation in the interest of the country as a whole. Clearly the dissolution of Parliament, elected in a fair and free election in expression of the will of the people, is not something that should be tackled in an arithmetical way but in line with the spirit and wording of the Constitution which provides the Head of State with the necessary discretion to exercise good and wise judgment. Therefore, in the light of the purpose of Art. 85 of the Constitution, the duty of the President to have consultations with parliamentary factions should be seen as a means to exhaust all the possibilities to form the Government or unblock the procedure of adopting the

laws after the expiration of the 3 months term, before deciding on the dissolution of the Parliament."

378. At the end of the analysis of this Opinion, the Venice Commission emphasized the following:

"42. The right of dissolution is an ultima ratio means to solve a constitutional crisis, caused by the impossibility of forming a government or blockage of legislation. If no other means exists, dissolving the Parliament can even be considered a constitutional obligation of the President. On the other hand, if other means do exist, if, for instance, parties representing a parliamentary majority have come to an agreement of forming a government, no such obligation can exist. Dissolving the Parliament in such a situation and deepening the constitutional crisis or even creating a new crisis might even be considered a violation of the constitutional duties of the President as a pouvoir neutre. As subsequent events have shown, in the present case, the dissolution of the Parliament by the President would have contradicted the ratio of Art. 85(1), such as it was summarised in the Constitutional Court's 2013 ruling."

379. In the conclusion remarks of this Opinion, the Venice Commission concluded, inter alia, that:

"51. The Venice Commission stresses that an essential role of the Constitutional Court is to maintain equal distance from all branches of power and to act as an impartial arbiter in case of collision between them. One of the aims of any Constitution is to maintain the constitutional order and one of the main functions of any Constitutional Court is, by upholding the principles of the Law, to keep the constitutional system functioning. This function of arbitration presupposes by definition the use of economy as well as equity, and requires respect for the solutions reached by democratically legitimate institutions.

54. The dissolution of parliament elected in a fair and free election in expression of the will of the people is a measure of last resort which may not be tackled lightly but only in line with the spirit and wording of the Constitution. The Constitution of the Republic of Moldova provides the Head of State, as any constitution should, with the necessary discretion to exercise his good and wise judgment on the dissolution of parliament following consultation with the parliamentary factions. The conditions for the dissolution of parliament clearly did not exist on 7 or 8 June."

Application of general principles in the circumstances of the present case

380. Initially, the Court recalls Article 82 of the Constitution, the meaning of which, in relation to the President's competence to dissolve the Assembly, will be interpreted below:

Article 82
[Dissolution of the Assembly]

1. *The Assembly shall be dissolved in the following case:*

   (1) If the government cannot be established within sixty (60) days from the date when the President of the Republic of Kosovo appoints the candidate for Prime Minister;
   (2) If the two thirds (2/3) of all deputies vote in favor of dissolution, the Assembly shall be dissolved by a decree of the President of the Republic of Kosovo;
   (3) if the President of the Republic of Kosovo is not elected within sixty (6) days from the date of beginning of the president's election procedure.

2. *The Assembly may be dissolved by the President of the Republic of Kosovo following a successful vote of no confidence against the Government.*

381. Paragraph 1 of Article 82 of the Constitution presents three specific situations, provided for in points (1), (2) and (3), when the Assembly is compulsorily dissolved. The first situation is when the Assembly fails to elect the Government within sixty (60) days from the day of the appointment of the mandate holder by the President. If such a situation occurs, the Assembly must be dissolved.

382. The second situation is when the elected representatives of the people decide themselves, by two thirds (2/3) of the votes of all deputies, for the Assembly to be dissolved. The Court recalls that the two-thirds (2/3) of votes of all members of the Assembly, except for the request for amendment of the Constitution, which requires also the two-thirds (2/3) of all deputies holding seats guaranteed to community representatives which are not a majority in Kosovo, is the highest threshold required for a successful vote in the Assembly determined by the Constitution, only for decisions of great importance, among other things, equal to the number of deputies required to give consent to the transfer of sovereignty (see Article 20.2 of the Constitution). The number of votes required for the dissolution of the Assembly, by the elected representatives of the people, reflects the weight of the respective decision. After such a vote, the Assembly must be compulsorily dissolved. The President's decree only formally seals the will of two-thirds (2/3) of the Assembly. (See Article 82.1 (2) of the Constitution).

383. The third situation is when the Assembly fails to elect the President within sixty (60) days from the day of the beginning of the election procedure. If such a situation occurs, the Assembly must be compulsorily dissolved. (See Article 82.1 (3) of the Constitution).

384. The common of the first and third situation, clarified above, is the inability of the Assembly to fulfill its constitutional obligations to form the Government or to elect the President. In this regard, the Constitution stipulates that if the Assembly fails to fulfill the important constitutional obligations to form the Government and elect the President of the Republic – then the Assembly must

be dissolved in order that a new Assembly that will be able to perform these important constitutional tasks, after the new and early elections, is created.

385. The second situation outlined above, unlike the first and third situations, represents the authorization that the Constitution gives to the elected people to dissolve the Assembly with their will declared through the vote. The reason or reasons for the dissolution of the Assembly on this basis are entirely in the will of two thirds (2/3) of all deputies of the Assembly, who decide *when* and *why* they will dissolve the Assembly with their vote and consequently *when* and *why* they want to cut their mandate.

386. The final common denominator of all three above-mentioned situations is that all three situations lead to mandatory dissolution of the Assembly and new elections, which would result in a new Assembly and with newly elected members of the people of the Republic.

387. On the other hand, and in contrast, paragraph 2 of Article 82 of the Constitution, clearly and deliberately separated from paragraph 1 of Article 82 of the Constitution, presents the situation when the Assembly may be dissolved by the President of the Republic, but not necessarily. This article provides for the possibility for the President to dissolve the Assembly, but in no way the obligation of the President to take such an action voluntarily and ignoring the declared will of the deputies of the Assembly. In fact, this competence of the President is closely related to the fact whether there is a will of the legislature which has overthrown a Government with a motion of no confidence to continue with the election of a new Government. If there is a will and if such a will is expressed, the President cannot dissolve the Assembly. Such dissolution of the Assembly, contrary to the declaratively expressed will of the people's representatives, would be an arbitrary interference of the President with the legislative power.

388. A Government voted and legitimized by the governing trust of the Assembly loses the trust of the latter, as a result of the expression of no -confidence through the vote in the Assembly, according to Article 100 of the Constitution. Sixty-one (61) votes of the people's representatives are sufficient for the approval of no confidence in a Government, as much as it is enough to give the confidence of the Assembly to a Government to be considered elected. As in other systems with parliamentary characteristics, in the Republic of Kosovo, as reflected in the Comparative Analysis, the responses of the Forum of the Venice Commission and the reports of the Venice Commission that have examined this issue in different countries (see paragraphs 274-306 and 365-379 of this Judgment), it is the Assembly that gives confidence to a Government and the same one that takes it. The Assembly is also authorized to change its mind, even within the same legislature, through the no-confidence motion mechanism and to elect another Government by terminating the mandate of an existing Government, based on the free mandate of the people's elected representatives. Such a thing, despite the fact that it does not happen often in other parliamentary systems, nor in that of the Republic of Kosovo, is completely within the constitutional norm for such a situation to occur in a parliamentary democracy, where the votes of the people's elected representatives in the Assembly determine the journey and duration of a

Government and the confidence that the people's elected representatives have in that Government.

389. The Court notes that the view and allegation that the exercise of the right of the Assembly to vote on the motion of no confidence in a Government, as a will to create a new governing majority, results in the automatic termination of the constitutional mandate of the Assembly itself, contradicts the principles and the spirit of the parliamentary system of government. This would mean that the Assembly, in the event of a vote of no confidence in a Government, effectively dissolves the Assembly itself. If this were the case and if this were the solution provided by the Constitution, paragraph 2 of Article 82 would be meaningless and without any constitutional effect. In this case, if this were the solution provided by the Constitution, item (2) of paragraph 1 of Article 82, according to which deputies can dissolve the Assembly, would not make sense, because despite their will, the President could dissolve the Assembly, after a successful motion of no confidence. Effectively, the President, after each no-confidence motion, would have the power equal to two-thirds (2/3) of the votes of the people's representatives. Furthermore, the mandatory dissolution of the Assembly by the President after a successful no-confidence motion for which sixty-one (61) votes are sufficient based on paragraph 4 of Article 100 of the Constitution, would reduce the number of necessary votes of the deputies by two thirds (2/3) of all the deputies to dissolve the Assembly, in only half of the deputies of the Assembly, contrary to item (2) of paragraph 1 of Article 82 of the Constitution. Such an allegation and interpretation is ungrounded.

390. The Court emphasizes that in the constitutional system of the Republic of Kosovo, the President has no constitutional competences to dissolve the highest legislative body in the country and, consequently, the power from which the will of the people derives. The President, even after a no-confidence motion, is not endowed with the authority or power to cut the mandate of the Assembly, without the consent of the required majority of parties and coalitions represented in the Assembly and the exhaustion of the opportunity to elect a new government. On the contrary, the President must respect their will to continue the constitutional mandate of the Assembly even after a successful no-confidence motion if the election of a new Government is possible, where the failure of a successful vote based on Article 95 of the Constitution results in a mandatory dissolution of the Assembly according to the procedure set out in paragraph 4 of Article 95 and item 1 of paragraph 1 of Article 82 of the Constitution.

391. As the Opinions of the Venice Commission show, as well as the responses received by the Forum of the Venice Commission (see paragraphs 291-306 and 365-379 of this Judgment), Presidents in parliamentary systems, but neither in the presidential nor semi-presidential ones are endowed with the automatic power to terminate the mandate of a legitimate Assembly elected by the people, under any circumstances, nor after a successful motion of no confidence, without consultation and consent of parties and coalitions represented in the respective Assemblies. In fact, such a power for the President is considered a power that weakens, conditions and puts the Assembly under undesirable pressure. In all cases where such powers for the dissolution of the Assembly have been attempted to be given to the Presidents of various countries through

constitutional amendments, the Venice Commission has considered such elections *"not advisable."*

392. The Court recalls that what the Applicants claim is that the Constitution has vested the President with the competence, namely the obligation, to dissolve the Assembly after any successful motion of no confidence in a Government. Such an obligation, according to the Applicants, the President must fulfill despite the fact that the majority of the deputies of the Assembly have expressed their will to continue the existing legislature and to elect a new Government. Such an obligation, according to the Applicants, the President must perform despite the fact that the current legislature is in its first year, and despite the fact that the regular term of the Assembly ends in 2023.

393. The allegation of the Applicants that in the constitutional system of the Republic of Kosovo, the President has a *"ceremonial"* role and a role of a *"public notary"*, goes against their key allegation that the President in the constitutional system of the Republic of Kosovo has the right to dissolve the Assembly, despite the expressed will of the deputies of the Assembly. A President who has the constitutional power to dissolve the Assembly, despite the will of the Assembly, is a very powerful President. As can be seen from the Comparative Analysis, the contribution of the Venice Commission Forum and the aforementioned Opinions of the Venice Commission, in democratic states with parliamentary systems, the President is not vested with this power. Such characteristics of presidential power are rarely found even in the most classical presidential systems of democratic states. As the Venice Commission itself points out in the above-mentioned Opinion, the Republic of Korea had removed this competence of the President from the Constitution, as the latter passed from the authoritarian regime to democracy.

394. The Republic of Kosovo, as a state with constitutional and parliamentary democracy, has not empowered the President with such competencies for automatic dissolution of the Assembly in case of a motion of no confidence in a Government. On the contrary, the Republic of Kosovo has empowered the Assembly as a exerciser of the sovereignty derived from the people, which has the final say on issues related to the dissolution of the Assembly after a motion of no confidence in the Government. The President may, as a result, exercise the right to dissolve the Assembly after a no-confidence motion against the Government, only on the basis of the will of the parties or coalitions represented in the Assembly and after acting in coordination with their expressed will regarding the purpose of the formation of a new Government or the dissolution of the Assembly and the announcement of elections.

395. According to this Court, it would be in full contradiction with the Constitution if the President himself decides, on the basis of Article 82.2 of the Constitution, to dissolve the Assembly against the will of the Assembly. The Constitution clearly does not provide for such a competence for the President. Moreover, in the circumstances of the present case, it is two thirds (2/3) of the deputies of the Assembly who have voted the motion of no confidence. The latter do not need the President's help to dissolve the Assembly. Based on item 2 of paragraph 1 of Article 82 of the Constitution, they may dissolve the Assembly themselves.

396. Furthermore, the Court considers that Article 82.2 has a clear constitutional logic. As a kind of competence of an unblocking nature, it is also foreseen in other democratic countries with a parliamentary system. This article is necessary to unblock possible political stalemates and crises, in cases where after a successful motion of no confidence voted by at least sixty-one (61) votes, as much as they are necessary for the successful voting of the no-confidence motion based on paragraph 4 of Article 100 of the Constitution, the Assembly does not have a sufficient majority to vote for a new Government, but also does not have eighty (80) votes, namely two thirds (2/3), as much as it is required for the Assembly to dissolve itself based on item (2) of paragraph 1 of Article 82 of the Constitution. Thus, this article covers the circumstances when the Assembly cannot implement Article 82.1 (2) to be self-dissolved because it does not have two thirds (2/3) of the votes needed for this purpose; but not even sixty-one (61) votes required to form a new Government. This article, on the one hand, presents an additional chance to form the Government within the existing legislature and a chance to avoid elections. On the other hand, this article also presents an opportunity for unblocking in cases when there is neither the will nor the necessary majority to form a new Government by the Assembly, after a motion of no confidence.

397. Another important difference between paragraphs 1 and 2 of Article 82 of the Constitution lies in the choice of words that the drafters of the Constitution have used to indicate the ways and situations of the dissolution of the Assembly. While paragraph 1 of Article 82 begins with the words *"The Assembly shall be dissolved"*; paragraph 2 of Article 82 begins with the words: *"The Assembly may be dissolved"*. The only difference in this respect is the use of the verb "*may*" in paragraph 2 of Article 82. Applicants claim that the use of the verb "*may*" obliges the President to dissolve the Assembly. This choice of words and sentence structure is neither accidental nor insignificant, but for opposing reasons which reflect the claims of the Applicants. Modal verb "*may*", in the present case also, expresses precisely the alternatives, the possible paths and not the only path. The only way becomes so, namely the possibility of dissolving the Assembly and announcing the elections, only when there is no other alternative. The meaning of the verb "*may*" in terms of the discretion of a President, has also been clearly clarified by the Venice Commission Reports cited above. In this context, there is no dilemma.

398. The verb "*may*" used in paragraph 2 of Article 82 of the Constitution means "*providing*" the possibility for the President to dissolve the Assembly and not the "*obligation*" of the President to dissolve the Assembly after each motion of co-confidence. The President has the right to exercise this "opportunity", but that the same is conditional for the President himself. This means that even the President does not have full and unlimited discretion in how he exercises this conditional constitutional competence. The competence of the President to dissolve the Assembly is directly dependent on the will of the Assembly.

399. Moreover, and importantly, the Venice Commission has already resolved this dilemma. In the Venice Commission Report, cited above (See Opinion of the Venice Commission No. CDL-AD(2019)012 Moldavia 2019), the Venice Commission had precisely analyzed the use of the word "*may*" in the context of

the competence for the dissolution of the Assembly. Regarding the use of this word, in the context of the dissolution of the Assembly by the President, he had emphasized that (i) the difference between "*may*" and "*shall*" is well-established in law and undoubtedly aims to give the President a freedom of action to exercise his judgment and discretion, taking into account the circumstances of a particular situation in the interest of the country as a whole; (ii) the dissolution of the Assembly, elected in fair and free elections in the expression of the will of the people, is not something to be treated in an arithmetic way, but in accordance with the spirit and formulation of the Constitution which provides the Head of State with the necessary discretion to exercise good and wise judgment; (iii) the duty of the President to have consultations with parliamentary factions should be seen as a means of exhausting all possibilities of forming the Government, before deciding on the dissolution of Parliament; and (iv) if there are other ways, if, for example, the parties representing a parliamentary majority have agreed to form the Government, no such obligation can exist. The dissolution of the Parliament in such a situation and the deepening of the constitutional crisis or even the creation of a new crisis, can even be considered a violation of the constitutional duties of the President.

400. In support of this finding and only to reflect the purpose of the drafters of the Constitution, the Court also notes the fact that the preparatory documents for drafting the Constitution reflect the purpose of its drafters, so that the successful motion of no confidence does not result in mandatory dissolution of the Assembly. As presented in paragraphs 309-317 of this Judgment, the dissolution of the Assembly in the event of a successful vote of no confidence was part of a single paragraph of Article 80 of the draft Constitution, along with three other cases in which the dissolution of mandatory of the Assembly. "*Questionnaire on Constitutional Issues*", also reflects that the alternatives regarding the dissolution of the Assembly have been discussed especially in the Constitutional Commission, and based on the minutes that are part of the preparatory documents in the then Unity Team, in which the main institutions, the main political forces and the civil society were represented. The draft constitutions included in the preparatory documents also reflect that between 22 December 2007 and 2 February 2008, the already article 82 of the Constitution is divided, into two paragraphs. The first determines the cases in which the Assembly is compulsorily dissolved, and the second, the case where the dissolution of the Assembly by the President is possible in the event of a successful vote of no confidence, as interpreted above, based on the President's consultations with the parties and coalitions represented in the Assembly, it is not possible to elect a new Government.

401. Such a constitutional solution is fully in line with the constitutional solutions of other states, including those referred by the Applicants themselves and the Prime Minister. As reflected in the comparative analysis of other Constitutions and the responses of the Forum of the Venice Commission, reflected in paragraphs 274-290 and 291-306 of this Judgment: (i) no Constitution stipulates the mandatory dissolution of the Assembly in the event of a successful vote of no confidence in a Government; (ii) the Constitutions that determine the constructive motion stipulate that the latter can be submitted and voted only if another candidate for Prime Minister is proposed at the same

time, the failure of whose election, then results in the dissolution of the Assembly; while (iii) in cases, namely majority of the analyzed cases, when this condition is not defined, the successful vote of no confidence results in the dismissal/resignation of the respective Prime Minister and the fall of the Government as a whole, and at the beginning of the procedures for the election of the new Government, following the relevant constitutional procedures. Only when all constitutional possibilities for the election of a new Government have been exhausted, the Assembly dissolved and the early elections are announced.

402. Furthermore, the Assembly cannot be limited to maintaining the trust given to a Government until the end of the legislature, because otherwise, it is not allowed to create a new Government within the same legislature, resulting in the termination of the mandate of the deputies. The mandate of the deputy is not conditioned and is not subject to the mandate of the Government, which he himself elects or takes away the confidence. Such an obligation for the Assembly would be clearly contrary to the Constitution and the principle of non-submission of the mandate of the deputy to any binding mandate. Deputies, as representatives of the people, have the right to change their positions so as to take confidence to one Government and give it to another Government. Such a thing is quite normal in a parliamentary democracy. The opposite would mean conditioning the mandate of the deputy that either to keep a Government that does not enjoy the confidence of the Assembly or the mandate of the Assembly will be cut. This is clearly not the constitutional regulation provided by the Constitution for the institutional relationship between the Assembly and the Government, because only the latter responds to the former and not the other way around. Consequently, such a practice, which would condition the mandate of the Assembly with the mandate of a Government, would be in open contradiction with Articles 2 (1), 4 (4), 65 (8 and 9), 70 (1) and 74.

403. In the end, the Court also notes that, on the one hand, the Applicants claim that after each no-confidence motion, the President has automatically dissolved the Assembly and the country has gone to early elections, while on the other hand, the responding party claims that the circumstances of past dissolutions have been different from the circumstances of the present case as, in essence, the expressed will of the people's elect has never before existed to create a new Government after a successful motion of no-confidence.

