



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

Prishtina , 7 October 2021
Ref.no.:AGJ 1865/21

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

Case No. KO61/21

Applicant

Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Decision No. 08/V-005 of the Assembly of the Republic of Kosovo of 22 March 2021 on the Election of the Government of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Slavko Simić, Zoran Mojsilović, Miljana Nikolić, Ivan Todosijević, Verica Čeranić, Branislav Nikolić, Jasmina Dedić, Ljubinko Karadžić, Miloš Perović, Adem Hodža and Igor Simić (hereinafter: the Applicants), all deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

2. The Applicants have authorized the deputy of the Assembly, Igor Simić, to represent them in the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

Challenged act

3. The Applicants challenge the constitutionality of the Decision of the Assembly no. 08/V-005, of 22 March 2021, on the election of the Government of the Republic of Kosovo (hereinafter: the challenged Decision).

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly is not in compliance with paragraphs 3 and 5 of Article 96 [Ministries and Representation of Communities] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
5. The Applicants further request the Court to impose an interim measure *“which would put in a state of calmness the position of the Minister who was appointed Minister of Local Government Administration - Elbert Krasniqi because he does not have the support of (11) eleven deputies who compose the majority of (20) twenty deputies who represent non-majority communities”*.
6. The Applicants also request the Court that *“in accordance with Article 24 of the Law on the Constitutional Court and Rule 42 of the Rules of Procedure of the Constitutional Court, to hold a public hearing in which it would invite all deputies representing the non-majority communities in Kosovo (non-majority Serb community of (10) ten deputies and of other non-majority communities of (10) ten deputies) [...]”*.

Legal basis

7. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties], of the Constitution, Articles 27 [Interim Measures], 42 [Accuracy of the Referral] and 43 [Deadline] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), as well as Rules 56 [Request for Interim Measures], 74 [Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

8. On 29 March 2021, the Applicants submitted their Referral to the Court.
9. On the same date, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).
10. On 30 March 2021, the Applicants were notified about the registration of the Referral.

11. On the same date, the Referral was communicated to the Acting President of the Republic of Kosovo, Mr. Glauk Konjufca (hereinafter: the Acting President), the Prime Minister of the Republic of Kosovo, Mr. Albin Kurti (hereinafter: the Prime Minister) and the Ombudsperson, with the instruction to submit to the Court the comments, if any, by 14 April 2021. The Referral was also communicated to the President of the Assembly, Mr. Glauk Konjufca, who was asked to notify the deputies of the Assembly that they can submit their comments regarding the Applicants' Referral, if any, by 14 April 2021.
12. On 30 March 2021, the Court also requested the Secretariat of the Assembly to submit to the Court by 14 April 2021 all relevant documents for the challenged decision.
13. On 2 April 2021, the Secretariat of the Assembly submitted to the Court the relevant documents relating to the challenged decision, namely:
 - Decree no. 61/2021, of 22 March, of the Acting President;
 - The request of the 52 deputies of the Assembly for convening the Extraordinary Session for the voting of the Government: Do-08/13, of 22 March 2021;
 - Invitations to hold the Extraordinary Session of the Assembly of 22 March 2021;
 - Decision of the Assembly no. 08-V -005, of 22 March 2021; and,
 - Transcript of the Extraordinary Meeting (Session) of the Assembly, of 22 March 2021.
14. On 14 April 2021, the Prime Minister on behalf of the Government submitted comments regarding the Referral.
15. On 20 April 2021, the Court notified the Applicants, President Mrs. Vjosa Osmani, President of the Assembly, and the Ombudsperson, regarding the comments of the Prime Minister and the documents received from the Secretariat of the Assembly. The Court also notified the Prime Minister about the documents received from the Secretariat of the Assembly.
16. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP.71-2/21 of the Court, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi on 26 June 2021.
17. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned as a judge before the Constitutional Court.

18. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision KSH61/21, appointed Judge Remzije Istrefi-Peci as a member of the Review Panel instead of Judge Bekim Sejdiu.
19. On 24 June 2021, the Applicants submitted the letter to the Court *"Supplementation of the Referral KO 61-21"*. In this letter, the Applicants stated that *"By this submission we want to supplement the Referral and notify the Constitutional Court that in addition to the violations which we have highlighted in our first Referral registered in the Court with number KO 61-21, a continuing violation of Article 96 paragraph 4 has been already existing for 90 days as no Deputy Minister has been appointed to the Government before the Serb community, as provided for in Article 96 paragraph 4 [of the Constitution]"*.
20. On 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.
21. On 28 June 2021, the President of the Court, Gresa Caka-Nimani, rendered Decision KSH61/21, replacing the previous President, Arta Rama-Hajrizi, in her role as the Presiding of the Review Panel.
22. On 28 July 2021, the Court considered the report of the Judge Rapporteur and decided to consider the case again at a forthcoming session. The Court also decided that it could not consider the new allegations under Referral KO61/21, which is already being considered by it. Consequently, on 3 August 2021, the Court notified the Applicants that in accordance with Rules 33 (Registration of Referrals and Filing Deadlines), 34 (Correction of Referrals and Replies) and 38 (Review Panels) of the Rules of Procedure, the allegations submitted in the letter for *"supplementation of the Referral KO 61-21"* submitted on 24 June 2021, cannot be reviewed by the Court through the Referral KO61/21.
23. On 22 September 2021, the Court considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.
24. On 24 September 2021, the Court decided (i) unanimously, that the Referral is admissible; (ii) by a majority of votes, that the challenged Decision is in compliance with the Constitution; (iii) unanimously rejected the request for the imposition of an interim measure; and (iv) by a majority of votes, rejected the request to hold a hearing.

Summary of facts

25. On 6 January 2021, the Acting President Mrs. Vjosa Osmani, rendered Decision No. 02/2021, on the appointment and announcement of early elections for the Assembly, which were scheduled for 14 February 2021.

26. On 14 February 2021, early elections were held for the Assembly.
27. On 13 March 2021, the Central Election Commission (hereinafter: the CEC) certified the results of the elections of the Assembly of 14 February 2021, by Decision No. 950/2021, according to the following list of the election results:
 - a. VETËVENDOSJE! Movement (hereinafter: the LVV), 58 deputies;
 - b. Democratic Party of Kosovo - PDK, 19 deputies;
 - c. Democratic League of Kosovo - LDK, 15 deputies;
 - d. Serb List, 10 deputies;
 - e. Alliance for the Future of Kosovo -AAK, 8 deputies;
 - f. Kosovo Democratic Turkish Party - KDTP, 2 deputies;
 - g. Coalition "Vakat", 1 deputy;
 - h. New Democratic Initiative of Kosovo, 1 deputy;
 - i. i. Romani Initiative – RI, 1 deputy;
 - j. New Democratic Party - NDS, 1 deputy;
 - k. Social Democratic Union –SDU, 1 deputy;
 - l. United Gorani Party, 1 deputy;
 - m. Ashkali Party for Integration, 1 deputy;
 - n. Kosovo Progressive Roma Movement - LPRK, 1 deputy.
28. On 16 March 2021, following meetings with political parties representing non-majority communities in the Assembly, a meeting was held between representatives of the LVV and those of the Serb List.
29. On 21 March 2021, Mr. Albin Kurti, in his capacity as President of LVV, sent a letter to Mr. Goran Rakić, in the capacity of the latter as President of the Serb List, emphasizing that: *"[...] in accordance with Article 96, par. 3 and 4 [of the Constitution], in conjunction with Article 92 par. 1 and 2, in the capacity of the President of the winning party and the future Prime Minister of the Government of the Republic of Kosovo, pursuant to Article 95 par. 3 and 4 [of the Constitution], I invite you - the Serb List, to propose the names of the three deputies of your party, among whom I will select a Minister of the Ministry of Communities and Returns [...]"*.
30. On the same date, on 21 March 2021, Mr. Goran Rakić, in his capacity as President of the Serb List, sent a letter to Mr. Albin Kurti in the capacity of the latter as President of LVV, in response to the above letter, emphasizing the following: *"[...] in case you propose a Government with 12 ministers, we will give the name of a minister.*

In case you propose a Government with more than 12 ministries, I want to inform you that in accordance with Article 96, paragraphs 3, 4 and 5, you are obliged to appoint 3 ministries in the administration of non-majority communities in Kosovo.

In this regard, I would like to inform you that the parliamentary group of the Serb List in the new legislature will have 11 deputies (10 from the Serb List and 1 from the United Gorani Party), representing the majority of the total number of (20) deputies in the Assembly of Kosovo, representing non-majority communities in accordance with Article 96, paragraphs 3, 4 and 5.

Thus, if the next government has more than 12 ministries, tomorrow we will provide you with 2 names for ministers who are not from the ranks of deputies, but in accordance with the Constitution have the support of 11 deputies who hold seats intended for non-majority communities. [...]”.

31. On 22 March 2021, the constitutive meeting of the Assembly was held, with three items on the agenda:
 1. Establishment of the Temporary Committee for Verification of the Quorum and the Mandates of the Deputies;
 2. Taking the oath of the deputies;
 3. Election of the President and Vice-Presidents of the Assembly.
32. The Temporary Committee for the Verification of Quorums and Mandates presented the Report to the Assembly on the same date. After that, the deputies took the oath and with the election of the President and Vice-Presidents, the Assembly was constituted.
33. On the same date, the Acting President issued Decree No. 61/2021 by which *“Mr. Albin Kurti 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”.*
34. On 22 March 2021, 52 (fifty two) members of the Assembly submitted a request to hold an Extraordinary Session for voting of the Government.
35. On the same date, on 22 March 2021, Mr. Albin Kurti, in his capacity as President of the LVV and as a candidate for Prime Minister, sent a letter to Mr. Goran Rakić, in his capacity as President of the Serb List, emphasizing, among other things, the following *“in the capacity of the president of the winning party and the mandate for Prime Minister for the formation of the Government of the Republic of Kosovo, based on Article 95, paragraphs 3 and 4, I invite you - the Serb List to propose the names of three deputies of your party, of whom I will elect one for Minister of the Ministry of Communities and Returns [...]”.*
36. On the same date, Mr. Goran Rakić, in his capacity as president of the Serb List, sent a letter to Mr. Albin Kurti in the capacity of the latter as President of the LVV and candidate for the formation of the Government, emphasizing the following: *“[...] Given that you propose a Government with more than 12 ministries, in accordance with Article 96 par. 3, 4 and 5 you are obliged to divide three ministries in the administration of non-majority communities in Kosovo. In this regard, we would like to inform you that 11 deputies (10 from the Serbian List and one from the Gorani United Party) representing the majority of the total number (20) of deputies representing non-majority communities in the Assembly of Kosovo, in accordance with Article 96, paragraphs 3, 4 and 5 of the Constitution of Kosovo give you the name of the candidate for the third minister.
He is:
Dalibor Jevtic [...]”.*

37. On the same date, on 22 March 2021, the Assembly held an extraordinary meeting convened by 52 deputies of the Assembly, with the agenda, the Election of the Government of the Republic of Kosovo, in which case the mandated Prime Minister Mr. Albin Kurti, presented the composition of the Government, as follows:
1. Albin Kurti, Prime Minister;
 2. Besnik Bislimi, First Deputy Prime Minister for European Integration, Development and Dialogue;
 3. Donika Gërvalla, Second Deputy Prime Minister and Minister of Foreign Affairs and Diaspora;
 4. Emilija Redžepi, Third Deputy Prime Minister for Minority and Human Rights Issues (representative from other non-majority communities in the Assembly);
 5. Hekuran Murati, Minister of the Ministry of Finance, Labor and Transfers;
 6. Albulena Haxhiu, Minister of the Ministry of Justice;
 7. Armend Mehaj, Minister of Ministry of Defense;
 8. Xhelal Sveçla, Minister of the Ministry of Internal Affairs and Public Administration;
 9. Arben Vitia, Minister of the Ministry of Health;
 10. Arbërie Nagavci, Minister of the Ministry of Education, Science, Technology and Innovation;
 11. Hajrulla Çeko, Minister of the Ministry of Culture, Youth and Sports;
 12. Elbert Krasniqi, Minister of the Ministry of Local Government Administration (representatives from other non-majority communities in the Assembly);
 13. Liburn Aliu, Minister of the Ministry of Environment, Spatial Planning and Infrastructure;
 14. Faton Peci, Minister of the Ministry of Agriculture, Forestry and Rural Development;
 15. Rozeta Hajdari, Minister of the Ministry of Industry, Entrepreneurship and Trade;
 16. Artane Rizvanolli, Minister of the Ministry of Economy;
 17. Goran Rakić, Minister of the Ministry of Communities and Returns (voted by non-majority deputies representing the Serb community in the Assembly);
 18. Fikrim Damka, Minister of the Ministry of Regional Development (representatives from other non-majority communities in the Assembly).
38. As noted above, regarding Mr. Goran Rakić, proposed for the position of Minister of the Ministry of Communities and Returns by representatives of the Serb community in the Assembly of Kosovo, as he was not a deputy of the Assembly, pursuant to paragraph 5 of Article 96 [Ministries and Representation of Communities], was voted separately by the deputies of the Serb community, in which case that proposal received 10 out of 10 votes of the deputies representing the Serb community in the Assembly of Kosovo.
39. On the same date, 22 March 2021, by the challenged decision, no. 08/V-005, the Assembly elected the Government of the Republic of Kosovo, with 67 votes “for”, 30 “against” and no “abstention”, according to the proposed composition mentioned above.