404. In this regard, the Court recalls the facts of the dissolution of all previous legislatures since the entry into force of the Constitution. (See paragraphs 221-250 of this Judgment, which in details reflect the parliamentary history of the Assembly of 2007-2020). There are three different types of situations and circumstances of the dissolution of the Assembly that have occurred so far, namely: (i) the situation when the Assembly is self-dissolved with two thirds (2/3) of the votes of all deputies of the Assembly (see the fourth and sixth legislatures) and the President has only formally decreed this self-dissolution of the Assembly based on Article 82.1.2 of the Constitution; (ii) the situations when the Assembly requested to be dissolved by the President after a no-confidence motion in the Government voted in the third year of the relevant legislature, due to the fact that all political parties were interested in early elections (see the third and fifth legislatures) ; and (iii) the current situation of

the seventh legislature, when the Assembly requested the President to continue the procedures for the creation of a new Government after the successful motion of no confidence in the Government, with the reasoning and explicit request that there is a clear political will not to cut the mandate of this legislature and to avoid early elections. In fact, the motion of no confidence itself voted in the Assembly on 25 March 2020, by two-thirds (2/3) of all deputies of the Assembly, in its content, among other things, explicitly shows the purpose of the Assembly to create a new Government.

405. More specifically, the Court notes that the previous legislature of the Assembly, the sixth one of 2017-2019, was not dissolved by the President under Article 82.2 of the Constitution; however, it was dissolved by the Assembly itself by two thirds (2/3) of the votes of all deputies of the Assembly, in accordance with Article 82.1 (2) of the Constitution. The Decree of the President had only confirmed the self-dissolution of the Assembly, and in that respect the President had no discretion other than to seal the will of the people's elected representatives and to announce early parliamentary elections. Therefore, the Court finds that the sixth legislature and the circumstances which have led to its dissolution have nothing in common with the circumstances of the present case. The same is the case with the fourth legislature, which was self-dissolved based on item (2) of paragraph 1 of Article 82 of the Constitution, by two-thirds (2/3) of the votes of all deputies and the President had only decreed this dissolution of the Assembly based on the same provision.

406. Furthermore, the Court notes that the common denominator of the other two legislatures, namely the third (2008 - 2010) and the fifth (2015 - 2017), is that the Assembly voted on the respective no-confidence motion about three years after the relevant parliamentary elections, and specifically requested the President to dissolve these legislatures and announce early elections. These legislatures ended after the motion of no confidence in the Government, and in neither case there was a will to create a new Government, nor was there any disagreement over what the President should do in those circumstances. Based on the will of the parties and coalitions represented in the Assembly, the Presidents had dissolved the legislatures in question using the opportunity provided by Article 82.2 of the Constitution. Consequently, the Court finds that the facts and circumstances of the dissolution of the third, fourth and fifth legislatures are not the same as the circumstances of the present case.

407. The circumstances of the current, seventh legislature, which began in 2019, are different from all of the abovementioned situations. The difference of the present circumstances is that, for the first time, a motion of no confidence: (i) less than two months after the vote of the respective Government; (ii) it was voted with the votes of two thirds (2/3) of all deputies; and (iii) most of the political parties and coalitions represented in the Assembly, namely the majority of the people's elected representatives, have declared for the creation of a new Government after expressing no confidence in the Government in the Assembly. As explained above, the current legislature, based on item (2) of paragraph 1 of Article 82 of the Constitution, could self-dissolve by two-thirds (2/3) of the votes cast in the no-confidence motion. Such a will clearly does not exist. Therefore, the President in such circumstances cannot dissolve the

Assembly, against the will of the people's representatives. This, as explained above, would be contrary to the Constitution.

408. The Court recalls that the last Government in which the Assembly expressed its no-confidence was established on 3 February 2020. The Assembly's confidence in the Government lasted until 25 March 2020, while the Assembly itself continued to have a constitutional mandate until the end of 2023. From the practice so far, no Government fell by two-thirds (2/3) of the votes of all deputies of the Assembly and, never before has it been explicitly requested by the institution of the President to initiate procedures for the creation of a new Government. The fact that such a thing has not happened so far does not make this request of the Assembly unconstitutional. On the contrary, such a request, as long as it is in the will of the Assembly and in the will of the majority of the people's elected representatives, is a legitimate request based on the Constitution, which the President is obliged to respect in terms of implementing his discretion under Article. 82.2 of the Constitution.

409. The Court finds that paragraph 1 of Article 82 of the Constitution presents the conditions and circumstances when the Assembly is mandatorily dissolved. The Court also finds that paragraph 2 of Article 82 of the Constitution presents the condition and circumstance when the President has the opportunity, but is not obliged to dissolve the Assembly. This opportunity cannot be exercised independently and contrary to the will of the Assembly. Practically, a typical situation of the possible exercise of this discretionary authorization by the President, would find its expression in a situation conditioned by two factors: (i) when a new majority needed to form a government cannot be formed after the vote of no confidence; and, (ii) when no political consensus can be reached within the parties represented in the Assembly to dissolve the Assembly on the basis of Article 82.1 (2). In these circumstances, the dissolution of the Assembly remains the only possibility to overcome the constitutional crisis, therefore, the President, in order to unblock a parliamentary crisis, where the Assembly would not be able to exercise its constitutional functions, may exercise its discretion laid down in Article 82.2 of the Constitution, always in consultation and based on the consent of the required majority of parties and coalitions represented in the Assembly.

410. Therefore, the Court concludes that the challenged Decree of the President [No. 24/2020 of 30 April 2020] is in compliance with Article 82.2 of the Constitution.

IV. REGARDING ARTICLES 95 [ELECTION OF THE GOVERNMENT] AND 100 [MOTION OF NO CONFIDENCE] OF THE CONSTITUTION

411. The Court recalls that the constitutional issue regarding Articles 95 and 100 of the Constitution relates to the final interpretation of whether after a successful vote of no confidence, as defined in Article 100 of the Constitution and in the absence of the will of a sufficient majority of political parties and coalitions represented in the Assembly for the dissolution of the Assembly after this motion, preventing the President from dissolving the Assembly, as established in paragraph 2 of Article 82 of the Constitution, Article 95 of the Constitution regarding the election of the new Government may be activated.

412. For the purposes of handling this case, and as explained above, the Court will present: the following (1) The essence of the Applicants' allegations and the supporting comments accepted by the interested parties (see paragraphs 62-92, 122-167 and 192-205 of this Judgment for a detailed reflection of these claims and supporting comments); (2) The essence of the arguments of the responding party and other interested parties that have supported the responding party (see paragraphs 93-121, 168-191 and 206-216 of this Judgment for a detailed reflection of the objections and comments in favor of such objection); and (3) the Court's response to matters relating to these allegations.

The essence of Applicants' allegations

413. The Applicants, namely thirty (30) deputies, in essence, allege that the Constitution obliges the President to dissolve the Assembly after a successful motion of no confidence in the Government, and that the latter has no competence to activate Article 95 of the Constitution. after the successful vote of a no-confidence motion, because between Article 100 and Article 95 of the Constitution, the "*connecting bridge*" is missing, namely the Constitution does not explicitly stipulate that after the successful vote of a no-confidence motion, the new Government may be elected through the procedures set out in Article 95 of the Constitution, thus leaving as the only option the dissolution of the Assembly under the procedure laid down in paragraph 2 of Article 82 of the Constitution.

414. According to the Applicants: (i) the activation of Article 95 of the Constitution, in particular its paragraph 4, by Decree of the President, is unconstitutional due to the fact that the procedure to be followed after the vote of no confidence in the Government is not defined by constitutional norm in expressed form, and that consequently, "*lack of this connecting bridge*" between Article 95 and then Article 95.4 through paragraph 4 of Article 84 of the Constitution, after the application of Article 100, makes the decree of the President unconstitutional. In support of the argument that the Constitution is characterized by a "*vacuum*" in this respect, the Applicants refer to a number of constitutions, including the Constitutional Framework, and claim that in the absence of a specific provision in the Constitution regarding the procedure to be followed after a motion of no confidence, the only solutions are elections after the dissolution of the Assembly based on paragraph 2 of Article 82 of the Constitution; (ii) paragraph 6 of Article 100 may not activate paragraph 5 of Article 95 of the Constitution, because "*The Prime Minister has not resigned*", and that these two provisions produce different constitutional situations, namely the first defines the situation in which one Government is dismissed through a no-confidence motion, while the second, in addition to resignation, referring to "*other reasons*" due to which "*his/her post becomes vacant*," implies "*death, or permanent inability to exercise the function of Prime Minister*" and not "*the no-confidence motion*"; and (iii) that the President did not have the right to appoint a candidate for Prime Minister for the formation of the Government based on paragraph 4 of Article 95 of the Constitution, because paragraph 1 and 2 of the same article were not respected, namely the mandate was not given "*to the political party or coalition that has won the*

required majority in the Assembly to form the Government", despite the fact that the latter has not rejected this mandate. (Specific allegations of the Applicant regarding "*lack of constitutional deadline*" for obtaining the mandate for Prime Minister and "*lack of rejection*" by the latter in the circumstances of the present case, will be elaborated in detail in the next section of this Judgment).

415. The same allegations are made by the Prime Minister, who through the comments submitted to the Court, also emphasizes the fact that: (i) the Constitution has deliberately changed the system of motion of confidence provided by the Constitutional Framework, which stipulated that "*The Assembly may express its lack of confidence in the Government only if, by a majority of its members, it elects simultaneously a new Prime Minister together with a list of Ministers proposed by him*", by not determining any other procedure after the successful voting of the no-confidence motion, consequently providing only "*destructive motion of no confidence*", unlike "*constructive motion of no confidence*", and in the event of which, according to the allegation, the Assembly is not dissolved, but continues to function until the end of the term of office provided for in the Constitution. In this context, the Prime Minister refers to a number of Constitutions, which are included in the Comparative Analysis of this Judgment (see paragraphs 274-290 of the Judgment) and have been applied during the constitutional review of the challenged Decree; and (ii) the President, based on the Constitution and the Judgment of the Court in case KO103/14, is obliged to consult "*only the political party or coalition that is the relative or absolute winner of the elections, not the political parties or other coalitions*", and that the latter, should wait "*until the candidate's name is sent*" by the political party or coalition that has won the required majority in the Assembly to form the Government, and that "*there is no set deadline for proposing the name of the candidate*". The LVV deputy and Deputy President of the Assembly, Mrs. Arbërie Nagavci also supports this position, emphasizing, among other things, that the Constitution does not explicitly provides alternative action to the President of the Republic after the successful vote of no confidence except the dissolution of the Assembly, as defined in paragraph 2 of Article 82 of the Constitution. The President of the Assembly, despite the fact that she submitted comments to the Court in support of the allegations of unconstitutionality of the challenged Decree, in the content of the latter, did not present arguments related to the issue under consideration in this part of the Judgment.

The essence of the arguments of the responding party

416. The responding party, the President, in essence, alleges that the Constitution does not oblige the President to dissolve the Assembly after a successful motion of no confidence in the Government, and that such competence is discretionary and is exercised in consultation with political parties or coalitions represented in the Assembly. If the latter, in the required majority of them, do not agree with the dissolution of the Assembly, the President is obliged to activate Article 95 of the Constitution regarding the initiation of the procedure for the election of the new Government. Arguments in favor of the constitutionality of the challenged Decree of the President have also been submitted by the LDK

Parliamentary Group, AKR deputies supported by NISMA deputies, and LDK deputy, Mr. Arban Abrashi, for the specific reasons mentioned by each interested party in their submissions submitted to the Court and which are reflected in detail in paragraphs 93-121, 168-191 and 206-216 of this Judgment.

417. According to the President: (i) paragraph 6 of Article 100, paragraph 2 of Article 82 and paragraph 5 of Article 95 of the Constitution, must be read together; (ii) Article 95 of the Constitution defines the manner of electing the Government as after the "*elections*" also "*following the successful vote of the no-confidence motion in the Government*"; (iii) the reference regarding "*the resignation of the Prime Minister*" in paragraph 5 of Article 95 of the Constitution and that with regard to the consideration of "*the resigned Government*" in paragraph 6 of Article 100 of the Constitution, are interconnected because in both cases "*the Government falls*". In this context, the President argues that the Prime Minister and the Government are interconnected and that based on the Constitution, the post of Prime Minister cannot be considered separate from the Government, because based on Article 92 of the Constitution "*The Government consists of the Prime Minister, deputy prime minister(s) and ministers*". The President also challenges the references of the Applicants to the provisions of other Constitutions, referring to a number of other Constitutions and in which, similarly as in the Republic of Kosovo, the relevant constitutions do not explicitly define the steps to be taken after the successful vote of a no-confidence motion, including the Constitution of North Macedonia, Montenegro and Austria.

418. In the same line of argument are the LDK Parliamentary Group and its deputy, Mr. Arban Abrashi. The former, contrary to the arguments of the Applicants and the caretaker Prime Minister, allege that: (i) there is "*substantial and functional*" connection between paragraph 6 of Article 100, paragraph 2 of Article 82 and paragraphs 4 and 5 of Article 95 of the Constitution; (ii) the situations set out in paragraph 6 of Article 100 and paragraph 5 of Article 95 of the Constitution, in which "*the Government falls*", as a result of the resignation of the Prime Minister or even the successful voting of the no-confidence motion, have the same effect, namely the fall of the Government, and that taking into account paragraph 2 of Article 82 of the Constitution, on the basis of which the President "*may*", but is not obliged to dissolve the Assembly, enables the latter, namely the President to activate Article 95 of the Constitution, starting the procedures for the election of the new Government. Whereas, the second, namely the deputy Abrashi, regarding the Applicants' allegation pertaining to "*lack of connecting provisions*", also refers to paragraph 5 of Article 95 of the Constitution emphasizing that "*the resignation of the Prime Minister and the resignation of the Government are compatible*", and that the situation set out in paragraph 6 of Article 100 of the Constitution is included in paragraph 5 of Article 95 thereof, and that in both cases "*President immediately conducts the procedures for the election of the new Government*". AKR deputies, supported by the Social Democratic NISMA, also emphasize the connection between paragraph 6 of Article 100 and paragraph 5 of Article 95 of the Constitution.

RESPONSE OF THE COURT – with respect to Articles 95 and 100 of the Constitution

General constitutional principles regarding the election of the Government and the Motion of no confidence/vote of confidence

419. In the context of the essence of the allegations and objections regarding the constitutionality of the challenged Decree and summarized above, and recalling that the Court has already found that the successful vote of no confidence motion, according to the procedure set out in Article 100 of the Constitution does not oblige but enables the President of the Republic to dissolve the Assembly based on paragraph 2 of Article 82 of the Constitution, this possibility conditioned by the will of the people's representatives, namely the possibility/impossibility of the necessary majority of parties or coalitions represented in the Assembly to form a new Government.

420. More precisely, the Court has already clarified that even after the successful vote of a no-confidence motion in the Assembly, if the required majority of political parties and coalitions represented in the Assembly have the will and the majority necessary to attempt the formation of a new Government, the President may not dissolve the Assembly pursuant to paragraph 2 of Article 82 of the Constitution, and is obliged to initiate proceedings for the formation of a new Government based on the provisions of Article 95 of the Constitution. Such a position is fully compatible with the Comparative Analysis, the Opinions cited by the Venice Commission and the contribution submitted to the Court by the members of the Forum of the Venice Commission.

421. The Court also emphasizes the fact that (i) based on Article 66 of the Constitution, the Assembly is elected for a four-year term, a term beginning on the day of the constitutive session, held within thirty (30) days from the day of the official announcement of the election results; and (ii) this mandate can be shortened only in case of mandatory dissolution of the Assembly in the cases defined in paragraph 1 of Article 82 of the Constitution and the possibility of dissolution of the Assembly by the President, if based on the will of the parties and coalitions represented in the Assembly, the formation of a new Government is not possible, as established in paragraph 2 of Article 82 of the Constitution. Consequently, the competence of the President, defined through paragraph 3 of Article 84 of the Constitution, regarding the announcement of elections for the Assembly of Kosovo, can be exercised only if the abovementioned requirements are met, namely the regular completion of the mandate of the Assembly, and the announcement of regular elections, as established in paragraph 2 of Article 66 of the Constitution, or even the announcement of early elections, by fair application of the provisions of Article 82 of the Constitution regarding the dissolution of the Assembly. Consequently, it is not disputed that in the event of a successful vote of no confidence and the respective consequence of the resignation of the Government, as defined in paragraph 6 of Article 100 of the Constitution, and the impossibility of dissolving the Assembly based on paragraph 2 of Article 82 of the Constitution, the procedures for the formation of the new Government, as established in Article 95 of the Constitution, begin.

422. In light of this finding, the following Court will further clarify: (i) the interconnection of Article 100 with Article 95 of the Constitution; and then, (ii) the procedure to be followed for the formation of a new Government after a successful vote of no confidence motion in a Government in the Assembly of the Republic.

423. The Court initially emphasizes that these two articles, Articles 95 and 100 of the Constitution, implement one of the most essential tasks of the Assembly of the Republic, namely that of exercising parliamentary control over the Government, as established in paragraph 4 of Article 4 of the Constitution, through exercise of the competence defined in paragraph 8 of Article 65 of the Constitution, based on which, the Assembly elects but also expresses no confidence in the Government.

424. The election and expression of no confidence by the legislative power against the holder of executive power is one of the essential premises of the separation and balance of powers, as defined in Article 4 of the Constitution and among the fundamental values of the Republic of Kosovo, as established in Article 7 of Constitution. Consequently, pursuant to paragraph 8 of Article 65 of the Constitution, Articles 95 and 100 of the Constitution must be read together, especially given the fact that it has already been found that paragraph 2 of Article 82 of the Constitution does not necessarily result in the dissolution of the Assembly, and that a successful vote of no confidence motion before it results in the dissolution of the Assembly enables the election of a new Government.

425. In order for the Government itself to have the opportunity to ensure that beyond its election, as established in Article 95 of the Constitution, to maintain and confirm the confidence of the Assembly in it, the Constitution has enabled a Prime Minister to seek the vote of confidence of the Government in the Assembly, based on paragraph 2 of Article 100 of the Constitution. On the other hand, it also authorized one third (1/3) of the deputies of the Assembly to challenge this confidence, proceeding in the Assembly with a no-confidence motion against the Government, as defined in paragraph 1 of Article 100 of the Constitution. At the same time, it has set the necessary guarantees for the Government, stating that a no-confidence motion is considered to have been accepted only if a majority of all deputies of the Assembly have voted for it, while on the contrary another no-confidence motion cannot to be re-submitted over the next ninety (90) days.

426. The Court recalls that the Assembly, as an institution directly elected by the people, as provided by Article 62 of the Constitution, exercises the sovereignty of the Republic of Kosovo, which derives from the people, as established in Article 2 of the Constitution. The democratic legitimacy of a Government elected by an Assembly which is the only institution of the Republic directly elected by the people stems from the confidence that the representatives of the people vest on the occasion of its election. A Government elected by the Assembly does not continue to have the same legitimacy, from the moment when the people's representatives take their confidence by voting for a successful motion of no confidence. The Government must always have at least the confidence of the necessary majority in the Assembly. This confidence

ceases at the moment when the majority of all deputies of the Assembly of Kosovo have voted against it, namely and based on paragraph 4 of Article 100 of the Constitution, at least sixty-one (61) deputies. With the approval of the no-confidence motion against the Government, the latter loses the confidence of the people's representatives, and consequently the constitutional authority to exercise the relevant powers. Therefore, the Constitution stipulates that the latter is the resigned Government, because it loses the governing mandate, just as, without exception, the same principle is determined by all the Constitutions analyzed in the Comparative Analysis and in all the states that have contributed through the Forum of the Venice Commission.

427. The consequence of a resigned Government as a result of the successful vote of no confidence motion based on paragraph 6 of Article 100 of the Constitution and the impossibility of dissolving the Assembly based on paragraph 2 of Article 82 of the Constitution, activates Article 95 of the Constitution regarding the election of the Government.