Applicant's allegations

40. The Applicants allege that the challenged decision is not in compliance with paragraphs 3 and 5 of Article 96 [Ministries and Representation of Communities] of the Constitution.
41. The Applicants state that Article 96 of the Constitution provides that in the Government there must be at least *“one (1) minister from the Serb community and one (1) minister from any other non-majority community in Kosovo. If there are more than twelve ministers, the Government will have a third minister, who represents one of the non-majority communities in Kosovo”*.
42. In this connection they add that *“in accordance with Article 96 par. 3 reserving the seat for at least (2) two ministers of non-majority communities, but does not exclude the possibility that the Government will have more than two such ministers. However, according to the obligations under this article, at least (2) two ministers from non-majority communities in Kosovo must be part of the Government. The reserved representation of non-majority communities in the Government constitutes the so-called “broad government” principle in terms of multiethnicity, and is a key condition of consociational democracy. This model of Government structure enables the guaranteed multiethnic character of the state to be expressed not only for reserved representation in government, but also because the ministers resulting from this article of the Constitution represent the voice of their communities in the government policy-making process”*. In this regard they refer to the Commentary, the Constitution of the Republic of Kosovo Hasani, Enver and Čukalović, Ivan, (2013) GIZ, Prishtina (hereinafter: the Commentary on the Constitution).
43. Referring again to the Commentary on the Constitution they add that *“the appointment of ministers and deputy ministers from non-majority communities in accordance with Article 96.4 shall be made after consultation with parties, coalitions or groups representing non-majority communities in Kosovo. If candidates are nominated from outside the structure of deputies of the Assembly of Kosovo, their appointment requires the votes of the majority of the deputies of the Assembly, who are members of parties, coalitions, civic initiatives and independent candidates who have stated that they will represent the communities in question. [...] From a legal point of view, the term “consultation” used in this article refers to the procedure when the party/coalition representing the community in question in the Assembly of Kosovo submits its candidacy for the composition of the Government that nominates the candidate for Prime Minister. Acceptance of the candidate proposed by the party/coalition representing the relevant non-majority community is mandatory within the meaning of Article 96.5, otherwise it would be considered that the obligation for full consultation with the party/coalition in accordance with this Article has not been fulfilled. This means that this article imposes a kind of parliamentary coalition, even implicitly, between the parties/coalitions that aim to form the Government and the deputies of the non-majority communities, as the acceptance of their candidate in the composition of the government is an obligation. according to the article in question. This type of coalition, even implicitly, results in a*

multiethnic parliamentary coalition, which is the only way to implement the provisions arising from this article [Article 96 of the Constitution]”.

44. *Regarding the third ministry from the ranks of non-majority communities, the Applicants state that “The Constitution does not clearly state here whether this minister comes from the ranks of non-majority Serb communities or from other non-majority communities. But Article 96 paragraph 5 stipulates that ministers representing non-majority communities must be appointed “after consultation with parties, coalitions or groups representing non-majority communities in Kosovo”.*
45. *Therefore, they add that “[...] it is clear that neither here nor in previous cases of minority representation has the Constitution left the possibility for the candidate or the Prime Minister to have freedom of choice, but the Constitution requires consultation to ensure a representative representation of non-majority communities in consultation with parties. coalitions or groups representing non-majority communities in Kosovo”. Therefore, they ask the question “how to put up a representative representation of non-majority communities in the case when the Constitution does not clearly define from which community the third minister comes as in the previous two cases”.*
46. *They hold the position that “[...] if the minister representing the Serb community is appointed by a majority of (10) ten deputies representing the Serb community, and if the minister from other non-majority communities is appointed by a majority of (10) ten deputies representing other non-majority communities, then it is entirely logical that the (3) the third minister nominated by non-majority communities shall be appointed by a majority of (20) twenty deputies who, in accordance with Article 64 of the Constitution, represent the non-majority communities in Kosovo (Serb non-majority community (10) deputies and other non-majority communities from (10) ten deputies). [...] Which means that the Prime Minister is obliged to hold consultations and as the third minister representing the non-majority communities in Kosovo appoints a representative of the non-majority communities (either from the non-majority Serb community or from other non-majority communities) in Kosovo who manages to secure the support of majority of (20) twenty deputies constituting the majority of communities, respectively (11) eleven out of a total of (20) twenty deputies who, in accordance with Article 64 of the Constitution, represent the non-majority communities in Kosovo (non-majority Serb community (10) ten deputies and other non-majority communities (10) ten deputies)”.*
47. *Based on the above arguments, the Applicants add that “the third minister is the Minister of Local Government Administration - Elbert Krasniqi who was appointed without consultation as a representative of the non-majority community in violation of Article 96 of the Constitution because he did not secure the support of (11) eleven deputies out of a total of (20) twenty deputies who , in accordance with Article 64 of the Constitution, represent the non-majority communities in Kosovo (non-majority Serb community (10) ten deputies and other non-majority communities (10) ten deputies). Therefore, in the present case they consider that “the rights of non-majority communities in general and the Serb community in particular have been marginalized and in*

the most rude way neglects the letter and spirit of the Constitution by appointing Minister of Local Self-Government Administration - Elbert Krasniqi who in the last legislature was not even part of the group of non-majority communities but was part of the parliamentary group of the political entity of Vetëvendosje Movement”.

48. *Therefore, they emphasize that “[w]e consider that the Prime Minister should have, in accordance with Article 96, convened consultations with all non-majority communities and appointed as the third Minister in accordance with Article 96 paragraph 3 the representative of the non-majority communities who manages to provide (11) eleven votes of the deputies, namely, the majority of votes out of (20) twenty votes in the council of communities, which is why it exists to express the views of non-majority communities”.*
49. *Comparing with the positions of other non-majority communities in the Assembly or appointed by the Assembly, they emphasize that “[...] almost all representatives of non-majority communities are appointed in this way, for example (Deputy President of the Assembly before the Serb community), it is logical that with 10 Serb votes he can never get 61 votes as he should be appointed Deputy President of the Assembly of Kosovo, but this does not mean that the President of the Assembly can impose on the Serb community which of the Serb deputies will be the Deputy President of the Assembly. Judges of the Constitutional Court are appointed similarly, with two judges first required to vote in the community council, and only after receiving approval from non-majority community deputies they will be voted in the Assembly into the full legislature. [...] With such norms, the constitution-maker wanted to protect the rights of non-majority communities, so that the majority would not outvote and marginalize them, which is exactly what was done during the election of the government”.*
50. *Therefore, the Applicants request the Court: i) to declare the Referral admissible; ii) to find that the challenged decision is not in accordance with paragraphs 3 and 5 of Article 96 [Ministries and Representation of Communities] of the Constitution; and iii) order the Prime Minister, in accordance with Article 96 [Ministries and Representation of Communities] of the Constitution, to carry out the reorganization of the Government and to appoint as third Minister from the non-majority communities a person belonging to the non-majority communities proposed and supported by a simple majority of (11) eleven deputies out of a total of (20) twenty deputies representing non-majority communities in the Assembly.*

Request for imposition of the interim measure

51. *The Applicants, regarding the request for an interim measure, reason that the conditions established in paragraph (4) of Rule 57 of the Rules of Procedure for the imposition of an interim measure have been met, as in this case we have a “prima facie case on the merits of the referral” because the case was submitted by (11) eleven deputies within (8) eight days and in accordance with Article 113 paragraph 5, the case is manifestly admissible on the merits”*

52. They add that “[...] regarding the irreparable damage itself, it is clear that we have a non-representative representation of non-majority communities in the Assembly of Kosovo where one person represents non-majority communities even though he does not have the support of (11) eleven deputies who make up the majority of (20) twenty deputies representing non-majority communities, in which case the majority in non-majority communities suffer irreparable damage because they are represented by an unauthorized person who is not a representative representative of non-majority communities”.
53. Also as regards the criterion that the interim measure should be in the public interest they reason that “the Government of Kosovo is currently in an unconstitutional composition because a person who does not have the authority of a deputy of non-majority communities to represent non-majority communities sits in its composition. It is in the public interest for the Government to be established in a Constitutional composition and for the Government to work and function in accordance with the Constitution. Because this is not the case at the moment, it is in the public interest to impose an interim measure that would put the position of minister who was appointed Minister of Local Government Administration - Elbert Krasniqi in a state of calm because he has not support of (11) eleven deputies constituting a majority of (20) twenty deputies representing non-majority communities”.

Request for holding a public hearing

54. The Applicants also request the Court to hold a hearing at which the latter would invite all deputies representing non-majority communities in Kosovo to determine the following issues::
- which representative of the Serb community has the support of a majority of 10 (ten) deputies representing the Serb community in order to be appointed Minister;
 - which representative of other non-majority communities has the support of a majority of (10) ten deputies representing other non-majority communities, in order to be appointed Minister;
 - which representative of all non-majority communities has the support of the majority or (11) eleven out of a total of (20) twenty deputies to be appointed third Minister of non-majority communities if the Government has more than 12 (twelve) ministries;
 - to determine that the third Minister before the non-majority communities who has been appointed Minister of Local Government Administration - Elbert Krasniqi, who is the representative of all non-majority communities, did not have the support of the simple majority of (11) eleven out of 20 twenty deputies who according to Article 64 of the Constitution represent non-majority communities.

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

55. The Prime Minister emphasized that regarding the Referral submitted to the Court, the Applicants are authorized parties under Article 113.5 of the Constitution, have exercised their right within the constitutional deadline, have informed the Court about the constitutional provisions which are relevant for

the constitutional review of the challenged act, but have failed to provide evidence in relation to their allegations. In this context, the Prime Minister stated that *“The Government considers it necessary that despite the fact that the Referral is not based on evidence and does not justify the Applicants’ allegation of the unconstitutionality of the challenged decision (manifestly ill-founded on constitutional basis), in order for the procedure of election and appointment of minority representatives within the Government of Kosovo to be considered adjudicated by the Constitutional Court, the Government considers it necessary and in the interest of constitutional stability for the Court to declare the Referral admissible and decide on the merits of the case. Because a case is considered “res judicata” only when it is adjudicated by a judgment and not if due to lack of reasoning it is declared procedurally inadmissible”*.