428. Article 95 of the Constitution is organized in 6 paragraphs, which establish the manner of electing the Government within an election cycle, taking into account that it also determines the manner of electing a Government after the elections but also after the fall of a Government. More precisely, its first paragraph stipulates that the President proposes to the Assembly the candidate for Prime Minister, in consultation with the political party or coalition that has won the necessary majority in the Assembly to form the Government. Its second and third paragraphs stipulate that this candidate, no later than fifteen (15) days after the appointment, submits the composition of the Government to the Assembly of Kosovo and requests the approval of the Assembly and that the Government is considered elected if it receives a majority of the votes of all deputies of the Assembly of Kosovo, namely the vote of sixty one (61) deputies. Its fourth paragraph defines two additional elements, (i) the term of ten (10) days, within which the President appoints the other candidate for Prime Minister, according to the same procedure, if the proposed composition of the Government according to paragraph 1 of Article 95 of the Constitution does not receive the required majority of votes; and (ii) the obligation of the President to announce the elections, if the Government is not elected for the second time, which must be held no later than forty (40) days from the day of their announcement. The fifth paragraph sets out the procedure for the nomination of a new candidate for Prime Minister, in consultation with political parties or the coalition that has won the majority in the Assembly, if the Government falls, as a result of the resignation of the Prime Minister or if "*for other reasons, his/her post remains vacant*". And finally, its paragraph 6 stipulates that the members of the Government after the election, take the oath before the Assembly, which text is regulated by law.

429. The Court has interpreted paragraph 14 of Article 84 of the Constitution in conjunction with paragraphs 1 and 4 of Article 95 of the Constitution in Judgment KO103/14. In this Judgment, the Court dealt with three aspects related to the above-mentioned articles (i) the function and role of the President of the Republic (see paragraphs 59 to 65 of this Judgment); (ii) the interpretation of paragraph 14 of Article 84 of the Constitution in conjunction with paragraphs 1, 2 and 3 of Article 95 of the Constitution (see paragraphs 66

to 88 of this Judgment); and (iii) the interpretation of paragraph 4 of Article 95 of the Constitution (see paragraphs 89 to 95 of this Judgment).

430. In this case, the Court decided that: (i) Articles 84 (14) and 95 of the Constitution are in compatible with each other; (ii) the use of the terms "*political party or coalition*" when referred to in conjunction with Article 84 (14) and Article 95, paragraphs 1 and 4 of the Constitution, means the political party or coalition registered under the Law on General Elections, participates as an electoral entity, is included in the ballot paper, passes the threshold and, consequently, wins seats in the Assembly; (iii) the party or coalition that has won the majority in the Assembly, as established in Article 95, paragraph 1, of the Constitution, means the party or coalition that has the majority of seats in the Assembly, whether absolute or relative; (iv) the President of the Republic, pursuant to Article 95, paragraph 1, of the Constitution, proposes to the Assembly the candidate for Prime Minister nominated by the political party or by the coalition that has the largest number of seats in the Assembly; (v) the President of the Republic has no discretion to refuse the appointment of the proposed candidate for Prime Minister; (vi) in case the candidate nominated for Prime Minister does not receive the necessary votes, the President of the Republic, at his/her discretion, in accordance with Article 95, paragraph 4, of the Constitution, appoints the other candidate for Prime Minister, after consulting with the parties or the coalitions (registered in accordance with the Law on General Elections) that have met the abovementioned criteria, thus, with a party or coalition that is registered as an electoral entity in accordance with the Law on General Elections, has its name on the ballot paper, participated in the elections and passed the threshold; and (vii) it is not excluded that the President of the Republic decides to give the party or the first coalition, in accordance with Article 95, paragraph 1, of the Constitution, the possibility to propose the other candidate for Prime Minister (see the Enacting Clause of the Judgment KO103/14).

431. More precisely, and insofar as it is relevant to the circumstances of the present case, this Judgment on the interpretation of paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 1 of Article 95 of the Constitution, stipulated that: (i) the President proposes to the Assembly the candidate for Prime Minister, in consultation with the political party or coalition that has won the necessary majority in the Assembly to form the Government, namely the relative majority based on the election result and the largest number of seats in the Assembly, and that if the same has "*necessary*" votes or not for the formation of the Government, is determined by the vote in the Assembly (see paragraphs 81 to 86 of this Judgment); (ii) the President of the Republic has no discretion in approving or disapproving the nomination of the candidate for Prime Minister by the party or the coalition, but must ensure his/her appointment (see paragraph 88 of this Judgment); and (iii) the possibility of the party or coalition in question to refuse to accept the mandate is not excluded (see paragraph 87 of this Judgment).

432. Whereas, in the interpretation of paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 4 of Article 95 of the Constitution, it was determined that: (i) it is at the discretion of the President of the Republic, that after consultations with parties and coalitions, to decide that what party or

coalition will be given the mandate to propose the next candidate for Prime Minister, and that the latter, should assess which is more likely for a political party or coalition to propose the candidate for Prime Minister, who will receive the necessary votes in the Assembly for the formation of the new Government (see paragraphs 90 and 92 of this Judgment); and (ii) that it is the responsibility of the President to maintain the stability of the country and to find prevailing criteria for the formation of the new government, in order to avoid elections (see paragraph 94 of this Judgment).

433. The Court reiterates that the principles established in Judgment KO103/14 are applicable and will not engage in further discussion of the paragraphs of Article 95 of the Constitution, which have already been interpreted through the abovementioned Judgment. Having said that, this Judgment has not interpreted the manner of election of a Government: (i) based on paragraph 5 of Article 95 of the Constitution; and (ii) in accordance with paragraph 6 of Article 100 of the Constitution, in the event and after the successful voting of a no-confidence motion. However, the principles set out in Judgment KO103/14 are also applicable to the application of these paragraphs and procedures to be followed for the establishment of a new Government.

434. In this context, the Court initially notes that in order to activate paragraph 5 of Article 95, the Prime Minister: (i) must have resigned; or, (ii) "*for other reasons, his/her post remains vacant*". This article refers to the Prime Minister as an individual and his/her position, and for whatever other reasons, on the basis of which, this post remains vacant. These reasons may include illness, death, inability to perform the duty, or other reasons which are not expressly defined in the Constitution. Having said that, based on this paragraph, the effect of the resignation of the Prime Minister or the remainder of his/her free post vacant also includes the effect of "*the fall of the Government*". The same effect follows if the no-confidence motion is successfully voted for "*the Government as a whole*", after which "*the Government is considered resigned*", as established in paragraph 6 of Article 100 of the Constitution.

435. More precisely, the legal effect of the resignation of the Prime Minister is the fall of the Government, and consequently, the resigned Government. The legal effect of a successful vote of no confidence in "*the Government as a whole*" in the Assembly, the Government is also the resigned Government. This finding is further based on (i) Article 92 of the Constitution, according to which the Government of Kosovo consists of the Prime Minister, Deputy Prime Ministers and Ministers, while the latter, namely the Government exercises executive power in accordance with the Constitution and law; and in (ii) Article 94 of the Constitution, according to which the Prime Minister represents and leads the Government. Therefore, the legal consequences for "*the Government as a whole*" are the same as in the circumstances of paragraph 5 of Article 95 of the Constitution, when the Prime Minister has resigned or when for other reason his/her position has remained vacant, as well as in the circumstances of paragraph 6 of Article 100 of the Constitution when "*the motion of no confidence in the Government as a whole*" was voted. The Court notes that the reference to "*the motion of no confidence in the Government as a whole*", implies that the Constitution also allows for a no-confidence vote for only one

individual member of the governing Cabinet, however, given that such a case is not before the Court, the latter will not analyze the constitutional possibilities and legal effects of a successful vote of no confidence which does not include "*the Government as a whole*".

436. The finding that the legal effects of the resignation of the Prime Minister and the successful vote of no confidence in the "Government as a whole" are the same, namely the resigned Government, is also supported by the Comparative Analysis reflected in paragraphs 274-290 of this Judgment and from responses of all members of the Venice Commission Forum. In all these cases, emphasis is placed on the fact that: (i) if a no-confidence vote is taken against the Prime Minister or the whole Government, the Prime Minister and the Government will resign; (ii) the mandate of the Government ceases when the Prime Minister resigns or on the occasion of the loss of confidence by the Assembly; and (iii) that except in cases which have specifically provided for a "*constructive motion*" in their Constitutions, on the basis of which the successful vote of no confidence automatically results in the election of a new Prime Minister, in all other cases, as a result of the resignation of the Prime Minister or the successful vote of no confidence, the respective article is activated regarding the election of the new Government, in the manner prescribed by the relevant Constitutions.

437. Similarly, the Constitution of Kosovo, in case of resignation of a Government as a result of: (i) resignation of the Prime Minister; (ii) the remaining of this post vacant "*for other reasons*", or (iii) successful vote of no confidence in it, activates paragraph 5 of Article 95 of the Constitution, and which, within the same election cycle, enables the election of a new Government. Based on this article, the new candidate, to form the Government, is mandated by the President, "*in consultation with political parties or the coalition that has won the majority in the Assembly*".

438. The application of this provision is directly related to paragraphs 2 and 3 of Article 95 of the Constitution because: (i) the President in accordance with paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 5 of Article 95 of the Constitution, as well as pursuant to paragraph 1 of Article 95 of the Constitution, is obliged to appoint the candidate for Prime Minister only in consultation with "*the political party or coalition that has won the majority in the Assembly*", consequently the party or coalition that has won the majority in the Assembly has the first right to propose a candidate for Prime Minister both after the elections and after the resignation of the Government [Note: The Court notes the difference between the singular and the plural of the word political party in paragraph 1 and 5 of Article 95 of the Constitution. Having said that, while paragraph 5 of Article 95 refers to the party in the plural, it also refers to the coalition in the singular, moreover that the reference to "*has won*", is in singular. Paragraph 5 of Article 95 of the Constitution in Serbian is also in the singular. Therefore, the Court finds that paragraphs 1 and 5 of Article 95 of the Constitution have the same meaning as "*the political party or coalition that has won the required majority in the Assembly to form the Government*"]; and (ii) the implementation of the procedure after the mandate of the candidate for Prime Minister as a result of the situation defined in paragraph 5 or 1 of Article 95 of the Constitution, is

conditional, namely it is applied only in conjunction with paragraphs 2 and 3 of Article 95 of the Constitution, according to which this candidate is obliged, no later than fifteen (15) days after the appointment, to submit the composition of the Government to the Assembly of Kosovo and to request the approval of the Assembly and that the proposed Government is considered elected if it receives a majority of votes of all deputies of the Assembly of Kosovo, namely of sixty-one (61) deputies, as established in paragraph 3 of Article 95 of the Constitution.

439. The Court also notes that in implementing this procedure, and as interpreted in the Judgment of the Court KO103/14, the President has no discretion in selecting the name of the candidate for Prime Minister, but is obliged to mandate the candidate for Prime Minister who has been proposed by "*the political party or coalition that has won the required majority in the Assembly to form the Government*" (see paragraph 68 of the Judgment in case KO103/14).

440. In the event that the proposed Government does not receive the required majority of votes in the Assembly, or even if, "*the political party or coalition that has won the majority in the Assembly*" does not propose the candidate for the Prime Minister and, consequently, refuses to accept the relevant mandate, as defined in Judgment KO103/14 (see paragraph 87 of this Judgment), the procedure set out in paragraph 4 of Article 95 of the Constitution is followed. Unlike the procedure set out in paragraphs 1 and 5 of Article 95 of the Constitution, pursuant to paragraph 4 of Article 95 of the Constitution, as specified in Judgment of the Court KO103/14, the appointment of a candidate for Prime Minister is at the discretion of the President. This discretion, however, is conditional, as clarified in Judgment KO103/14, by the President's obligation to assess which political party or coalition is "*most likely*" to propose the candidate for Prime Minister, who will receive the necessary votes in the Assembly for the formation of the new Government, "*in order to avoid elections*". Consequently, the candidate for Prime Minister in the case of application of paragraph 4 of Article 95 of the Constitution, may be from any party or coalition represented in the Assembly, including "*the political party or coalition that has won the required majority in the Assembly to form the Government*", provided there is the highest probability of ensuring the necessary votes for the successful voting of the Government, in order to avoid early elections.

441. However, the elections will be inevitable in case of failure of the election of the Government in the second attempt, either after the elections or after the resignation of the Prime Minister/Government, in which case, based on paragraph 4 of Article 95 of the Constitution, the President announces the elections, which must be held no later than forty (40) days from the day of their announcement.

442. The Court notes that "*the political party or coalition that has won the majority in the Assembly*", namely the party or coalition that has won the relative majority in the parliamentary elections has the first right but not the exclusive right to propose the candidate for Prime Minister. Neither the Constitution, nor the Judgment in case KO103/14, stipulate that the

Government can only be established on the basis of the proposal of the party or coalition that has won the majority in the Assembly. This party or coalition enjoys the first right to: (i) the proposal of the candidate for Prime Minister after the elections based on paragraph 1 of Article 95 of the Constitution; (ii) the proposal of the candidate for Prime Minister even in the event of the first failure, provided that in the President's assessment this party is more likely to form the Government and to avoid elections based on paragraph 4 of Article 95 of the Constitution, and as it has been interpreted by the Court in case KO103/14; and (iii) the right to the first proposal of the candidate for Prime Minister even after the resignation of the Government, as a result of the resignation of the Prime Minister or even the resignation of the Government as a result of the successful voting of the no-confidence motion. Having said that, in case of failure to receive sufficient votes in the Assembly or even the refusal to accept the mandate, the Constitution enables another party or coalition to propose the candidate to the Prime Minister, provided that it is most likely to form the Government and to avoid early elections, as interpreted in Judgment KO103/14.

443. Consequently, the Court notes that the joint reading of: (i) paragraph 8 of Article 65 of the Constitution regarding the competence of the Assembly to elect and express no confidence in the Government; (ii) paragraph 2 of Article 82 of the Constitution, which excludes the possibility of the dissolution of the Assembly, if there is the will and the sufficient majority of political parties or coalitions represented in the Assembly for the purpose of forming a new Government; (iii) paragraph 6 of Article 100 and paragraph 5 of Article 95 of the Constitution, which result in a resigned Government, results in the activation of Article 95 of the Constitution regarding the election of the Government, which enables two attempts to elect a Government before the announcement of the early elections, in the manner prescribed by the Constitution and according to the explanations of Judgment KO103/14 and this Judgment.

444. In this context, the Court also notes that the preparatory documents of the drafting of the Constitution reflect the purpose of the drafters of the Constitution in relation to the respective articles on the Election of the Government (see paragraphs 318-325 of the Judgment for detailed description of the evolution of this article). The evolution of Article 104, 96, 93 and finally, 95 in the drafts of the Constitution included in the preparatory documents related to the Election of the Government, reflects that the latter: (i) determining the situations of the formation of the Government, after the elections, after the resignation of the Prime Minister/Government, and after the post of Prime Minister remains vacant, has always included an election cycle in its entirety; (ii) has always determined two attempts to form the Government, the first within a period of fifteen (15) days, and the second, after the appointment of another candidate by the President within ten (10) days, according to the same procedure; (iii) has consistently stipulated that when the Government is not elected for the second time, then the early elections shall be announced; and (iv) has emphasized that with the fall of the Prime Minister, the Government also falls. The Court also notes that the current language of the Constitution reflected in paragraphs 1 and 5 of Article 95 of the Constitution, as regards the party or coalition to be consulted by the President

on the appointment of the first candidate for Prime Minister, after elections or after the resignation of the Prime Minister/Government, respectively "*in consultation with the political party or coalition that has won the majority in the Assembly*" has become part of the drafts of the Constitutions in the versions of 22 December 2007 and 2 February 2008. Until these changes, in order to appoint the candidate for Prime Minister for the formation of the Government, the draft Constitution was referred to "*consultations with political parties or the coalition that has the necessary majority in the Assembly to form the Government*".

445. On the other hand, the evolution of Articles 105, 97, 98 and finally, 100 in the drafts of the Constitution included in the preparatory documents related to the Motion of No Confidence/Confidence, reflects that it has not undergone major changes during its drafting, but which, and importantly, is considered whether or not to maintain the system of no-confidence motion established through the then Constitutional Framework, and has deliberately ruled out such a solution (see paragraphs 307-332 of the Judgment for a detailed description of the evolution of this article). The Court recalls that the Constitutional Framework in its point 9 regarding the Motion of Confidence provided that the Assembly "*may express its lack of confidence in the Government only if, by a majority of its members, it elects simultaneously a new Prime Minister together with a list of Ministers proposed by him*".

446. That this issue was specifically addressed is reflected in the document entitled "*Questionnaire on Constitutional Issues*" of 20 June 2007 which is an integral part of the preparatory documents. The same issue was raised and reflected in the draft titled "*Public comments on the Draft Constitution of the Republic of Kosovo*", where it was specifically recommended to change the vote of confidence in the so-called "*constructive*". The drafts of the Constitution had not undergone these recommended changes by electing the No-confidence Motion as reflected in Article 100 of the Constitution and not the solution set out through the Constitutional Framework. Such an attitude of the drafters of the Constitution, read together with the changes that have been made in the current Article 82 of the Constitution at the end of 2007, enabling but not forcing the dissolution of the Assembly in case of a successful vote of no confidence, reflect the purpose of the drafters of the Constitution, to enable the formation of a new Government according to the procedures set out in Article 95 of the Constitution, a solution which is reflected in many Constitutions of other countries, as reflected in the Comparative Analysis and in the responses of the members of the Forum of the Venice Commission in paragraphs 274-306, of this Judgment.

447. In this context, the Court emphasizes that based on the Comparative Analysis of the relevant Constitutions (see paragraphs 274-290 of this Judgment), it follows: (i) all determine the competence of the President to nominate a candidate for Prime Minister, according to the procedures set out in them, including those cases in which in later stages of the procedure, and after the failure of a certain number of candidates, the right of candidacy of the Prime Minister passes to the respective Assemblies; (ii) all, with the exception of Montenegro and North Macedonia, which do not specify the procedure in the event of the failure of the election of the Prime Minister for the first time,

determine from two to four attempts through the nomination of different candidates for Prime Minister, including cases in which simultaneously more than one candidate for Prime Minister for voting in the Assembly, before the procedures for the dissolution of the respective Assemblies begin and the announcement of early elections. The Court recalls the fact that based on the response of North Macedonia through the Venice Commission, the latter stated that despite the fact that its Constitution does not explicitly stipulate that after the vote of no confidence motion in the current Government a new Government can be elected, the mandate to form a new Government is given to the party or other coalition; (iii) all have in mind the procedures for the no-confidence motion against the Government, the successful vote of which, in none of the cases, results in the immediate and binding dissolution of the Assembly, but in the exhaustion of all constitutional possibilities for the formation of a new Government, in order to avoid early elections; and (iv) in all these Constitutions, it is provided that the successful vote of no confidence motion results in the resignation of the relevant Prime Minister and his/her Government.

448. The Court further states that the Comparative Analysis of these Constitutions and the responses of the Forum of the Venice Commission result in four types of no-confidence motion systems, always based on their specific characteristics as explained in the Comparative Analysis and the contribution of the Forum of the Venice Commission, reflected in paragraphs 274-306 of this Judgment. In this regard, the Court notes that: (i) the constructive motion of no confidence, namely the conditioning of the proposal and voting of a no-confidence motion on the proposal of a new candidate for Prime Minister, is provided for in the Constitutions of Germany, Slovenia, Hungary, Georgia and Armenia. In these cases, the relevant Assembly shall be dissolved if the proposed candidate for Prime Minister is not elected through the relevant motion; (ii) the motion of no confidence after which, only one attempt to elect a new Prime Minister is explicitly defined, before the dissolution of the relevant Assembly, which is provided for in the Constitutions of Croatia, Albania, Lithuania and Austria; (iii) exceptionally, a motion of no confidence, after the successful voting of which, the dismissed Government continues to play a role, in relation to the dissolution of the Assembly. The latter is not necessarily dissolved, but may occur on the recommendation of the Government. This is the case in Estonia, Lithuania but also in Sweden, based on the Constitution of which, but also in the response sent through the Forum of the Venice Commission, the dissolution of the Assembly is not mandatory, but nevertheless the Government plays a role in the dissolution or not of the latter. That said, the response of Sweden through the Forum of the Venice Commission specifically states that if the Assembly has a sufficient majority to elect a new Government, the dissolution of the Assembly is not mandatory; and finally, (iv) most states define a no-confidence motion system, the successful passage of which results in the resignation of the Government and the return of the procedure to the competence of the President, explicitly or implicitly said, to initiate the procedure for electing the new Government, through the appointment of the candidate for Prime Minister, according to the relevant constitutional provisions, including the obligation to exhaust all possibilities, for the election of the Prime Minister, before the Assembly is dissolved. This solution is reflected in the Constitutions of Montenegro, North Macedonia, Greece,

Bulgaria, the Czech Republic, Slovakia, and Liechtenstein. The same solution is reflected in the Constitution of the Republic of Kosovo.