56. Regarding the Applicants’ allegation that paragraphs 3 and 5 of Article 96 of the Constitution were violated during the election of the Government, the Prime Minister states that *“the Applicants have misinterpreted paragraphs 3 and 5 of Article 96 of the Constitution, because the candidate for Prime Minister has fulfilled the constitutional obligations provided by this Constitution”*. As the Constitution in paragraph 3 of Article 96 stipulates that at least one (1) minister from the Serb community, and one (1) minister from other minority communities, must be represented in the Government, according to paragraph 3 of Article 96 of the Constitution, if they are more more than twelve ministers, the Government will also have a third minister, who represents one of the non-majority communities in Kosovo. However, according to the Prime Minister *“the Constitution does not stipulate that the third minister representing minority communities must necessarily be representative of the Serb community. The Constitution in this case is clear and contains a precise wording, which does not leave room for ambiguity”*. In this regard he states that *“non-majority communities” refers not only to the Serb community, but also to other non-majority communities living in the Republic of Kosovo*”, adding that on the basis of this, are allocated the seats guaranteed under Article 64.4 of the Constitution.
57. In this regard, the Prime Minister refers to other laws which define the representation of non-majority communities in other state institutions which refer to the representation of non-majority communities in general without setting quotas for the Serb community in particular. In this regard, he refers to the Law on the Ombudsperson, the Law on the Independent Media Council, and the Law on the Independent Oversight Board of the Civil Service. The Prime Minister argues that the above laws prove that when it is not specified from which non-majority communities a member should be appointed, it does not automatically mean that these nominees should be from the Serb community. This is evidenced by the current practice of functioning of these independent institutions, which elect their members after the vote of the Assembly.
58. The Prime Minister, regarding the issue of consultation with non-majority parties for the appointment of ministers from non-majority communities, states that before the election of the Government, *“The Applicants confirm themselves that on 21.03.2021 they had an exchange of letters with the candidate for Prime Minister, while on 22.03.2021 they met with him, after the*

formal mandate from Acting President. Consequently, the constitutional obligation to consult with them as representatives of the Serb minority in Kosovo has been exhausted. They also confirm that Mr. Goran Rakic has been elected minister on the proposal of their parliamentary group". He adds that "[i]f their proposal had been ignored and instead of Mr. Rakic was elected another person in the position of guaranteed minister for the representatives of the Serb minority, then the Applicant's claim would have been grounded. However, the latter do not challenge the election of Mr. Rakić".

59. *In this context, he holds that " Consultation is not a category which entitles a certain minority the right to dictate the composition and division of ministries within the Government. However, it is a process that gives the representatives of that minority the right to announce the candidate for Prime Minister who will be the representatives of that minority within the representation guaranteed by the Constitution".*
60. *The Prime Minister adds that "The Government reiterates that the Republic of Kosovo is a state of its citizens (Article 2.1 of the Constitution) and a multiethnic society consisting of Albanians and other communities which is governed democratically (Article 3.1 of the Constitution). In the framework of this democracy, the Albanian majority has guaranteed the representation of minorities in the framework of its institutions and through the above constitutional provisions has guaranteed the unitary character of the constitutional order and the territory of the Republic of Kosovo (Article 1 of the Constitution)". He further emphasizes that in this case the non-majority communities have been consulted and in this respect the constitutional procedures for their representation in the Government have been respected.*
61. *Regarding the request of the Applicants for the imposition of an interim measure, the Prime Minister states that "In addition to the lack of reasonableness for the request for an interim measure, the imposition of an interim measure would be in full contradiction with the public interest. By the interim measure, the Government considers that irreparable damage would be caused, at a time when the country needs a functioning Government in providing vaccines for protection against the COVID-19 pandemic and in the overall management of the pandemic. Moreover, the imposition of the interim measure would directly affect the Government's ability to work in the process of economic recovery and would also endanger national security. Therefore, an interim measure for the case in question is not in the public interest and may cause irreparable harm". The Prime Minister also emphasizes that it is not necessary to hold a hearing as in this case there is no ambiguity regarding the issue of law and fact, therefore, the request for a hearing should be rejected.*

Relevant provisions of the Constitution, laws and sub-legal acts

Constitution of the Republic of Kosovo

"Article 64 [Structure of the Assembly]

1. *The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.*
2. *In the framework of this distribution, twenty (20) of the one hundred twenty (120) seats are guaranteed for representation of communities that are not in the majority in Kosovo as follows:*
 - (1) *Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through the open election, with a minimum ten (10) seats guaranteed if the number of seats won is less than ten (10);*
 - (2) *Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the other Communities shall have the total number of seats won through the open election, with a minimum number of seats in the Assembly guaranteed as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat if the number of seats won by each community is less than the number guaranteed.*

[...]