449. Consequently, the Constitution of Kosovo, despite the Applicants' allegations: (i) there is no "*vacuum*" or "*lack of connecting bridge*" between its provisions regarding the possibility of electing a new Government after the successful vote of no confidence in the Government, as established in Article 100 of the Constitution; (ii) the constructive motion is the solution of some Constitutions as explained above and is not the solution of many others; (iii) the successful voting of a no-confidence motion does not in any way result in the mandatory dissolution of the Assembly, but rather enables the election of a new Government, based on the relevant constitutional provisions, in the case of the Constitution of Kosovo, those defined by Article 95 thereof.

450. The Court, as explained above, also emphasizes the fact that: (i) the allegation of the Applicants that the formation of a Government that "*excludes the winner of the elections*" is contrary to Judgment KO103/14, is ungrounded, because this Judgment has never ascertained such a thing, but has only emphasized the right of "*the winner of the elections*" to be the first to propose the name of the candidate for Prime Minister, namely the right to the first attempt to form the Government; (ii) the allegation of the Applicants that after the successful vote of no confidence in the Assembly, only one attempt to form the Government is allowed, also does not stand. As explained above, except in cases where "*constructive motion*" is foreseen or even those cases when after a successful motion of no confidence, the Constitution explicitly defines only one possibility for the formation of the Government, such as the case of Albania, all other cases allow the exhaustion of all constitutional possibilities, and in certain cases even up to four attempts or even the possibility of voting for more than one candidate for Prime Minister at the same time, to form the Government and avoid early elections. Such a finding is clear from the Comparative Analysis and the responses of the Venice Commission Forum, even in the cases of the Constitutions referred to by the Applicants; and (iii) the allegation of the caretaker Prime Minister regarding the superiority of the Comprehensive Proposal for the Settlement of the Final Status of Kosovo in relation to the Constitution of Kosovo and the superiority of the English language as the authentic source of the Constitution in relation to "*translated versions*", is also ungrounded. The Court recalls that under Article 5 of the Constitution, the official languages in the Republic of Kosovo are Albanian and Serbian; and that with the amendment of the Constitution of the Republic of Kosovo regarding the completion of the International Supervision of Kosovo's Independence in 2012, the Comprehensive Proposal for the Settlement of the Final Status of Kosovo has no legal effect in the constitutional order of the Republic of Kosovo.

451. The Court finally states that by this Judgment it has already been established that: (i) the challenged Decree is in accordance with paragraph 2 of Article 82 of the Constitution; (ii) the successful voting of the no-confidence motion pursuant to paragraph 6 of Article 100 shall result in the effect of the resignation of the Government; (iii) in case of existence of the necessary majority in the Assembly for the election of the new Government after the resignation of the previous Government, including the circumstances of paragraph 6 of Article 100 of the Constitution, paragraph 5 of Article 95 of the

Constitution is activated, through which the President proposes the candidate to the Assembly for Prime Minister, in consultation with the political party or coalition that has won the required majority in the Assembly to form the Government; (iv) in case of failure of the election of the proposed Government, either due to lack of majority of the necessary votes of all deputies of the Assembly or even due to the rejection of the proposal of the candidate for Prime Minister by "*the political party or coalition that has the necessary majority in the Assembly to form the Government*", as explained in Judgment KO103/14, paragraph 4 of Article 95 of the Constitution is activated, on the basis of which the challenged Decree is issued.

452. On this basis, to assess the compatibility of the challenged Decree with paragraph 4 of Article 95 of the Constitution, and taking into account that the candidate for Prime Minister was not voted or failed in the Assembly, as established in paragraph 3 of Article 95 of the Constitution, but was not been proposed by the political party or coalition that has won the required majority in the Assembly to form the Government, the Court must first assess whether in the circumstances of the present case, "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the LVV, has refused to accept the mandate for Prime Minister, or more precisely, refused to propose the candidate for Prime Minister for the formation of the Government, as defined in paragraph 14 of Article 84 in conjunction with paragraph 5 of Article 95 of the Constitution. Therefore, the assessment of the constitutionality of this Decree with Article 95 of the Constitution will be addressed in the following analysis.

V. REGARDING THE IMPLEMENTATION OF THE CONSTITUTIONAL PROCEDURE THAT HAS RESULTED IN THE CHALLENGED DECREE

453. The Court recalls that the remaining constitutional issue related to the assessment of the constitutionality of the challenged and issued Decree pursuant to paragraph 14 of Article 84 in conjunction with paragraph 4 of Article 95 of the Constitution relates to the assessment of the procedure followed in the application of paragraph 14 of Article 84 in conjunction with paragraph 5 of Article 95 of the Constitution. More precisely, the Court must assess whether the issuance of the challenged Decree under paragraph 4 of Article 95 of the Constitution has followed the exhaustion of the right of "*the political party or coalition that has won the required majority in the Assembly to form the Government*", in the circumstances of the present case LVV, for: (i) to propose the candidate for the Prime Minister based on paragraph 5 of Article 95 of the Constitution; and (ii) to present the composition of his/her Government before the Assembly and to request his/her approval by a majority vote of all deputies, as established in paragraphs 2 and 3 of Article 95 of the Constitution.

454. In the circumstances of the present case, "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the LVV, has not proposed the candidate for the Prime Minister for the formation of the Government, as established in paragraph 14 of Article 84 in conjunction with paragraph 5 of Article 95 of the Constitution, and

consequently the procedure set out in paragraphs 2 and 3 of Article 95 of the Constitution was not followed. Therefore, the Court must assess whether, as provided in Judgment KO103/14, "*the political party or coalition that has won the required majority in the Assembly to form the Government*", has refused to accept mandate for Prime Minister (see paragraph 87 of the Judgment KO103/14).

455. In this respect, there are two issues that need to be interpreted by the Court. The first issue has to do with the deadline within which "*the political party or coalition that has won the required majority in the Assembly to form the Government*", must propose the candidate for Prime Minister to the President, who is mandated by the latter, as established in paragraph 14 of Article 84 in conjunction with paragraph 5 of Article 95 of the Constitution. Whereas, the second issue has to do with the assessment if, in the circumstances of the present case, the acceptance of the mandate has been rejected, as a result of not proposing the name, namely the candidate for Prime Minister by "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the LVV.

456. For the purposes of dealing with these cases, the Court will then present: (1) The essence of the Applicants' allegations and the supporting comments accepted by the interested parties (see paragraphs 62-92, 122-167 and 192-205 of this Judgment for a detailed reflection of these allegations and supporting comments); (2) The essence of the arguments of the responding party and other interested parties that have supported the responding party (see paragraphs 93-121, 168-191 and 206-216 of this Judgment for a detailed reflection of the objections and comments in favor of such objection); (3) the Court's response to issues relating to these allegations.

The essence of the Applicants' allegations

457. The Applicants, namely thirty (30) Applicants deputies, in essence, allege that: (i) The Constitution does not provide a deadline within which the candidate for Prime Minister must be proposed by the political party or coalition that has won the elections; and that (ii) the waiver of the right to declare the proposal of the candidate for Prime Minister to the President can only be made expressly. The Applicants' allegations of the unconstitutionality of the challenged Decree of the President have been supported by the Prime Minister, the President of the Assembly and the Deputy President of the Assembly, always for specific reasons stated by each interested party in their submissions submitted to the Court and reflected in detail in paragraphs 62 -92, 122-167 and 192-205 of this Judgment. In the following, the Court will present the crux of the allegations regarding the time limit and (non) refusal to propose the candidate for the Prime Minister.

The essence of the allegations regarding the (lack of) time limit(s)

458. According to the Applicants: (i) the President has arbitrarily interpreted Article 95, presuming (concluding) that the winning party has refused to propose the candidate for Prime Minister within a period of twenty (20) days determined by the President himself; (ii) the Constitution or any decision of the Court does

not provide for a time limit for proposing the candidate for Prime Minister by the winning party; (iii) the purpose of not determining the deadline by the winning party is that, under the Constitution, the winning party has the exclusive right to send the candidate's name at the most appropriate time when it deems that all political, administrative and technical conditions for sending a name to the President have been met; (iv) the twenty (20) day time limit used by the President or any other time limit is arbitrary and unconstitutional; (v) in principle you may not request a time limit from the other as long as that time limit is not provided for in the Constitution or applicable law; (vi) the time limit cannot be consumed by the exchange of letters but the time limit is consumed by the period determined by the Constitution, and the term which is not provided by the Constitution cannot be respected; (vii) the exclusivity of sending the name remains at the discretion of the winning party, and this discretion is without time limit; (viii) the history of the creation of the constitutional institutions of 2014 clearly proves that the formation of the Government has lasted over six (6) months, only and exclusively as a result of not sending the name of the candidate for Prime Minister from the winning party to the President; (ix) lack of deadlines is in the same logic as with the constitutions of European states; (x) non-setting the deadlines by the constitutions is intentional because the political forces cannot be obliged to form the post-election coalitions easily, especially when there are major discrepancies in their programs; (xi) the constitutional deadlines in relation to the formation of the Government begin to run only at the moment when the President is proposed a candidate for Prime Minister; (xii) by setting deadlines arbitrarily, the President is endangering the constitutional functioning of institutions; (xiii) lack of deadline implies the intention to leave the winning party space for negotiations to form a Government; (xiv) in case KO119/14, although the winning party had delayed the name of the President of the Assembly for six (6) months, the Court nevertheless did not limit any time limit; (xv) in cases where the limitation of the time limit was the purpose of the drafters of the Constitution, they have done so in an expressive manner and this is noted e.g. the term of fifteen (15) days determined after giving the name of the candidate for Prime Minister for the first time and 10 days for the second time; and (xvi) that the Constitution has set expressive deadlines in other articles of the Constitution, namely articles 66.1; 66.2; 70.2; 82.1 (1) and (3); 86.2; 86.6; 95.2; 95.4; 100.3; 100.5; 113.5; 131.5; 131.6; 145.1; 145.2; 161.

459. According to the Prime Minister: (i) the Constitution does not provide deadlines for the political party or the winning coalition to propose a name for a candidate for Prime Minister; (ii) the Constitution by Article 95 has determined the running of deadlines only after the candidate for Prime Minister has been appointed, by not defining deadlines at any moment earlier; (iii) the practices of 2014 and 2017 show that there have been some cases when the election of the Government has lasted more than six (6) months after the elections and the constitution of the Assembly, but the Presidents in those cases did not interfere by pressuring the political forces to send the name; (iv) the President should not impose himself, but should wait for the proposal from the winning party; (v) the Constitution suspends the self- initiative of the President and obliges him to wait for the proposal from the winning political party or coalition.

460. According to the President of the Assembly: (i) the President by the Constitution is not recognized in any way the competence of the constitution-maker, nor in terms of setting deadlines regarding the mandate of the candidate for Prime Minister, as long as such a constitutional norm does not exist; (ii) by setting a deadline, the President has created a new constitutional norm, for issues on which the Constitution remains silent; (iii) the Constitution does not set deadlines regarding the time available to the winning entity of the elections to send the name of the candidate for Prime Minister; (iv) the only constitutional deadlines that begin to be consumed are those after the formal mandating of the candidate for Prime Minister by the President; (v) by setting deadlines, the President has interfered with the competencies of the Assembly as the only institution that has the competence to amend the Constitution; (vi) the President has exceeded his powers at the moment when he set deadlines and this has been done in violation of the principle of separation of powers; (vii) if the purpose of the drafters was to set a deadline, the drafters could express it explicitly; and (viii) in case KO119/14, the Court did not set deadlines but left such a thing to political life despite the fact that the first party for months did not send a name for the President of the Assembly.

461. According to the Deputy President of the Assembly: (i) the President has no constitutional authorization to arbitrarily set deadlines which the Constitution does not provide for until when he must submit a proposal for a candidate for Prime Minister; (ii) when it comes to the procedure for electing the Government, the Constitution has set only two deadlines, namely the 15-day deadline after the appointment of the candidate and the 10-day deadline for the appointment of another candidate for Prime Minister if the proposed Government composition does not receive the confidence of the Assembly; (iii) the exclusivity of sending the name remains at the discretion of the winning party and this discretion is without deadline; (iv) Article 95.1 and 95.5 lack the time limit as well as the time limit between the procedure of Article 95.1 and 95.4, because the same question was after the elections, how much the candidate for Prime Minister should be waited from the party that won the elections to secure numbers in the Assembly; and (v) Article 95 does not contain any word on the deadline for nominating a candidate by the winning party.

The essence of allegations regarding (non) refusal

462. According to the Applicants: (i) the LVV has never, in any form, rejected the proposal to present a new candidate for Prime Minister; (ii) the President has requested in writing the candidate for Prime Minister and rejected without any constitutional basis the proposal which, according to the Constitution, had to be made by the LVV; (iii) only the winning party has the constitutional right to explicit approval or rejection; (iv) the President has usurped the competences of the President of the LVV to expressly reject, in writing, the proposal for the candidate for Prime Minister; (v) according to Judgment KO103/14, paragraph 87, only the party that won the elections has the exclusive right to refuse the mandate; (vi) the President has acted unconstitutionally by finding that the winning party by its actions has not exercised the right to propose a new candidate to form the Government; (vii) the President has a passive role in the

formation of the Government and is not recognized as having an active role in the realization of his political will; (viii) the refusal to exercise a right is expressly made and therefore the holder of the right must expressly waive its use; (ix) Judgment KO103/14 also speaks about the ability of the party to refuse to send a name for a candidate for Prime Minister; and (x) in the present case the refusal has been made neither explicitly nor implicitly, on the contrary, the winning party has informed the President that it does not reject this right and that it will exercise this right as soon as possible.

463. According to the Prime Minister: (i) the President of the LVV never refused and did not waive his party's right to propose the candidate for Prime Minister; (ii) the Court stated that the President may bypass the winner of the elections only if he expressly waives his right but in no other circumstance; (iii) the winner of the elections has never waived its constitutional right to propose the candidate for Prime Minister; (iv) the President has arbitrarily interpreted the questions for clarification of the provision which he invokes and thus has interpreted these questions as a refusal to propose the candidate for Prime Minister; (v) the Constitution does not recognize the President's right not to consider non-sending the candidate's name as a refusal; (vi) the non-refusal of the LVV President to propose the candidate for Prime Minister has been clear to both parties; and (vii) non-refusal was communicated by official letter from the Office of the Prime Minister and did not create any ambiguity or legal uncertainty.

464. According to the President of the Assembly: (i) until the moment the name is sent to the President by the political entity, the Constitution has not given the President any competence or active role; (ii) the President has exceeded his constitutional powers when he has ascertained that the right to propose the candidate for Prime Minister has not been exercised, without an express statement by the winning entity of the elections; and (iii) the Constitution does not provide for an active role of the President in cases where the Constitution remains silent, namely legal situations without formal expression of the will of the political party to which this right and obligation has been recognized by the Constitution.

465. According to the Deputy President of the Assembly: (i) the President has no discretion to appoint or reject the candidate for Prime Minister, just as there is no discretion for self-initiative to appoint the candidate for Prime Minister; (ii) the President has no right to assert or arbitrarily interpret that, as long as there is no constitutional deadline, the political party has not submitted the name of the candidate and thus waived the right to propose a candidate for Prime Minister; (iii) as the Constitution does not provide for a twenty-day (20) day deadline, and since neither the Prime Minister nor the President of the LVV have in any case refused to send the name, it cannot be considered that the proposal of the candidate for Prime Minister has been waived; (iv) the President has no authority to ascertain that an entity has abdicated a right as long as he has not expressly rejected or formally waived the proposal of the candidate for Prime Minister; and (v) the President has concluded outside his authorizations that the LVV has not exercised its right to propose the new candidate for the formation of the Government.

The essence of the allegations of the responding party

466. The responding party, the President, in essence, claims that in order to ensure the democratic functioning of the institutions, the President cannot wait indefinitely for the winning party to propose the name of the candidate for Prime Minister and that the winning party has not exercised its right to do send the name. The arguments in favor of the constitutionality of the challenged Decree of the President have been submitted by the LDK Parliamentary Group, AKR deputies supported by NISMA deputies, and the LDK deputy, Mr. Arban Abrashi, for the specific reasons mentioned by each interested party in their submissions submitted to the Court and presented in detail in paragraphs 93-121, 168-191 and 206-216 of this Judgment.

The essence of objections regarding (the lack) of deadline

467. According to the President: (i) the lack of accurate deadlines in the Constitution does not justify the behavior of the party that has won the relative majority to delay indefinitely the proposal of the candidate for Prime Minister because the delay in infinity would jeopardize the functioning of institutions; (ii) the lack of a deadline does not imply that the winning party is given room for negotiation to form the Government, but quite the opposite, namely the lack of a deadline means that the winning party rejects the mandate in cases where this party notices that after the successful voting of the motion of no-confidence by two-thirds (2/3) does not have such a majority; (iii) the hypothetical situation according to which the winning party would endlessly abuse the right to propose the candidate would disable the normal functioning of the Government and the parliamentary majority; (iv) it is up to the President as a representative of the unity of the people to prevent the situation when a political party would endanger the functioning of the institutions indefinitely; (v) the delay would lead to the blocking of the Assembly, where on the one hand the winning party of the relative majority would not send the proposal of the candidate for Prime Minister and on the other hand would continue with a resigned Government and a parliamentary majority that does not agree with it; (vi) such a situation would jeopardize the functioning of the Assembly, which would jeopardize the blocking of all constitutional institutions or a deep crisis of the constitutional system; (vii) since the President has to guarantee the democratic functioning of the institutions, he has was not able to endlessly wait for the party that has won the relative majority to make the expressive proposal of the candidate for Prime Minister; (viii) the President, in the midst of the will of the relative winning party that insisted on the dissolution of the Assembly and the expressed will of all other parties represented in the Assembly seeking the establishment of a new Government, had to act without delay so as not to jeopardize the democratic functioning of institutions.

468. According to the LDK Parliamentary Group: (i) the Constitution has not explicitly set a deadline for the proposal of the candidate for Prime Minister but has set a deadline of fifteen (15) days after the President's mandate to submit the composition of the Government; (ii) the drafters of the Constitution have left this deadline open because they have considered that it is in the interest of the political entities and the public for the Government to be established as soon as possible; (iii) it is now being established that failure to

set a reasonable deadline for sending the name of the candidate for Prime Minister may be misused to the point of abuse by the relative winner of the election; (iv) according to the spirit of the Constitution, it remains the obligation of the President to exhaust all possibilities within an optimal timeframe; (v) at the moment when the President assesses that the relative winner of the elections does not have the will to propose the candidate and that at any cost he is trying to block the establishment of the new Government, the President should consult the political entities represented in the Assembly and then ascertain that it is not possible for the relative winner to create a parliamentary majority; (vi) in case it is proved to the President the creation of a new parliamentary majority, he/she is obliged to decree the candidate for Prime Minister from the new parliamentary majority; (vii) the Applicants' interpretation regarding the time limit that the winning party may send the name of the candidate for Prime Minister at the most appropriate time and when "*political, administrative and technical conditions*" are completed for sending the name, is completely wrong, because it is not clear what is meant by political, administrative and technical conditions and who will assess whether such conditions have been met or not; and (viii) such an interpretation of the deadline would lead to political stalemates and to the obstruction of the democratic functioning of the institutions.

469. According to the AKR deputies supported by NISMA deputies: (i) although the right to propose the candidate for Prime Minister belongs to the winning party, this does not mean that the winning party can abuse its right to propose the candidate for Prime Minister in the sense of delaying the proposal indefinitely; and (ii) the Court must take into account the situation when the winning party may continue to abuse the right to nominate a candidate and balance this with the obligation of the President to create circumstances that enable the democratic functioning of the institutions.

470. According to the deputy Arban Abrashi from the LDK: (i) according to the Applicants' allegation that they may not respond and not send their name to the President until the maturity of political, administrative, technical conditions, it follows that they can endlessly hold the process of Government formation a hostage; (ii) notwithstanding the priority of the first entity, this right is not absolute and unlimited in time; (iii) the issue of proposing a candidate by the first entity may also remain unlimited, but if the deadlines given after the proposal of the candidate are taken into account then it is noticed that these deadlines are too short and intentionally left as such by the drafters given the immanent need for the country to have a Government as soon as possible; (iv) the non-limit of the time for the proposal of the candidate for Prime Minister cannot be understood as an intention to give the first entity time to form eventual coalitions because the eventual talks on the formation of the Government must be initiated and developed by the officially appointed candidate for Prime Minister through the Decree of the President; (v) after the non-proposal of the candidate for Prime Minister by the first entity within a reasonable time and when we consider that this issue is simple and completely technical, the President has proposed the candidate who is most likely to form the Government; (vi) if the President did not act but allowed the Government not to be formed for a long time, the President would violate the Constitution by not acting in accordance with the explicit request to guarantee the

democratic functioning of the institutions; and (vii) the President is obliged to find solutions within his constitutional powers to avoid elections by forming a new Government.

The essence of objections regarding (non) refusal

471. According to the President: (i) the President sent five (5) letters to the President of the LVV (on 2, 10, 15, 17 and 22 April 2020), as a political entity with the right to propose a candidate for Prime Minister; (ii) the LVV has not responded to any of the letters for the appointment of the candidate for Prime Minister because all the answers have been received by the caretaker Prime Minister; (iii) the President, in a letter dated 22 April 2020, informed the President of the LVV that, given that he had not exercised his right to propose a new candidate, the President, in accordance with Article 95 and Judgment KO103/14, shall proceed further with joint consultations with all leaders of political parties represented in the Assembly; (iv) when the right to propose a new candidate is not exercised or abused, the President is authorized to find a solution to overcome the situation; (v) the non-declaration or non-sending of the name by the President of the LVV and his public statements to avoid sending the name and repeating the request for the dissolution of the Assembly and the holding of elections, have been sufficient arguments to show that LVV has waived its right to propose the candidate for Prime Minister; (vi) the LVV tried at all costs to impose the dissolution of the Assembly and the announcement of early elections; (vii) the situation of non-use of the right to obtain a mandate was foreseen by the Court in Judgment KO103/14; (viii) the possibility that the first winning party will reject the mandate is related to the argument that if the latter, after consulting with other parties, considers that it does not have a majority to form a Government then it must reject the proposal of the candidate for Prime Minister; (ix) the vote of no confidence motion in the previous Government by eighty two (82) votes of the deputies of the Assembly showed the change of the parliamentary majority in relation to the party that has won; (x) the President made efforts to consult with the LVV and has given him the opportunity to propose the candidate for the Prime Minister from among their ranks.; (xi) the President, after constant consultation, had to find a way to form the Government in order to materialize the will of the political parties and the representatives of the people; (xii) all political parties represented in the Assembly, unanimously, except the LVV have declared for the new Government and that the country does not go to the elections; (xiii) the President in the consultative meeting of 22 April 2020 informed the participants that since the expressed will of the political parties (representing 91 deputies) is for the country to have a new Government without going to the elections then the mandate will be given to each party or coalition that proves to have a majority in the Assembly to form the new Government; (xiv) the President issued the Decree with the aim of avoiding early elections, after the consent of the absolute majority of the political parties represented in the Assembly to form a new Government; and (xv) Articles 4.3 and 84.2 of the Constitution give to the President an active role in guaranteeing the democratic and constitutional functioning of institutions.

472. According to the LDK Parliamentary Group: (i) only after five (5) letters sent to LVV, the President stated that it refuses to send the candidate for Prime

Minister and then the political parties represented in the Assembly were invited to be asked if they are ready for elections or for the formation of the new Government; (ii) all parties have declared to avoid the elections, and the LDK, with the agreement of several other parties, has undertaken the establishment of a parliamentary majority; (iii) the President, by 22 April 2020, forwarded four requests to the LVV but was never sent the proposal of the candidate for Prime Minister, and this clearly shows that LVV did not want or refused to propose its candidate; (iv) the LVV has never expressed readiness to form a new Government and has not taken any action within party forums and has not held any meetings with other entities to try to create a new parliamentary majority; (v) these circumstances clearly indicate that the LVV has refused to appoint a candidate for Prime Minister and has attempted to block the establishment of the new Government; and (vi) no relative winner of the elections has a monopoly on democratic legitimacy, much less in cases where he abstains/refuses to exercise constitutional rights.

473. According to the AKR deputies, supported by NISMA deputies: (i) the right to propose a candidate from the winning party is not an absolute right and the same is even more relativized in the post-motion situation of no confidence where clearly the parliamentary majority or the attitude of the deputies has changed; (ii) if the winning party of the relative majority insists on the right to propose the candidate for Prime Minister, then it should not be consistently stated in communications with the President that he wants to go to the elections and dissolve the Assembly; and (iii) the President acted correctly when he acted towards the creation of the new Government because the President is required to find prevailing criteria to enable the creation of the Government and to avoid elections.

474. According to LDK deputy Arban Abrashi: (i) the President has taken a series of actions aimed at fulfilling his constitutional responsibility to appoint a candidate for Prime Minister after consulting with the party or coalition that constitutes the majority in the Assembly; (ii) the relative winner of the elections has acted irresponsibly in relation to the responsibility for the formation of the Government, recognized by the Constitution; (iii) in the present case, we are not dealing with unconstitutional actions of the President but with inaction, the intentional non-proposal of the candidate by LVV; (iv) the priority that the Constitution gives to the first entity must be seen not only as a privilege but also as the responsibility of the winner towards the country and the citizens; and (v) the President has acted correctly after five (5) letters and two (2) meetings in a period of about twenty (20) days, proposed the candidate from the ranks of the second entity, as the relative winner had not submitted a name but had publicly stated that we are for elections.

RESPONSE OF THE COURT – regarding the implementation of the constitutional procedure that resulted in the challenged Decree

475. The Court reiterates that the Constitution of the Republic of Kosovo consists of a unique set of constitutional principles and values on the basis of which the state of the Republic of Kosovo is built and should function. The norms provided by the Constitution should be read in relation to each other and not isolated from each other. Only in this way is the correct understanding of

certain constitutional norms is derived and it is possible for the Court to interpret ambiguities regarding the application of constitutional competencies in accordance with the purpose and spirit of the Constitution.

476. The Court also emphasizes that the structure of constitutional norms, and in particular the one relating to the establishment of state institutions deriving from the people's vote, must be interpreted in such a way as to implement and not block the effective establishment and exercise of their functions, because only that way the principle of separation of powers and control of the balance between them can be applied correctly, as defined by this Constitution.

477. The Court reiterates that the interpretation of the Constitution in support of the effective functioning of state institutions is especially important with regard to the establishment of post-election institutions, the results of which are determined by the elected representatives of the people for a four (4) year term in the Assembly of the Republic, and then, their Government, elected by the Assembly, according to the procedures set out in the Constitution, for a term of the same duration, or as long as a Government, has the confidence of the elected representatives of people represented in the Assembly.

478. Furthermore, the Court emphasizes that the democratic functioning of institutions is the primary responsibility of every person who is vested with public authorizations. All actions taken by persons vested with power or public authorization must be in accordance with the Constitution and its spirit and contribute to the progress and coordination of works of public interest for the state of the Republic of Kosovo, so that the latter develops and implements the values and principles on which it is built. Any obstruction or lack of cooperation in fulfilling the constitutional obligations and authorizations is contrary to the spirit of the Constitution.

Regarding the time limit within which the candidate for Prime Minister is proposed

479. The Court recalls that the essence of the dispute regarding the constitutionality of the challenged Decree is related to the lack of clarification of a time limit in the Constitution, regarding the appointment of a candidate for Prime Minister. The Court recalls that: (i) paragraph 14 of Article 84 of the Constitution; and (ii) paragraphs 1 and 5 of Article 95 of the Constitution define the duty of the President to appoint a candidate for Prime Minister for the formation of the Government from among the "*the political party or coalition that has won the required majority in the Assembly to form the Government*", "*after the proposal*" of the latter "*in consultation*" with it.

480. In this regard, the Court emphasizes that the lack of such specification in the abovementioned provisions of the Constitution should be analyzed in terms of: (i) the constitutional deadlines set by the Constitution for the establishment of post-election institutions, with particular emphasis on those are set for the purposes of establishing the Government; and, (ii) the content of expressions "*proposal*" and "*consultations*" for the purpose of appointing a candidate for Prime Minister.

481. Initially, in terms of the deadlines set out in the Constitution, regarding the establishment of the Government, the Court emphasizes that the Constitution defines a structure of accurate deadlines that indicate the purpose: (i) for the quick establishment of the Government; and (ii) the consequence of the dissolution of the Assembly, if the same deadlines are not met.

482. More precisely, the formation of institutions after the elections, the Constitution based on paragraph 1 of Article 66 of the Constitution, relates to the official announcement of the election results. Based on the same article, it is determined that the mandate of the elected Assembly starts from the day of the constitutive session, which is held within thirty (30) days from the day of the official announcement of the elections. The Court recalls that by Judgment KO119/14, it has assessed the constitutionality of Decision no. 05-V-001 of 17 July 2014 for the election of the President of the Assembly, through which, has interpreted the meaning of "*the largest parliamentary group*", as referred to in paragraph 2 of Article 67 of the Constitution (see paragraph 116 of Judgment KO119/14) and found in items a) and b) of the Enacting Clause as it follows: (i) the meeting and procedure followed after the suspension of the constitutive session, on 17 July 2014, by the Chairperson, due to lack of quorum, have violated Article 67 (2), in conjunction with Article 64 (1) of the Constitution and Chapter III of the Rules of Procedure applicable to these articles; and (ii) Decision No.05-V-001, of 17 July, is unconstitutional, both in terms of the procedure followed and in terms of content, as it was not the largest parliamentary group that proposed the President of the Assembly, and consequently, invalid (see the Enacting Clause of Judgment KO119/14).

483. In this regard, the Court recalls that the allegation of the Applicants that the history of the establishment of constitutional institutions in 2014 clearly proves that the formation of the Government lasted over six (6) months, "*as a consequence of not sending the name of the candidate for Prime Minister by the winning party to the President*", is not accurate. The referred delays are related to the non-constitution of the Assembly, and the Court has never assessed issues related to the deadlines regarding the constitution of the Assembly, as defined in paragraph 1 of Article 66 of the Constitution.

484. Immediately after the constitution of the Assembly, as established in paragraph 1 of Article 66 of the Constitution, the obligation of the President to initiate the procedure for the formation of the Government follows, applying paragraph 4 of Article 84 of the Constitution in conjunction with paragraph 1 of Article 95 of Constitution. This obligation also follows immediately after the resignation of the Prime Minister/Government, including cases of successful vote of no confidence motion, based on paragraph 4 of Article 84 of the Constitution in conjunction with paragraph 5 of Article 95 of the Constitution. The commencement of the procedure for the formation of the Government means the obligation of the President to appoint the candidate for Prime Minister, "*after the proposal*" and "*in consultation*" with "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the winner of the elections.

485. The appointment of a candidate for Prime Minister results in running of two types of parallel deadlines: (i) the one set out in item 1 of paragraph 1 of Article

82 of the Constitution; and (ii) those set out in Article 95 of the Constitution. The first deadline, namely that of Article 82 of the Constitution, stipulates sixty (60) days of time for the formation of a Government, the failure of which results in the consequence of the dissolution of the Assembly and the announcement of early elections. Such a provision reflects the importance that the Constitution has placed on the quick establishment of the Government, and on the contrary, the respective consequence of the dissolution of the Assembly. Furthermore, within this period of sixty (60) days, by Article 95 of the Constitution, the accurate deadlines have been set, regarding two possibilities for the formation of the Government, after the elections or after the resignation of the Prime Minister/Government, including the case of successful voting of the no-confidence motion by the Assembly. Article 95 of the Constitution stipulates: (i) fifteen (15) day deadline within which the candidate for Prime Minister from "*the political party or coalition that has won the required majority in the Assembly to form the Government*", presents the composition of the Government before the Assembly and requests the approval of the Assembly, as defined in paragraph 2 of Article 95 of the Constitution; (ii) the ten (10) day deadline within which the President nominates the other candidate for Prime Minister, in case the first candidate for Prime Minister fails to secure the necessary votes in the Assembly or even rejects the respective mandate; and (iii) referring to "*the same procedure*", in paragraph 4 of Article 95 of the Constitution, the period of fifteen (15) days, within which the other candidate for Prime Minister, represents the composition of the Government before the Assembly and requires its approval.

486. The Court reiterates that the above-mentioned deadlines reflect the importance that the Constitution has given to the quick establishment of the Government, setting the fifteen (15) day deadlines for the candidate for Prime Minister, to negotiate and reach the necessary agreements to ensure the necessary votes of deputies of the Assembly for voting the proposed Government. This deadline applies to the proposal of the relevant Government in the Assembly. As long as it does not specify the deadline within which the Assembly approves the Government or not, the action of the Assembly must be prompt and within a total (60) sixty-day period within which both possibilities for the formation of the Government are foreseen. On the contrary, and as explained above, the Constitution has determined the consequence of the dissolution of the Assembly and early elections, as defined in item (1) of paragraph 1 of Article 82 of the Constitution.

487. The Court found that a deadline regarding the appointment of a candidate for Prime Minister was not specified in the Constitution only pertaining to: (i) the first candidate for Prime Minister, namely the candidate for Prime Minister proposed by "*the political party or coalition that has won the required majority in the Assembly to form the Government*", after elections based on paragraph 1 of Article 95 of the Constitution; and (ii) the first candidate for Prime Minister, namely the candidate proposed by "*the political party or coalition that has won the required majority in the Assembly to form the Government*", after the resignation of the Prime Minister/Government, including the situation after the successful vote of a no-confidence motion, based on paragraph 5 of Article 95 of the Constitution.

488. However, the Court also notes that this deadline is not specified only in relation to the proposal of the candidate for Prime Minister by "*the political party or coalition that has won the required majority in the Assembly to form the Government*"; but also in relation to the mandating of the same by the President and the forwarding of the proposed candidate for Prime Minister to the Assembly. The same does not apply to the second candidate for Prime Minister, in case of failure of the first, as defined in paragraph 4 of Article 95 of the Constitution, a case in which the Constitution has specified exactly ten (10) days available to the President for his appointment based on the proposal of the party or coalition, which, as explained in Judgment KO103/14, in the assessment of the President that there is a higher probability of forming the Government and consequently to avoid elections.

489. This difference in the way of specifying the deadlines in case of application of: (i) paragraph 14 of Article 84 of the Constitution in conjunction with paragraphs 1 and 5 of Article 95 of the Constitution, both after the elections and after the resignation of the Prime Minister/Government, regarding with the first candidate for Prime Minister; and (ii) paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 4 of Article 95 of the Constitution, both after the elections and after the resignation of the Prime Minister/Government, regarding the second candidate for Prime Minister, in case of failure of the first, is important in the light of meaning and differences that the expressions "*after the proposal*" and in "*consultation with*" the political party or the respective coalition, when they apply in case of the appointment of the first and second candidate for Prime Minister.

490. In this regard, the Court recalls that in Judgment KO103/14, it emphasized the distinction between the manner of appointing these two candidates for Prime Minister and the meaning of the expressions in "*in consultation with*" and "*after the proposal*" in the implementation of relevant procedures. More precisely, these expressions in the case of the appointment of the first candidate for Prime Minister, and in the complete absence of the discretion of the President regarding the political party or coalition to be consulted, imply a process of completely formal and technical "*consultation*". More precisely, in any case, both after the elections or after the resignation of the Prime Minister/Government it is completely clear: (i) what is "*the political party or coalition that has won the required majority in the Assembly to form the Government*"; (ii) that this is the only political party or coalition with which the President can consult for the purpose of appointing a candidate for Prime Minister; and (iii) that the President should only mandate the name proposed by this political party or coalition. Therefore, "*consultation*" for the purposes of applying paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 1 and 5 of Article 95 of the Constitution, means only the mutual obligation, namely the obligation of "*the political party or coalition that has won the required majority in the Assembly to form the Government*" to propose the name of the candidate for Prime Minister and, the obligation of the President to mandate this name.

491. In contrast, in the application of paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 4 of Article 95 of the Constitution, in the light of Judgment KO103/14, the expression "*in consultation with*" the political party

or relevant coalition has a broader meaning. In the context of paragraph 4 of Article 95 of the Constitution: (i) the President is not obliged to "*consult*" only with "*the political party or coalition that has won the required majority in the Assembly to form the Government*", but with all political parties or coalitions represented in the Assembly; (ii) on the basis of these consultations, the President should assess what political party or coalition is most likely to form the Government in order to avoid elections; and (iii) Based on this condition, the President determines the political party or coalition, which proposed candidate he will mandate for Prime Minister, certainly without having any discretion in determining the name of the proposed candidate. In exercising this discretion and completing the whole process of "*consultation*" between the President and the relevant political party or coalition, the Constitution has set only ten (10) days.

492. Therefore, emphasizing the difference that the "*consultation*" of the President with the respective party or coalition in the application of paragraph 14 of Article 84 in conjunction with: (i) paragraphs 1 and 5 of Article 95 of the Constitution, without any discretion; and (ii) paragraph 4 of Article 95, with discretion, the Court notes that the time limit for determining the first candidate for Prime Minister has not been specified, in which the "*consultation*" involves a fully formal and technical process, while a ten (10) day deadline has been set, in the determination of the second candidate, in which the "*consultation*" involves a much more complex process.

493. In this context, Article 95 of the Constitution read in its entirety cannot be construed to imply that this article provides for an indefinite period in the appointment of the first candidate for Prime Minister based on paragraphs 1 and 5 of Article 95 of the Constitution, as for the political party or coalition with the right to propose to the President, in the light of a "*consultation*" process completely formal and technical, without any discretion or ambiguity; whereas, the same article has precisely limited the period to ten (10) days within which the second candidate for Prime Minister is proposed and determined, based on paragraph 4 of Article 95 of the Constitution, which includes a much more complicated "*consultation*" process regarding the determination of the candidate for Prime Minister. The setting of this ten (10) day deadline in the Constitution regarding the second mandate also reflects its purpose for concluding the "*consultation*" process for the purposes of appointing a candidate for Prime Minister in the short term.

494. Moreover, the allegation that the political party or the winning coalition can propose the candidate for Prime Minister "*only when the political, administrative and technical conditions are met*" in its assessment, it would be contrary to (i) the purpose of the Constitution for the quick establishment of institutions, and in particular the Government, as the bearer of executive power, reflected through the precise constitutional deadlines set out above; (ii) the immediate need to form a Government, in the event of the resignation of the Prime Minister/Government, including cases of successful no-confidence vote, a process through which the existing Government loses the confidence of the people's representatives and democratic legitimacy to run the executive branch; (iii) paragraphs 2 and 4 of Article 95 of the Constitution, which set a fifteen (15) day deadlines, available to the candidate for Prime Minister to

reach the necessary agreements and to propose to the Assembly the Government; and (iv) the purpose of item (1) of paragraph 1 of Article 82 of the Constitution based on which the consequence of the dissolution of the Assembly is foreseen in case of impossibility of forming the Government within sixty (60) days from the appointment of the first candidate for Prime Minister. If the deadline for the proposal of the candidate for Prime Minister by the political party or the winning coalition is at the full discretion of the latter, but also the President, for an indefinite period, then the abovementioned deadlines and the respective consequences would have no meaning or value.