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 96 [Ministries and Representation of Communities]

1. *Ministries and other executive bodies are established as necessary to perform functions within the powers of the Government.*
2. *The number of members of Government is determined by an internal act of the Government.*
3. *There shall be at least one (1) Minister from the Kosovo Serb Community and one (1) Minister from another Kosovo non-majority Community. If there are more than twelve (12) Ministers, the Government shall have a third Minister representing a Kosovo non- majority Community.*
4. *There shall be at least two (2) Deputy Ministers from the Kosovo Serb Community and two (2) Deputy Ministers from other Kosovo non-majority Communities. If there are more than twelve (12) Ministers, the Government shall have a third Deputy Minister representing the Kosovo Serb Community and a third Deputy Minister representing another Kosovo non-majority Community.*
5. *The selection of these Ministers and Deputy Ministers shall be determined after consultations with parties, coalitions or groups representing Communities that are not in the majority in Kosovo. If appointed from outside the membership of the Kosovo Assembly, these Ministers and Deputy Ministers shall require the formal endorsement of the majority of Assembly deputies belonging to parties, coalitions, citizens' initiatives and independent candidates having declared themselves to represent the Community concerned..*
6. *The Prime Minister, Deputy Prime Minister(s) and Ministers of the Government may be elected from the deputies of the Assembly of Kosovo or may be qualified people who are not deputies of the Assembly.*
7. *The incompatibilities of the members of the Government as to their functions shall be regulated by law”.*

Admissibility of the Referral

62. The Court first examines whether the Referral meets the admissibility requirements established in the Constitution and further specified in the Law and the Rules of Procedure.

63. In this respect, the Court refers to paragraph 1 of Article 113 of the Constitution, which establishes that:

“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”

64. In addition, the Court also refers to Article 113.5 of the Constitution, which provides:

“Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.”

65. The Court finds that the Referral is filed by 11 (eleven) deputies the Assembly, in accordance with Article 113.5 of the Constitution. Therefore, the Applicants are authorized parties to submit this Referral.

66. In addition, the Court takes into account Article 42 [Accuracy of the Referral] of the Law, which establishes that the Referral submitted in accordance with Article 113.5 of the Constitution must contain:

“1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;

1.2. provisions of the Constitution or other act or legislation relevant to this referral; and

1.3. presentation of evidence that supports the contest.”

67. The Court also refers to Rule 74 [Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law] of the Rules of Procedure, which establishes:

“[...]

(2) In a referral made pursuant to this Rule, the following information shall, inter alia, be submitted:

(a) names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;

(b) provisions of the Constitution or other act or legislation relevant to this referral; and

(c) evidence that supports the contest.

(3) The applicants shall attach to the referral a copy of the contested law or decision adopted by the Assembly, the register and personal signatures of the Deputies submitting the referral and the authorization of the person representing them before the Court.”

68. The Court notes that the Applicants: (i) entered the names of the deputies and their signatures; (ii) submitted the power of attorney for the person representing them before the Court; (iii) specified the challenged decision, specifically the Decision of the Assembly no. 08/V-005, of 22 March 2021 on the election of the Government of the Republic of Kosovo, and submitted a copy; (iv) referred to specific constitutional provisions, which they claim that the challenged decision is not in compliance with; as well as (v) presented evidence and proof to support their allegations.
69. Therefore, the Court considers that the criteria set out in Article 42 of the Law and further specified in Rule 74 of the Rules of Procedure have been met. Likewise, regarding the deadline set for submitting the Referral, which is 8 (eight) days from the date of approval of the challenged act, the Court notes that the challenged decision was adopted on 22 March 2021, while the Referral was submitted to the Court on 29 March 2021. Consequently, the Court finds that the Referral was filed within the time limit set by paragraph 5 of Article 113 of the Constitution.
70. In view of the above, the Court finds that the Applicants have met the admissibility requirements, established in the Constitution and further specified in the Law and the Rules of Procedure, and therefore, the Court declares the Referral admissible and will consider its merits in the following.