495. Moreover, and especially considering the fact that the Constitution recognizes to "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the winner of the elections, the right to first start the process of forming the Government, the latter, referring to the unlimited time available to propose the name of the candidate for Prime Minister, could block the necessary dynamics for quick establishment of the Government for an unlimited period of time. The same, and even more important, given the fact that the Constitution recognizes the first right to propose a candidate for the Prime Minister, the political party or coalition that, under certain circumstances may have led or may have been represented in the Government, to which the confidence was taken by the people's representatives in the Assembly through the successful vote of a no-confidence motion, the reference to the unlimited time available to propose the name of the new candidate for Prime Minister, would enable the political party or winning coalition of the elections, blocking the creation of the new Government, despite the fact that the same political party or coalition has lost confidence of the Assembly of the Republic to lead the executive branch. Moreover, such an approach would also enable the President not to decree the proposal for the first candidate for the Prime Minister for an indefinite period of time and thus to hold the entire process of forming the Government a hostage. Such an interpretation is not only contrary to the Constitution, but also contradicts the fundamental values of a democratic society.

496. Consequently, the Court emphasizes that failure to specify a time limit in Article 95 of the Constitution regarding a quite technical and formal "*consultation*" process of the proposal of the first candidate for Prime Minister by "*the political party or coalition that has won the required majority in the Assembly to form the Government*" and the obligation of the President to appoint and propose the later to the Assembly, in contrast to setting deadlines, not only accurate but also short, in relation to any other step related to the procedure of forming the Government, means that this deadline actually includes in itself the demand for rapid dynamic interaction between the respective political party and the President. Based on all the explanations above, this constitutional purpose is clear and self-evident.

497. In fact, the Constitution did not specify this deadline based on the clear and implicit premise that: (i) the President, as the guarantor of the constitutional functioning of the institutions stipulated by the Constitution, immediately after the constitution of the Assembly must begin the process of forming the Government through the appointment of a candidate for Prime Minister, so that the Assembly can exercise the fundamental constitutional responsibility of

electing the Government; and (ii) the primary goal of the election winner is to immediately start the process of forming a new Government and gain the confidence of the Assembly. The holder of the right to propose, in addition to the right given by the Constitution for the formation of the Government, at the same time has the obligation to exercise this right in good faith and to show the clear intention that it is taking all necessary actions to create as quick as possible the executive body, and to start the implementation of the governing plan.

498. The Court also notes that a number of constitutions included in the Comparative Analysis of this Judgment also do not specify this deadline, despite the fact that majority have set precise and short deadlines for all the steps to be followed for the formation of a Government from the moment when the first candidate for Prime Minister is appointed, including the deadlines within which, each subsequent candidate for Prime Minister is mandated. Failure to specify the deadline only regarding the first step, that of the mandate of the first candidate for Prime Minister, the political party or coalition from which the same is proposed is also accurately identifiable in most Constitutions, means that the mandating of the first candidate for Prime Minister, should be done as soon as possible. Such an intention is specified, for example, by Bulgaria's response through the Venice Commission Forum, which states that despite the fact that the Bulgarian Constitution does not specify the deadline for the candidacy of the first candidate for Prime Minister, this deadline is "*as soon as possible*". The rapid dynamics of the start of the process for the formation of Governments is also reflected in those Constitutions, which, in fact, have set this deadline. The Constitutions of Montenegro and North Macedonia, for example, determine the mandate of a candidate for Prime Minister within thirty (30) and ten (10) days, respectively, from the moment of the constitution of the Assembly. Whereas, in cases of formation of Governments, after the resignation of the Prime Minister/Government, even shorter deadlines are set, such as in the case of the Constitution of Estonia and Lithuania, in which the new Government is proposed to the Assembly, within fourteen (14) and fifteen (15) days, respectively.

499. If the Court were to accept the proposal of the Applicant deputies, the Court would effectively have to find that since the Constitution has not explicitly specified a deadline for sending the name of the candidate for Prime Minister to the President, the winning political party or coalition, has discretion to send the name within 1 month, 1 year, 2 years, 3 years, depending on when the winning party or coalition considers that the necessary conditions qualified as *"political, administrative and technical"* s conditions have been matured to propose the name of the candidate for the Prime Minister. The same would apply to the President. The latter could keep and not decree the proposal of the candidate for Prime Minister until according to his/her assessment the necessary conditions would be met, all this in the absence of specification of the deadline to decree/send the name to the Assembly. Had this interpretation been adopted, nothing could have limited the discretion of the winning political party or coalition and of the President, now or in the future, to exercise these rights and obligations in an unlimited manner and time, including blocking of the election of the Government after the elections, but also by holding in office the Government which has lost the trust of the people's

representatives, by not proposing/not decreeing not sending the name of the candidate for Prime Minister, preventing the other candidate for Prime Minister who comes from the ranks of a political party or coalition and who may have the necessary majority in the Assembly to form the new Government, and more important, making it impossible for the Assembly to exercise its functions to elect a Government. Such an interpretation would be clearly contrary to the Constitution.

500. Consequently, the Court notes that taking into account that the process of "*consultation*" in determining the first candidate for Prime Minister, in the absence of discretion of the President and with full clarity as to what political party or coalition is entitled to this proposal, is quite formal and technical. It encompasses only the reciprocal obligation between the President and the winning political party or coalition in the elections to appoint a candidate for Prime Minister, after the proposal of the winning political party or coalition. This "*consultation*" should be concluded as soon as possible through a quick dynamic interaction, taking into account: (i) the completely formal and technical nature of this "*consultation*"; (ii) the system and structure of constitutional deadlines regarding the formation of the Government; (iii) the limitation of ten (10) days set by the Constitution in the event of the appointment of a second candidate for Prime Minister based on paragraph 4 of Article 95 of the Constitution, and in which in contrast, the "*consultation*" is much more complex; and (iv) the fact that the Constitution has set the exact fifteen (15) day deadlines available to candidates for Prime Minister to reach the necessary political agreements and to propose the Government to the Assembly.

Regarding the lack of a proposal for a candidate for Prime Minister

501. In addition, the Court must assess whether, in the circumstances of the present case, "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the LVV, has proposed or refused to propose, the candidate for Prime Minister. In this regard, in the following, the Court will first recall the procedure followed by the President of the Republic and the winning political party, namely the LVV, after the successful vote of no confidence against the Government led by the latter, in the Assembly of Kosovo.

502. The Court recalls that the no-confidence motion against the Government was voted on 25 March 2020, by two-thirds (2/3) of all deputies of the Assembly. The text voted by this parliamentary majority also reflects their willingness to prove the possibility "*for the formation of a stability government*".

503. Based on the case file, on 1 April 2020, the President met with all representatives of political parties and coalitions represented in the Assembly, regarding "*further steps*" after the successful vote of no confidence motion. In accordance with the will expressed through the no-confidence motion of 25 March 2020, the majority of parties and coalitions represented in the Assembly have stated their opposition to the dissolution of the Assembly and in support of the possibility of forming a new Government.

504. On the same day, the President also met with the caretaker Prime Minister and at the same time the President of "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the LVV. After this meeting, the latter addressed the President through two letters, bearing the same date, namely that of 1 April 2020, through which he emphasized, among others: (i) "*your duty* [of the President] *to dissolve the Assembly of the Republic of Kosovo after the motion of no confidence*"; and (ii) that "*The Constitution of the Republic of Kosovo, as well as your previous practice in 2017, makes it clear that, after the successful motion of no confidence, the only way forward is to dissolve the Assembly of the Republic of Kosovo, in accordance with Article 82.2 of the Constitution, and the announcement of the early elections*", also stating that "*with regard to erroneous interpretations of Article 95.5 of the Constitution, this topic of secondary or tertiary importance may be left for another day*.".

505. The next day, namely on 2 April 2020, the President addressed two letters to the President of the LVV. In the first, he emphasized that the meeting of the previous day, namely that of 1 April 2020, was a consultative meeting with the President of LVV, namely, "*the leader of the first party according to the final results of the Early Elections for the Assembly of the Republic. Kosovo, held on 6 October 2019*", and consequently a meeting "*of a formal, legal and procedural nature, for consultation to assess whether it is in the interest of the political party that you represent the formation of the new Government or the dissolution of the Assembly*". While in the second, the President emphasized that: (i) the LVV, it is the political entity that "*has won the required majority in the Assembly to form the Government*", and based on Article 95 of the Constitution has the right to propose a new candidate to form the Government; and (ii) requested that the LVV propose the new candidate, who would be mandated to form the Government.

506. The latter did not respond to the letter of 2 April 2020, through which the President requested the proposal of the candidate for Prime Minister by the President of LVV. Consequently, based on the case file, on 10 April 2020, the President addressed another letter to the President of the LVV. Through this letter, and recalling the letter of 2 April 2020, the President, among others, had: (i) reminded that he is waiting for the proposal of the candidate for Prime Minister from the LVV, as the political entity that has won the majority in the Assembly to form the Government and has the right to propose the new candidate for Prime Minister to form the Government; and (ii) once again requested the President of the LVV to propose a candidate for Prime Minister, who would be mandated by the President to form the Government.

507. To this letter of the President, the President of LVV, responded on 13 April 2020, not proposing the candidate for Prime Minister from among its ranks, but emphasizing, among other things, that: (i) the President has only the duty to dissolve the Assembly after the successful motion of no confidence; (ii) the assessment of "*of the interests of the political parties*" is not within the competence of the President; (iii) that the meeting of 1 April 2020 with the President took place in the capacity of the caretaker Prime Minister, and not the President of the LVV; (iv) after the successful motion of no confidence, the President is entitled "*to fulfill only one action determined by the constitution-*

maker. Thus, the dissolution of the Assembly in accordance with Article 82.2 of the Constitution of the Republic of Kosovo"; (v) that the elections are the only option after the successful vote of a no-confidence motion, citing the practice followed in 2010 and 2017, respectively; (vi) that the President is obstructing the work of the Government "*in the midst of an emergency state of public health*", through requests for the proposal of a candidate for Prime Minister; and finally, (vii) also pointed out that "*this letter is not a refusal to give you a name of the candidate for Prime Minister*".

508. On 15 April 2020, the President responded to the letter of 13 April 2020 of the President of the LVV, and who recalled the letters of 2 and 10 April 2020, and stated: (i) that he is still waiting "*the proposal of the candidate for Prime Minister to form the Government of the Republic of Kosovo, after the motion of no confidence in the Government*"; (ii) that he is obliged by the Constitution to guarantee the democratic functioning of the institutions of the Republic of Kosovo, including the provision of the name of the candidate for Prime Minister to form the Government and that the "*citizens of the Republic of Kosovo and the political parties represented in the Assembly of the Republic of Kosovo, rightly expect the functioning of the new Government, as well as expect the President to appoint a candidate for Prime Minister for the formation of the Government*"; (iii) no one has the right to deprive the elected representatives of people in the Assembly of the Republic of having the candidate for Prime Minister and to exercise the competence to elect the Government, as established in Article 65 (8) of the Constitution; (iv) your delay in proposing a candidate for Prime Minister makes it impossible for the Assembly to elect the Government, and consequently makes it impossible for the democratic functioning of the institutions, which, according to the Constitution, the President must guarantee; (v) based on Judgment KO103/14, "*it is not excluded that the party or coalition concerned will refuse to receive the mandate*"; and (vi) asked once again for the proposal of the candidate for Prime Minister for the formation of the Government.

509. The President of the LVV responded to the above-mentioned letter of the President, on 17 April 2020, emphasizing that: (i) "*we do not reject your request*" for the proposal of the candidate for the Prime Minister; but (ii) qualifying it as "*secondary and tertiary issue*" the request for the proposal of the candidate for Prime Minister, requested clarifications from the President regarding his obligation to dissolve the Assembly and the legal basis of Article 95 of the Constitution regarding the Election of the Government, to which the President refers.

510. The President responded to this letter on the same day, namely on 17 April 2020, by reminding the President of the LVV of his letters sent on 2 April, 10 April and 15 April 2020, and requesting once again the relevant proposal of the candidate for Prime Minister from the ranks of the political party he represents. Through this letter, the President emphasized that: (i) "*you have not proposed a candidate for Prime Minister, but you have stated that you are not refusing to propose a candidate for Prime Minister*"; and (ii) "*that your non-refusal means that you send the name of the candidate for Prime Minister*". The President of LVV did not respond to this letter.

511. On 22 April 2020, the President addressed a letter to the President of LVV, through which: (i) he emphasized that despite the letters of 2, 10, 15, and 17 April 2020, a candidate for Prime Minister was not proposed to the President; and (ii) stated that the President of the LVV had not "*not exercised the right to propose a new candidate to form the Government*"; and (iii) that based on Article 95 of the Constitution and Judgment KO103/14, he will "*hold joint consultations with all leaders of parliamentary political entities about further steps*". On the same date, the President of LVV responded to the President's letter stating that: (i) the President had ascertained "*outside the constitutional powers as President, that I have not exercised the right to propose a new candidate to form the Government*"; (ii) The Constitution does not provide for such a competence of the President to "*assess or ascertain the use or non-use of the right to propose the candidate for Prime Minister*"; (iii) the Constitution and Judgment KO103/14, "*have not even set a deadline for such a thing*"; and (iv) the Constitution foresees "*the appointment of the candidate for Prime Minister only after the proposal by the party or coalition that has won the absolute or relative majority, as defined in item 84 of the Judgment of the Constitutional Court*".

512. On 22 April, 2020, the President invited to a joint consultative meeting the leaders of the parliamentary parties, including the President of the LVV. After this meeting and on the same date, he addressed a letter to the President of LDK, namely the political party ranked after LVV with the most deputies according to the elections of 6 October 2019, requesting him the proposal for the candidate for Prime Minister for the formation of the Government. The President repeated the same request to the President of the LDK on 29 April 2020. On the same date, the President of the LDK responded to the President, emphasizing that the candidate for Prime Minister will be proposed soon. After that, Mr. Avdullah Hoti, was proposed as a candidate for Prime Minister, the next day on 30 April 2020. On the same date, the President decreed his mandate for Prime Minister.

513. In light of the abovementioned clarifications regarding the exchange of letters between the President and "*the political party or coalition that has won the required majority in the Assembly to form the Government*", in the elections of 6 October 2019, namely the LVV, the Court, as explained above, should further assess whether the possibility established through paragraphs 5, 2 and 3 of Article 95 of the Constitution has been exhausted, regarding the appointment of the first candidate for Prime Minister to form the Government after the resignation of the latter as a result of the successful vote of no confidence in the Assembly, so that it may have been possible for the President to nominate another candidate for Prime Minister, based on paragraph 4 of Article 95 of the Constitution. In the circumstances of the present case, it is already clear that the first attempt to form the Government did not fail in the Assembly as a result of the failure to obtain the required majority of votes, but the latter has allegedly failed due to lack of proposal of the name of the candidate for Prime Minister from "*the political party or coalition that has won the required majority in the Assembly to form the Government"*, and consequently, according to the President's allegation, the taking of relevant mandate was refused, as set out in Judgment KO103/ 4. Such a claim of the President is opposed by the Applicants and the caretaker Prime Minister,

namely and for the purposes of this review, the President of the LVV. Therefore, the Court must assess whether, based on the circumstances of this case, "*the political party or coalition that has won the required majority in the Assembly to form the Government*", has refused to take the relevant mandate.

514. This assessment depends on: (i) the role of the President in determining the candidate for the Prime Minister, as defined in paragraph 14 of Article 84 in conjunction with Article 95 of the Constitution; (ii) the interdependence and mutual obligations of the President and "*the political party or coalition that has won the required majority in the Assembly to form the Government*", as established in paragraph 14 of Article 84 in conjunction with Article 95 of the Constitution; and (iii) the circumstances of the formation of a new Government, after the successful vote of a no-confidence motion in the Assembly.

515. First, and regarding the role of the President in appointing the Prime Minister, the Court notes that: (i) the President exercises all his powers on the basis of Article 83 of the Constitution, according to which he/she is the head of state and represents the unity of the people of the Republic of Kosovo. Furthermore, his/her competence defined in paragraph 14 of Article 84 of the Constitution, regarding the appointment of a candidate for Prime Minister for the formation of the Government in relation to the relevant paragraphs of Article 95 of the Constitution, must always be exercised together with the competence of the President, established in paragraph 2 of Article 84 of the Constitution, according to which the President guarantees the constitutional functioning of the institutions set forth by this Constitution. This is because the determination of the candidate for Prime Minister includes not only the relationship between the President and "*the political party or coalition that has won the required majority in the Assembly to form the Government*", but also the relationship between the President and the Assembly of the Republic, regarding the exercise of the competence of the latter for the election and expression of no confidence in the Government, as set out in paragraph 8 of Article 65 of the Constitution.

516. More precisely, the exercise of the competence of the Assembly regarding the election of the Government is dependent on the exercise of the competence of the President established through paragraph 14 of Article 84 of the Constitution for the appointment of the candidate for Prime Minister. The President is obliged to exercise this competence in the light of his obligation to guarantee the constitutional functioning of the institutions defined by the Constitution, starting the procedures of "*consultations*" with the political party or the relevant coalition for the formation of the Government, immediately after the constitution of the Assembly after the elections or immediately after the resignation of the Prime Minister/Government, including cases of successful vote of no confidence in the Government in the Assembly. Otherwise, the President would prevent the Assembly from exercising its right to elect the Government effectively. Therefore, the President in exercising the competence established through paragraph 14 of Article 84 of the Constitution, is also in the role of mediator between the political party or coalition that has the necessary majority to form the Government and the Assembly. The appointment of the candidate for Prime Minister begins the constitutional

procedures for the formation of a new Government, which is submitted to the Assembly for voting, enabling him to exercise one of his most essential competencies, that of electing the Government.

517. Second, regarding the interdependence and mutual obligations of the President and "*the political party or coalition that has won the required majority in the Assembly to form the Government*", the Court recalls that the competence of the President set out in paragraph 14 of Article 84 of the Constitution is exercised "*in consultation*" with the political party or coalition having the necessary majority to form the Government. Thus, this paragraph, read together with Article 95 of the Constitution, includes not only the obligation of the President to appoint a candidate for Prime Minister, but also the obligation of "*the political party or coalition that has won the required majority in the Assembly to form the Government*" to propose the candidate for Prime Minister. In the absence of such a reciprocal obligation, the constitutional norm could not be realized, and would remain at the full discretion of "*the political party or coalition that has won the required majority in the Assembly to form the Government*", which, by not proposing the candidate for the Prime Minister, would make it impossible not only to exercise the powers of the President, but also the right of the Assembly to elect the Government.

518. The right to propose a candidate for Prime Minister is also a responsibility and a privilege. The proposal of this name encompasses the highest point of success of a political party or coalition towards and within an election cycle. The first right to propose a candidate for Prime Minister is guaranteed to the winning party or coalition by the Constitution of Kosovo. The exercise of this right is not vested with the authority to block the formation of a Government within an election cycle. Such an attitude would hold the entire most essential state institutions a hostage to the winning political party or coalition. On the contrary, and for this reason, the Constitution has provided for the unblocking mechanism, through which it is passed to another candidate for Prime Minister, whose eventual failure would result in the announcement of early elections.

519. In the end, the need to form a new Government after a successful vote of no confidence motion is immediate. This is because, as explained above, a Government elected by the Assembly does not continue to have the same legitimacy, at a time when the people's representatives are taking away their confidence by voting for a successful motion of no confidence.

520. Moreover, based on the Comparative Analysis and the contribution of the Venice Forum, in the vast majority of cases, after the successful vote of a no-confidence motion, the resigned Government has no role in the election of the new Government. Relevant presidents begin constitutional proceedings for the election of another Prime Minister who has the required majority in the Assembly to form the Government and gain its confidence. This is except in cases when the dismissed Government is assigned a certain role regarding the dissolution of the Assembly after voting on a successful motion of no confidence. This is the case with: (i) Article 104 of the Constitution of Croatia, which stipulates that the President may, on the proposal of the Government, with the signature of the Prime Minister and after consultations with

representatives of parliamentary parties, dissolve the Croatian Parliament if the latter, among other things, passes a no-confidence vote in the Government ; (ii) Article 94 of the Constitution of Estonia which stipulates that if a vote of no confidence in the Government or the Prime Minister is expressed, the President of the Republic may, on the proposal of the Government and within three days, declare early elections for Riigikogu; (iii) Article 58 of the Constitution of Lithuania, which stipulates that early elections for Seimas may also be announced by the President, *inter alia*, on the proposal of the Government, if Seimas expresses a no-confidence in the Government; and (iv) under the Swedish Constitution, and based on Sweden's response to the Court through the Venice Commission Forum, the dissolution of the Assembly can only take place if the Government calls early elections. Such elections may be the result of a no-confidence motion against the Government, as mentioned above.

521. In contrast, the Constitution of Kosovo, like most other Constitutions, does not stipulate any competence for the Government dismissed through the successful voting of a no-confidence motion, regarding the dissolution or not of the Assembly. Political parties or coalitions that have led/composed the latter, for the purposes of dissolving the Assembly, are reduced to the political power they have through their representation in the Assembly of the Republic. That said, the Constitution of Kosovo recognizes to "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the winner of the elections, the first right to propose a candidate for Prime Minister even when the Government that has led it, has lost the confidence by the Assembly through a successful vote of a no-confidence motion.

522. This constitutional right can in no way be transformed into a mechanism through which the political party or the winning coalition can prevent the formation of a new Government, by not proposing the name of the new candidate for Prime Minister, nor by expressly rejecting the mandate, and holding a Government led by the same political party or winning coalition, which has already lost the confidence of the Assembly. On the contrary, the task of a winning political party or coalition whose government has lost confidence in the Assembly through a successful vote of no confidence is to exercise the right to nominate a candidate for Prime Minister in order to form a government, taking back the confidence of the Assembly, or in order to allow the space for the formation of a Government by political parties or other coalitions, which have the necessary numbers in the Assembly to form the Government.

523. In the circumstances of the present case, "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the LVV, which Government was dismissed by the no-confidence motion of 25 March 2020, by the two thirds (2/3) of votes of all representatives of the people, and who, again, was given the first opportunity to form a new Government based on paragraph 5 of Article 95 of the Constitution, did not propose a candidate for Prime Minister, despite four (4) requests of the President of the Republic, for the formation of the new Government.

524. More precisely, to the requests of the President dated 2, 10, 15 and 17 April 2020, for the proposal of the candidate for Prime Minister, the President of LVV responded by (i) emphasizing that the issue of proposing the candidate for the Prime Minister is "*secondary or tertiary issue*"; (ii) requiring the President to dissolve the Assembly of the Republic pursuant to paragraph 2 of Article 82 of the Constitution; (iii) requesting the announcement of early elections; and at the same time emphasizing that (iv) it is not rejecting the mandate, but in fact, also (v) by not proposing any name for the same purpose.

525. The Court has already clarified that the appointment of the candidate for Prime Minister, as a result of the "*consultations*" between the President and "*the political party or coalition that has won the required majority in the Assembly to form the Government*", includes a completely technical and formal "*consultation*", namely the request of the President for the proposal of a name for the candidate for Prime Minister and the proposal of a name by "*the political party or coalition that has won the required majority in the Assembly to form the Government*". This "*consultation*" for the purposes of applying paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 5 of Article 95 of the Constitution, may not include a discussion regarding the dissolution of the Assembly or even the announcement of elections. This is because these two issues are neither in the exclusive competence of the President nor of "*the political party or coalition that has won the required majority in the Assembly to form the Government*".

526. On the contrary, the announcement of early elections, as a result of the dissolution of the Assembly is determined precisely by the Constitution, namely in its Article 82, and as explained throughout this Judgment, is realized based on the Constitution and is mandatory in cases of paragraph 1 of Article 82 of the Constitution, while it is at the discretion of the President in case of a successful vote of no confidence in the Assembly, a discretion that cannot be exercised in consultation only with "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the winning political party or coalition in the elections, but with all the political parties and coalitions represented in the Assembly. Furthermore, when Article 95 of the Constitution on the election of the new Government is activated, it is implied that: (i) the consultations with political parties and coalitions represented in the Assembly regarding the dissolution of the Assembly after a successful vote of no confidence have already been concluded, making it impossible to dissolve the Assembly based on paragraph 2 of Article 82 of the Constitution; and (ii) that there is a sufficient majority of political parties and coalitions represented in the Assembly to form a new Government.

527. Consequently, and as explained above, for the purposes of "*consultations*" pursuant to paragraph 14 of Article 84 in conjunction with paragraph 5 of Article 95 of the Constitution, it is only necessary to propose a candidate for Prime Minister and a mandate of the latter. In the circumstances of the present case, the political party with the right to propose, neither proposed the candidate for the Prime Minister nor explicitly refused to accept the mandate for the Prime Minister.

528. Regarding the possibility of refusing to take office, the Court recalls that in Judgment KO103/14, it found that "*it is not excluded that the party or coalition concerned will refuse to receive the mandate*". This Judgment did not specify the manner in which the refusal of the respective mandate could be made.

529. The Court recalls that in assessing the constitutional issue in Judgment KO103/14, the case before the Court was in no way related to the possible refusal to accept the mandate for Prime Minister by "*the political party or coalition that has won the required majority in the Assembly to form the Government*". However, the Court provided for the possibility of rejection, always keeping in mind that the future circumstances may contain the possibility that the political party or the winning coalition may not secure the required majority in the Assembly to vote on the proposed Government or other reasons, and consequently refuses to accept the mandate for Prime Minister, enabling the continuation of procedures for the election of a Government, based on paragraph 4 of Article 95 of the Constitution.

530. The Court, in Judgment [KO103/14], did not specify how this refusal is made. Therefore, the Applicants' allegation that "*The Court stated that the President can bypass the winner of the election, only if he expressly waives his right but under no other circumstances",* is not accurate. The Court, in fact, has never stated before about the modality of non-exercise of the right that the political party or the winning coalition can make. In all parliamentary practices so far in the Republic of Kosovo, there has been no case when the political party or the winning coalition that had the right to propose, refused to propose a candidate for Prime Minister. The present case, therefore, is the first case that deals with the aspect of non-exercise of the right to propose a candidate, namely *de facto* refusal to propose a name.

531. In this regard, the Court emphasizes that the interpretation that the right to propose a candidate for the Prime Minister should be explicitly rejected is not acceptable. This is because the possibility of a refusal on the condition that it is made only explicitly, combined with the circumstances related to the allegations of uncertainty about the deadline within which the proposal of the candidate for Prime Minister should be made by "*the political party or coalition that has won the required majority in the Assembly to form the Government*", as in the application of paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 1 of Article 95 of the Constitution, after the elections; as well as the application of paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 5 of Article 95 of the Constitution, after the resignation of the Prime Minister/Government, including the case of successful vote of no confidence motion, would result in full discretion of "*the political party or coalition that has won the required majority in the Assembly to form the Government*", regarding the formation of the Government, either by not proposing a name for the candidate, or by not expressly rejecting this right.

532. Therefore, rejection does not necessarily mean that it has been explicitly done, The Court notes that according to the dictionary of the Albanian language: *"REFUSAL m. pl.* [means] *Action according to the meanings of the verbs*

REFUSE." The verb REFUSE in the accusative: *"I refuse to do a job or an action that is required of me, I object."*

533. The right to propose the candidate for the Prime Minister is the right of "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the winning party or coalition, and also incorporates the responsibility and obligation to act, respectively to propose this candidate and to propose the Government to the Assembly. This right also includes the obligation and responsibility to reject the proposal and to unblock the constitutional procedure for the election of the Government, if the political party or the winning coalition considers that it does not have the necessary votes in the Assembly to form the Government. That said, (i) failure to take concrete action towards the proposal and lack of proposal of the name of the candidate for Prime Minister; e (ii) neither the refusal to accept this mandate, but at the same time requesting the (iii) dissolution of the Assembly and the announcement of early elections, can be conditioned only by the express declaration of the political party or the winning coalition for the rejection of the mandate for Prime Minister, to be considered a rejection. On the contrary, in such circumstances, the conditioning of the refusal to make an express statement regarding the refusal of the political party or the respective coalition would hold the establishment of state institutions a hostage only to the absence of refusal formally expressed by the political party or the winning coalition.

534. From the exchange of official documents between the President and the President of LVV, in the capacity of "*the political party or coalition that has won the required majority in the Assembly to form the Government*", not a single action or intention is reflected, that the latter plans to propose a candidate for the Prime Minister. On the contrary, the request of these letter is the dissolution of the Assembly and the announcement of early elections. These requests are in complete contradiction and exclude the possibility of proposing a candidate for the Prime Minister. The Court has already clarified that the "*consultations*" for the purposes of proposing the first candidate for Prime Minister, includes the proposal of the candidate for Prime Minister and the decreeing of the latter. Neither the dissolution of the Assembly, nor the announcements of early elections are the exclusive decision of either the President or the political party or the winning coalition.

535. Lack of a proposal of a candidate for the Prime Minister, namely the inaction regarding the only necessary obligation and taking any concrete step in this direction, especially in the circumstances when against the Government that was led by "*the political party or coalition that has won the required majority in the Assembly to form the Government*", a motion of no confidence with two-thirds (2/3) of all deputies of the Assembly has been successfully voted, it is sufficient to ascertain this refusal. The very lack of performance of an action which is required to be performed, in spite of the right, possibility and intermediary invitations, consists *de facto* in the opposition or refusal to perform a certain action.

536. In these circumstances, and after a successful vote of a no-confidence motion by two-thirds (2/3) of all deputies of the Assembly, the President, (i) balancing

his obligation to guarantee the democratic functioning of the institutions established in the Constitution, as set forth in paragraph 2 of Article 84 of the Constitution, including in this context the right of the Assembly to elect the Government, as established in paragraph 8 of Article 65 of the Constitution, on the one hand; and, on the other hand, by (ii) taking into account "*the political party or coalition that has won the required majority in the Assembly to form the Government*", namely the LVV, did not take any single action towards the proposal of the candidate for the Prime Minister despite the President's right, opportunity and requests, but continued to request the dissolution of the Assembly and the announcement of early elections, despite the fact that most political parties or coalitions represented in the Assembly had already stated against this possibility, making impossible to the President to exercise the competence specified in paragraph 2 of Article 82 of the Constitution, has rightly concluded the exhaustion of the constitutional possibilities for proposing the candidate for Prime Minister set forth in paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 5 of Article 95 of Constitution, and has initiated the following procedure set out in paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 4 of Article 95 of the Constitution. The opposite, would make it impossible to implement the essential competencies of the Assembly to elect the Government of the Republic of Kosovo.

537. Therefore, the Court finds that the challenged Decree of the President was issued in compliance with paragraph 14 of Article 84 of the Constitution in conjunction with paragraph 4 of Article 95 of the Constitution.

VI. Request for holding a hearing

538. The Court recalls that the Applicants also requested that the Court holds a hearing, stating that *"It is in the public interest to hold this public hearing, because the content of this decree violates the constitutional order, as well as some essential constitutional provisions that pave the way for the creation of new legitimacy through early parliamentary elections"*.

539. In this regard, the Court recalls that pursuant to paragraph 1 of Rule 42 [Right to Hearing and Waiver] of the Rules of Procedure: *"Only referrals determined to be admissible may be granted a hearing before the Court, unless the Court by majority vote decides otherwise for good cause shown";* whereas, pursuant to paragraph 2 of the same rule: *"The Court may order a hearing if it believes a hearing is necessary to clarify issues of fact or of law"*.

540. The Court notes that the abovementioned Rule of the Rules of Procedure is of a discretionary nature. As such, that rule only provides for the possibility for the Court to order a hearing in cases where it believes it is necessary to clarify issues of fact or law. Thus, the Court is not obliged to order a hearing if it considers that the existing evidence in the case file are sufficient, beyond any doubt, to reach a decision on merits in the case under consideration (See case of the Constitutional Court, KO43/19, Applicants: *Albulena Haxhiu, Driton Selmanaj and thirty other deputies of the Assembly of the Republic of Kosovo*, Judgment of 13 June 2019, paragraph 116; see also case KI34/17, Applicant *Valdete Daka*, Judgment of 1 June 2017, paragraphs 108-110).

541. In the circumstances of the present case, this is not the case, because the Court does not consider that there is any uncertainty regarding the "facts or law" and therefore does not consider it necessary to hold a hearing. The documents and letters that are a part of the case file KO72/20 are sufficient to decide the case.

542. Therefore, the Applicants' request to hold a hearing is rejected as ungrounded.

VII. Request for interim measure

543. On 30 April 2020, the Applicants submitted their Referral to the Court, which, *inter alia*, requested the imposition of an interim measure "*on the Decree in order to prevent irreparable damage to the party and the institution".*

544. On 1 May 2020, the Court approved the request for interim measure as grounded and suspended the implementation of the challenged Decree of the President, stating that the latter is suspended *"without any prejudice to the admissibility or merits of the referral."* The interim measure was imposed until 29 May 2020. (See Decision on Interim Measure in Case KO72/20, 1 May 2020, paragraph 51 and the enacting clause).

545. Given that today, on 28 May 2020, the Court declared the Referral admissible and decided on its merits by confirming the constitutionality of the challenged Decree of the President, it is no longer necessary to keep the interim measure in force.

VIII. CONCLUSIONS

546. In the assessment of the Decree [no. 24/2020] of 30 April 2020 of the President of the Republic of Kosovo, through which "Mr. Avdullah Hoti, is proposed to the Assembly of the Republic of Kosovo as a candidate for Prime Minister to form the Government of the Republic of Kosovo", the Court decided: (i) unanimously that the request of the Applicants is admissible; (ii) unanimously that the contested Decree of the President is in compliance with paragraph 2 of Article 82 [Dissolution of the Assembly] of the Constitution; whilst therefore declaring that the successful vote of a motion of no confidence by the Assembly against a Government does not result in the mandatory dissolution of the Assembly and thereby permits the election of a new Government in compliance with Article 95 [Election of the Government] of the Constitution; (iii) by majority that the contested Decree is in compliance with paragraph (14) of Article 84 [Competencies of the President] in conjunction with paragraph 4 of Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo; (iv) unanimously to repeal the interim measure which was set through the Decision of 1 May 2020; and (v) unanimously to reject the request for a public hearing.

547. The Court recalls that the constitutional matter involved in this Judgment is the compliance with the Constitution of the disputed Decree of the President of the Republic, through which Mr. Avdullah Hoti was proposed to the Assembly of Kosovo as a candidate for Prime Minister. In assessing the constitutionality of the aforementioned Decree, and based on the Applicants' allegations as well

as the arguments and objections of other interested parties, the Court initially assessed whether after a successful vote of no confidence by the vote of two thirds (2/3) of all Deputies of the Assembly on 25 March 2020, the President of the Republic, was obliged to dissolve the Assembly of the Republic and to announce early elections, based on paragraph 2 of Article 82 of the Constitution. Further, the Court clarified the procedure to be followed for the formation of a new Government, after a successful vote of no confidence in the Assembly and also gave its assessment, as to whether, in the circumstances of the concrete case, the procedure followed for the nomination of the candidate for Prime Minister pertaining to the formation of a new Government, resulted in a Decree that is constitutionally compliant.

548. In order to interpret the constitutional articles related to the circumstances of the concrete case, respectively Articles 82, 95 and 100 of the Constitution, the Court also took into account: (i) the constitutional principles on the role of the Assembly and the President; (ii) its case law, including Judgment KO103/14 and all cases cited by the parties to the proceedings; (iii) the relevant Opinions of the Venice Commission; (iv) the Comparative Analysis of the Constitutions, including those referred to by the Applicants; (v) responses received from the Constitutional/Supreme Courts, part of the Venice Commission Forum; and (vi) the preparatory documents for the drafting of the Constitution.

549. The Court initially recalled that the Constitution consists of a unique entirety of constitutional principles and values on the basis of which the Republic of Kosovo has been built and must function. The norms provided by the Constitution must be read in conjunction with each other, because that is the only manner through which their exact meaning derives. Constitutional norms cannot be taken out of context and interpreted mechanically and in isolation from the rest of the Constitution. This is due to the fact that the Constitution has an internal cohesion, according to which each part is connected to the other. The structure of the constitutional norms related to the establishment of state institutions that stems from the people's vote must be interpreted in such a way that they enable and not block the establishment and the effective exercise of the respective functions. Any ambiguity of norms must be interpreted in the spirit of the Constitution and its values. No constitutional norm can be interpreted in such a way as to block the effective establishment and functioning of the legislative and executive branches of government, nor the way in which they balance each other in terms of the separation of powers.

550. In addition, the Court also notes that every state power and holder of public functions without any exception, is under the obligation to undertake the respective public duties in service of the implementation of the values and principles based on which the Republic of Kosovo was built to function. The rights and obligations deriving from the Constitution must not be exercised in service of establishment and effective functioning of State Institutions.

551. Further and with regard to the constitutional provisions pertaining to the dissolution of the Assembly, the Court emphasized that the Constitution provides an obligation to dissolve the Assembly only in the circumstances of paragraph 1 of Article 82 of the Constitution, and the possibility to dissolve the Assembly in the circumstances of paragraph 2 of Article 82 of the Constitution,

following a successful vote of a motion of no-confidence. More precisely, the Assembly is mandatorily dissolved only in three cases: (i) if the government cannot be established within sixty (60) days from the date when the President of the Republic of Kosovo appoints the candidate for Prime Minister; (ii) if two thirds (2/3) of all deputies of the Assembly vote in favor of the dissolution of the Assembly; and (iii) if, within sixty (60) days from the date of the beginning of the President's election procedure, the latter is not elected. Whereas, in case of a successful vote of no confidence against Government, the President has the possibility but not the obligation to dissolve the Assembly.

552. The President's possibility to dissolve the Assembly cannot be exercised independently or contrary to the will of the Assembly, but it must be exercised in coordination and depends on the will of the necessary majority of the representatives of the people represented in the Assembly. The use of the verb "*may*" in the context of paragraph 2 of Article 82 of the Constitution, only reflects the possibility of the President to dissolve the Assembly, based on consultations with the political parties represented in the Assembly. Such a determination pertaining to the presidential competencies related to the verb "*may*" ["*mund*"/"*može*"] in the context of the dissolution of the Assembly, is also confirmed through the Opinions of the Venice Commission, referred to in this Judgment.

553. The Court emphasized that the Assembly is the only institution in the Republic of Kosovo that is directly elected by the people for a four (4) year term. Apart from the Constitution, the representatives of the people are not bound by any other power or obligatory mandate. Neither does the President who is elected by the Assembly have the power to dissolve the Assembly in contradiction with its will; nor can the exercise of the competence of the Assembly to express a vote of no confidence against a Government which was elected by Assembly itself, can result into the end of the mandate of the Assembly itself. The Assembly cannot be conditioned to self-dissolution if it chooses to express no confidence against a Government it has elected, because a motion of no confidence as a mechanism of constitutional control of the Government by the Assembly as a representative organ of the people, would not have any meaning. Such an approach is contrary to the constitutional principle of parliamentary control of the Government enshrined in paragraph 4 of Article 4, paragraph 8 of Article 65 and Article 97 of the Constitution and the basic democratic principles.

554. The high threshold of the vote required to dissolve the Assembly by the deputies themselves, reflects the weight and importance that the Constitution has set for this purpose. In addition to the highest threshold provided for the amendment of the Constitution, which requires the approval of two thirds (2/3) of all deputies of the Assembly, including two thirds (2/3) of all deputies of the Assembly holding guaranteed seats guaranteed for representatives of communities that are not in the majority in the Republic of Kosovo, the Constitution sets the next highest possible threshold for the dissolution of the Assembly, namely the vote of two thirds (2/3) of all its deputies, which equals, *inter alia*, to the necessary vote for the delegation of state sovereignty, as defined in Article 20 of the Constitution. In contrast, for a successful motion of

no-confidence against the Government, the Constitution has set a lower threshold of the required vote, namely sixty-one (61) deputies.

555. If the President could dissolve the Assembly on its own motion following a no-confidence motion, then the President would have the power which equals to the two-thirds (2/3) of the votes of the representatives of the people and which would result in an arbitrary reduction of the necessary will of two thirds (2/3) of the deputies for the dissolution of the Assembly, into only sixty one (61) votes, required for a motion of no confidence. Such a power, Presidents, based also on the Opinions of the Venice Commission, do not even have in the majority states with presidential regulation.

556. In fact, the Analysis of other Constitutions reflected in this Judgment, including those Constitutions used in the arguments of the Applicants, the relevant Opinions of the Venice Commission and the responses of the Venice Commission Forum, reflects that no Constitution requires the mandatory dissolution of the Assembly only due to the fact that a motion of no-confidence has been successfully voted. On the contrary, the successful vote of a motion of no-confidence results in three situations: (i) the automatic election of a new Prime Minister, in cases where the Constitutions provide for a "*constructive motion*"; (ii) an additional possibility for the election of a Prime Minister; and (iii) the return of the process to the President, to start and follow the procedures for the election of the Government, for the number of possibilities for prescribed in the Constitution. In all these countries, only when all the constitutional possibilities for the election of a new Government have been exhausted, the Assembly is dissolved and early elections are announced.

557. The competence of the President to dissolve the Assembly as set forth in paragraph 2 of Article 82 of the Constitution, is applied correctly, only when following a successful motion of no confidence voted by at least sixty-one (61) deputies: (i) there is sufficient majority of deputies to form a new Government, and at the same time (ii) there is no majority of two-thirds (2/3) of the deputies, necessary to self-dissolve. This competence, on one hand, represents an additional possibility to form the Government within the existing legislature and avoid elections; while on the other hand, it represents a possibility to enable the unblocking of situations in which there is neither will nor a necessary majority to form a new Government by the Assembly within the same legislature.

558. To this day, Article 82 of the Constitution has always been applied in this same way. More precisely: (i) the third and fifth legislatures were dissolved by the President in the third year of their term, in 2010 and 2017, respectively, when in the Assembly there was no will or necessary majority to form a new Government; whereas, (ii) the fourth and sixth legislatures, in 2014 and 2019, respectively, were self-dissolved with two-thirds (2/3) of the votes of all deputies and this dissolution was only decreed by the respective Presidents.

559. The circumstances of the present case are clearly different from those of previous legislatures. In this case, (i) a no-confidence motion was passed by the votes of two-thirds (2/3) of all people's representatives and the same, do not need the President's help to self-dissolve; and (ii) the majority of political

parties and coalitions represented in the Assembly, respectively the majority of the people's elected representatives, have declared their will in favor of the establishment of a new Government, after expressing no confidence against the caretaker/dismissed Government. The dissolution of the Assembly by the President against the will of the people's representatives would be arbitrary and clearly unconstitutional. On the contrary, the President was obliged to initiate proceedings which would provide for the opportunity to establish a new Government based on the provisions of Article 95 of the Constitution.

560. The manner of electing the Government in the Constitution of Kosovo is determined through Article 95. The procedure to be followed for the election of a Government is clarified in the Judgment of the Court in case KO103/14. The Court adheres to the principles set out in that Judgment. The latter clarified that for the establishment of a Government, the Constitution defines two possibilities. The first right to establish the Government belongs to the "*political party or coalition that has won the necessary majority in the Assembly to establish the Government*", respectively the political party or the coalition having won the elections. The President has no discretion regarding the right of this political party or coalition to nominate a candidate for Prime Minister and only mandates the same. In case of failure of the election of this Government in the Assembly, or rejection of this mandate by the winning political party or the coalition, the right to establish the Government passes to the political party or coalition represented in the Assembly, which at the discretion of the President is more likely to establish the Government and avoid elections. Whilst, the failure of these two possibilities, results in the obligation of the President to announce the elections, as defined in the Constitution.

561. Article 95 of the Constitution defines the procedure for electing a Government during an election cycle. The same, defines two options for electing a Government, after the elections and after the resignation of the Prime Minister/Government. The Court has clarified that the effect of the resignation of a Prime Minister results in the resignation of a Government, just as the effect of the successful vote of a no-confidence motion on the "*Government as a whole*", results in the resignation of the same. Such a stand is also consistent with the Comparative Analysis, the cited Opinions of the Venice Commission and the contribution submitted to the Court by members of the Venice Commission Forum, according to which, after a successful motion of no-confidence, the Prime Minister/Government are resigned, and the respective constitutional article pertaining the election of the Government is activated, except for those cases that have provided for the "*constructive motion*", or have provided only one more possibility for the election of the Prime Minister/Government, after the relevant motion.

562. Therefore, all cases of resignation of the Prime Minister, or when the post becomes vacant for other reasons, result in the fall of the Government, including when the resignation of the Government is the result of a successful motion of no confidence, provided that after this motion there is no dissolution of the Assembly, based on the principles explained above, paragraph 5 of Article 95 of the Constitution is activated, obliging the President to mandate

the new candidate for Prime Minister. The political party or coalition that has the first right to nominate the candidate for Prime Minister and establish the Government, is again the winning political party or coalition. For the establishment of this Government, the procedure defined through paragraphs 2 and 3 of Article 95 of the Constitution must be followed, while the failure to obtain the necessary votes in the Assembly or the rejection of this mandate, results into passing the right to establish the Government to a political party or a coalition that may have the necessary majority to establish the Government, as provided in paragraph 4 of Article 95 of the Constitution and in accordance with the principles set out in Judgment KO103/14. The Court clarifies that through Judgment KO103/14, it has never determined that the winning political party or coalition has the exclusive and sole right to nominate the candidate for Prime Minister and to establish the Government.

563. The Court also notes that the competence of the Assembly to elect and express no confidence against the Government is set out in paragraph 8 of Article 65 of the Constitution and is implemented through Articles 95 and 100 of the Constitution, on the Election of the Government and the Motion of No Confidence, respectively. The latter is one of the most essential mechanisms for exercising parliamentary control over the Government and, consequently, for balancing the powers among the branches of government. The democratic legitimacy of a government elected by an Assembly stems from the confidence that the representatives of the people vest with it when electing it. This confidence ceases at the moment when the majority of all deputies of the Assembly have voted against it. As a result, it loses the confidence of the representatives of the people, and consequently the constitutional authority to exercise the relevant competences.

564. The Court reiterates that in the circumstances of the concrete case, on 25 March 2020, a motion of no-confidence was voted for by two-thirds (2/3) of the votes of all deputies of the Assembly, against the Government led by the winning political party in the elections of 6 October 2019. The same political party, unlike most of the Constitutions analyzed and reflected in the Judgment, after a successful vote on the motion of no confidence, based on the Constitution of Kosovo, still has the first right to propose a candidate for Prime Minister. Such a proposal has not been made by this political party even after (4) four requests by the President, starting from 2 April 2020 to 22 April 2020. The respective political party, namely VETËVENDDOSJE! Movement, in essence, claims that: (i) after a motion of no confidence, the President is obliged to dissolve the Assembly and announce early elections; and that (ii) there is no constitutional deadline for proposing of the candidate for Prime Minister, therefore, it is at the full and indefinite discretion of the winning political party to nominate the candidate for Prime Minister and that "*only when the political, administrative and technical conditions have been met*." Consequently, another matter relevant for this Judgment is: (i) the deadline within which the candidate for Prime Minister must be proposed; and (ii) if the lack of proposal of this candidate by the political party that has the first right to nominate, reflects the refusal to accept the mandate for the Prime Minister.

565. Regarding the deadline within which the proposal for the candidate for Prime Minister should be made, the Court has emphasized that this matter must be

analyzed in terms of: (i) the system of constitutional deadlines that the Constitution has set for the purposes of forming the Government; and (ii) the nature of the "*consultation*" between the President and the political party or coalition with the right to nominate a candidate for Prime Minister, including mutual responsibilities and obligations between them, for the purpose of nominating the candidate for Prime Minister.

566. First, the Court noted that the nomination of a candidate for Prime Minister by the President results into the running of two types of parallel constitutional deadlines: (i) that of the dissolution of the Assembly if the election of the Government is not made within sixty (60) days of taking the mandate; and (ii) those set out in Article 95 of the Constitution, which relate to the two possibilities for the formation of the Government, respectively the fifteen (15) day period within which the candidate for Prime Minister presents the composition of the Government and requires approval by the Assembly; (iii) the ten (10) day deadline within which the President nominates another candidate for Prime Minister, in case the first candidate for Prime Minister fails to secure the necessary votes in the Assembly or refuses the respective mandate; and (iv) referring to the "*same procedure*", the fifteen (15) day deadline, within which the other candidate for Prime Minister, presents the composition of the Government and requests its approval by the Assembly. These precise deadlines reflect the purpose and importance that the Constitution has assigned to the need for speedy establishment of the Government, setting the deadline of fifteen (15) days for the candidate for Prime Minister, to negotiate and reach the agreements to secure the necessary votes of deputies of the Assembly for the proposed Government; and also the sixty (60) day deadline for the formation of a Government, and the corresponding consequence of the dissolution of the representatives of the people, if this deadline is not met.

567. Secondly, the Court recalled that in Judgment KO103/14, it distinguished between the nature of "*consultation*" between the President and the political party or coalition with the right to nominate the first and second candidate for Prime Minister. In the first case, the President has no discretion and it is clear which is the political party or coalition that proposes the candidate for Prime Minister, consequently this "*consultation*" entails a completely formal and technical process between the President and the winning party or coalition, pertaining to the proposal of the candidate for Prime Minister and the appointment of the same. By contrast, in the second case, the President has the discretion and it is not clear at the outset which is the political party or coalition with the right to propose the candidate for Prime Minister, therefore, this process of "*consultation*" is more complex and entails the obligation of the President to consult with all the political parties and coalitions represented in the Assembly and his/her assessment, as to who has the highest probability to form the Government in order to avoid elections. In exercising this discretion, the Constitution has set a deadline of ten (10) days for the President.

568. Therefore, in the context of: (i) the undisputed importance of the effective functioning of a Government as one of the three branches of government; (ii) the system of precise and short deadlines set out in the Constitution regarding the formation of a Government; (iii) the completely clear, technical and formal

nature of the "*consultation*" between the President and the winning political party or coalition for the purposes of nominating the first candidate for Prime Minister; and (iv) the constitutional limit of ten (10) days for the purposes of nominating the second candidate for Prime Minister through a much more complex "*consultation*" process, the Court notes that the non-specification of deadlines by the Constitution pertaining to the proposal of the first candidate for Prime Minister from the winning political party or coalition, does not entail the right and the discretion of the latter not to act for an unlimited duration of time.

569. In this respect, the Court notes that a time limit for proposing the candidate for the Prime Minister is not specified in the Constitution not only with respect to the political party or coalition with the first right to propose a candidate, but it also does not specify a deadline within which the President is obliged to decree the proposed candidate, or to submit the same to the Assembly. The Court notes that the designation of the candidate for the Prime Minister, neither involve only the obligation of the President to decree the candidate, nor only the right of the winning political party to propose a candidate; but it also includes the duty of the latter to propose or refuse to propose the candidate for Prime Minister. More precisely, the designation of the candidate for Prime Minister involves the mutual obligation for the cooperation between the President and the winning political party in this process. Moreover and whilst having in mind the technical and formal nature of the "*consultation*" for the purpose of designating the first candidate for Prime Minister, a step that puts into motion the process Government formation and corresponding constitutional deadlines, it is clear and self-understanding that this "*consultation*" must be concluded as soon as possible and that it involves the requirement for a swift cooperation dynamic.

570. On the contrary, all of the above-mentioned constitutional norms regarding the deadlines and the purposes that they entail regarding the formation of the Government, would be without any meaningful effect and completely unnecessary. The election of the Government would remain hostage to the "*unlimited deadlines*" and at the full discretion of a winning political party or coalition or at the full discretion of the President. The former, would hold the formation of the Government pending, relying to the full and indefinite discretion to propose a candidate for Prime Minister, while the President would also refer to the full and indefinite discretion to decree the same. This "*full and unlimited discretion in terms of time*", in the meantime, is related to the election of the Government, a competence which pertains to another branch of government, respectively the Assembly. Such an approach and interpretation would be arbitrary and clearly contrary to the structure of constitutional norms, its purpose and spirit, but also contrary to the basic principles of a parliamentary democracy. In this regard, the Court also emphasizes that, despite the allegations of the applicants regarding the delay of the procedures for establishing institutions after the elections, emphasizing the situation of 2014 in respect to the prolongation of the process for the establishment of the Assembly, the Court has never, including in the Judgment KO119/14, addressed the issue of deadlines related to the constitution of the Assembly, as the same were not the subject matter of the case before the Court.

571. Regarding the lack of a proposal of candidate for the Prime Minister by the winning political party in the elections, the Court, in this Judgment, has analyzed the exchange of letters between the Chairman of the winning political party, at the same time the caretaker Prime Minister, and the President. These letters reflect two characteristics: (i) the President's request for the nomination of a candidate for Prime Minister on the one hand; and (ii) the lack of a proposal and the request for the dissolution of the Assembly and the announcement of early elections by VETËVENDOSJE! Movement, on the other hand.

572. The Court, in this Judgment, has emphasized that: (i) for the purposes of "*consultation*" to nominate the candidate for Prime Minister between the President and the winning political party or coalition, only the nomination of the candidate for Prime Minister and the respective decreeing by the President is relevant; and (ii) this "*consultation*" process cannot include issues related to the dissolution of the Assembly or the announcement of early elections, because none of these issues is within exclusive competence of either the President or the winning party or Caretaker/resigned Government. This because it is clear that: (i) the cases of compulsory dissolution of the Assembly are precisely defined in the Constitution; (ii) the possibility of the Assembly to be dissolved by the President, as has already been clarified, is not a competence exercised by the President without coordination with all political parties and coalitions represented in the Assembly, and not only with the one that has won the elections; and (iii) the Government has no constitutional competence either with regard to the dissolution of the Assembly or the announcement of elections. On the contrary, in relation to these two issues, the role of political parties or coalitions represented in a Government is equivalent only to the power they have through their representation in the Assembly. The will of the majority of the Assembly in the circumstances of the current case, has clearly made it impossible for the President to dissolve the Assembly and announce early elections.

573. The Court notes that in the circumstances of the present case, the political party that has led the Government against which a motion of no confidence has been voted, has not made a proposal for a new candidate for Prime Minister for the purpose of forming a new Government. However, the Applicants claim that they have never explicitly refused to accept this mandate.

574. Regarding the possibility of refusing to accept the mandate, the Court recalls that in Judgment KO103/14, it found that "*it is not excluded that the party or coalition in question will refuse to accept the mandate*". Despite the fact that it was not an issue before the Court in 2014, the Court had foreseen the possibility of refusal, precisely for the purpose of making it impossible to block the formation of the Government in the future. This Judgment did not specify the manner in which the refusal of the respective mandate can be made. Therefore, the claim of the applicants that "*the Court has stated that the President may bypass the winner of the election only if the latter expressly waives his right but under no other circumstances*" is incorrect. This is so because also the authorization of the winning political party or coalition to refuse the mandate only explicitly, namely the possibility to not propose a

name for the candidate for Prime Minister, and at the same time, to hold this right by not refusing explicitly, would vest the winning political party or coalition with the undisputable right to block the process of nominating a candidate for Prime Minister by the President.

575. Such a possibility would make it impossible for the President to exercise his competence to appoint a candidate for Prime Minister, thus making it also impossible for the Assembly to exercise its competence for the election of Government. On the contrary, as it has already been clarified, the appointment of a candidate for Prime Minister requires immediate interaction in fulfilling the mutual obligations and responsibilities between the President and the winning political party or coalition. Therefore, the refusal in fact means the lack of action in order to fulfill this obligation, namely the lack of concrete action towards and through proposing the candidate for Prime Minister by the winning political party or coalition. The Constitution and its spirit foresees that this right and, at the same time, obligation, for both, the winning party and the President, cannot be abused by any of them and must be exercised in a good faith and in the function of forming of the Government.

576. From the exchange of official letters between the President and the winning political party in the present case, not only that there is no proposal of a candidate for Prime Minister, but even a single indication of the intention to propose a candidate for the Prime Minister, is reflected. They rather only contain the request to dissolve the Assembly and call early elections. These demands exclude the possibility of proposing a candidate for Prime Minister.

577. In circumstances where a no-confidence motion with two-thirds (2/3) of the representatives of the people is successfully voted and the possibility to form a new Government exists, if the claims about (i) the unlimited time and the full discretion of the winning political party, and (ii) the right to only expressly refuse the candidate for Prime Minister, were to be held, combined with the sole demand for the dissolution of the Assembly and the announcement of early elections, the formation of a Government would be blocked indefinitely, keeping in office a Government that has lost the confidence of the representatives of the people. This is not the spirit of the Constitution of the Republic of Kosovo.

578. The President, through balancing his obligation to guarantee the constitutional functioning of the institutions defined by the Constitution, as set forth in paragraph 2 of Article 84 of the Constitution, including in this context, the right of the Assembly to elect a Government, as defined in paragraph 8 of Article 65 of the Constitution, on the one hand; and on the other hand, given that the winning political party has not undertaken any single action towards proposing the candidate for Prime Minister despite the President's requests, but has continued to request the dissolution of the Assembly and the announcement of early elections, despite the fact that the majority of political parties or coalitions represented in the Assembly have already declared themselves against this possibility, whereby making it impossible for the President to exercise the competence set out in paragraph 2 of Article 82 of the Constitution, has rightly ascertained the constitutional possibilities to nominate a candidate for Prime Minister by the winning political party have

been exhausted. As a result, the President initiated the procedures for the appointment of the new candidate for Prime Minister, in consultation with and after the proposal of the political party, which based on the relevant consultations, resulted to have the highest probability to form the Government and in order for the elections to be avoided. The opposite would make impossible the exercise of the essential powers of the Assembly of the Republic to elect the Government of the Republic of Kosovo.

579. The right to nominate a candidate for Prime Minister is a responsibility and a privilege. The proposal of this name represents the highest point of success of a political party or coalition for and within an election cycle. The first right to nominate a candidate for Prime Minister is guaranteed to the winning political party or coalition, through the Constitution. The exercise of this right is not vested with the authorization to block the formation of a Government within an election cycle. Such an attitude would submit the most important state institutions to the sole will of the winning political party or coalition.

580. Finally, the Court concludes that the democratic functioning of institutions is the primary responsibility of every person who is vested with public authority. All actions taken by persons vested with public power or authorizations must be in accordance with the Constitution and its spirit and contribute to the orderly conduct and coordination of affairs of public interest for the state of the Republic of Kosovo, so that the latter would develop and implement the values and principles on which it has been built and aspires through its Preamble.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Articles 113 (2) (1) and 116.2 of the Constitution, Article 20 of the Law and Rule 59 (1) of the Rules of Procedure, on 28 May 2020,

DECIDES

I. TO DECLARE, unanimously, the Referral admissible;

II. TO HOLD, unanimously, that Decree [No. 24/2020] of 30 April 2020 of the President of the Republic of Kosovo, by which *"Mr. Avdullah Hoti, is proposed to the Assembly of the Republic of Kosovo a candidate for Prime Minister to form the Government of the Republic of Kosovo"*, **is in compliance** with paragraph 2 of Article 82 [Dissolution of the Assembly] of the Constitution of the Republic of Kosovo;

III. TO HOLD, by majority, that Decree [No. 24/2020] of 30 April 2020 of the President of the Republic of Kosovo, by which *"Mr. Avdullah Hoti, is proposed to the Assembly of the Republic of Kosovo a candidate for Prime Minister to form the Government of the Republic of Kosovo"*, **is in compliance** with paragraph (14) of Article 84 [Competencies of the President] in conjunction with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo;

IV. TO REPEAL, unanimously, the interim measure imposed on 1 May 2020;

V. TO REJECT, unanimously, the request for holding a hearing;

VI. TO NOTIFY this Judgment to the Parties;

VII. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20.4 of the Law; and

VIII. TO DECLARE this Judgment effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Nexhmi Rexhepi

Arta Rama- Hajrizi

This translation is unofficial and serves for informational purposes only