Merits of the Referral

Summary of the Applicants’ allegations and arguments of the Government

71. The Court recalls that the Applicants request the constitutional review of the challenged decision of 22 March 2021 of the Assembly on the election of the Government, which they consider to be inconsistent with paragraphs 3 and 5 of Article 96 [Ministries and Representation of Communities] of the Constitution.
72. The Applicants state that according to paragraph 3 of Article 96 of the Constitution, there will be at least one (1) Minister from the Serb community in the Government and one (1) Minister from any other non-majority community in Kosovo. Whereas, if there are more than twelve ministers, the Government will have a third minister, who represents one of the non-majority communities in Kosovo (hereinafter: the “third” Minister). In this regard, they consider that given that the appointment of ministers of the non-majority community will be decided after consultation with parties, coalitions or groups representing non-majority communities in Kosovo, the appointment of a “third” minister should be proposed. and have the support of a majority of twenty (20) deputies of the Assembly representing non-majority communities in Kosovo. Therefore, the Applicants construct their arguments for constitutional violation by

emphasizing that the Government elected by the challenged decision, and that more than twelve ministers, the “third” elected Minister, namely Minister Elbert Krasniqi, was elected in violation with paragraphs 3 and 5 of Article 96 of the Constitution. According to them, this is because his appointment in the Government has not been proposed/approved by the majority of twenty (20) deputies of the majority communities in Kosovo, including the deputies of the Serb community.

73. Finally, the Applicants allege that pursuant to paragraphs 3 and 5 of Article 96 of the Constitution, the appointment of the “third” Minister in the Government required the appointment/approval of majority of all deputies representing the non-majority communities in Kosovo, who in this case, means the proposal/approval by at least eleven (11) deputies of these communities out of twenty (20) deputies, which are a total number in the current legislature of the Assembly.
74. With regard to the abovementioned allegations of the Applicants, the Prime Minister, on behalf of the Government, states that the Constitution in paragraph 3 of Article 96 stipulates that at least one (1) Minister from the Serb community, and one (1) Minister from other non-majority communities in Kosovo, must be represented in the Government. Whereas, if there are more than twelve ministers, the Government will have a third minister, who represents one of the non-majority communities in Kosovo. In this regard, the Prime Minister maintains that the Constitution does not stipulate that the “third” minister representing minority communities must necessarily be representative of the Serb community. This is because “non-majority communities” does not refer only to the Serb community, but also to other non-majority communities living in the Republic of Kosovo. As the Constitution does not specify from which majority communities the “third” minister should be appointed, as long as he/she belongs to one of the majority communities in Kosovo, the conditions for representation of non-majority communities in the Government are met as defined in Article 96 of the Constitution. Therefore, the Constitution does not require the “third” minister is nominated or approved by a majority of all deputies representing the non-majority community in the Assembly.
75. With regard to the Applicants’ allegation referring to the constitutional requirement for “consultation” with non-majority parties for the appointment of ministers from non-majority communities, the Prime Minister alleges that the consultation process does not imply that this entitles a certain minority to dictate the composition and division of ministries within the Government. However, the request for “consultation” under Article 96 of the Constitution is a process which entitles the representatives of that minority to notify the candidate for Prime Minister of who will be the representatives of that minority within the representation guaranteed by the Constitution.
76. Therefore, in the light of these allegations of the parties, the Court will first assess the constitutional criteria for the representation of non-majority communities in the Government, namely: (i) whether the Constitution of Kosovo, including paragraphs 3 and 5 of Article 96 of the Constitution, provides that the “third” Minister of the Government representing the non-majority communities in Kosovo (in case the Government consists of more than twelve

(12) ministers) belongs to a certain non-majority community; (ii) clarify whether the “third” minister should be nominated and receive the formal support of a majority of all deputies representing non-majority communities in Kosovo as well as constitutional obligations regarding consultation with non-majority communities for the appointment of the “third” minister; and (iii) assess whether the constitutional criteria for appointing the “third” Minister to the Government have been respected in the present case.

(i) Whether the “third” minister of the Government representing non-majority communities in Kosovo (in case the Government consists of more than twelve (12) ministries) belongs to a certain non-majority community

77. The Court initially finds it necessary to clarify that Article 64 [Structure of the Assembly] of the Constitution stipulates that out of one hundred and twenty (120) deputies that is the total number in the Assembly, twenty (20) of them are guaranteed for representation of non-majority communities in Kosovo.
78. Under this guaranteed quota, parties, coalitions, civic initiatives and independent candidates who have declared themselves to represent the Serb community will have the number of seats in the Assembly won in the open elections, with a minimum of ten (10) guaranteed seats, if the number of seats won is less than ten (10) (hereinafter: deputies representing the Serb community).
79. Whereas parties, coalitions, civic initiatives and independent candidates, who have declared themselves to represent other non-majority communities in the Assembly, will have the number of seats won in the open elections with the minimum guaranteed seats as follows: Roma community one (1) place; Ashkali community one (1) place; Egyptian community one (1) place; and one (1) additional seat shall be awarded to the Roma, Ashkali, or Egyptian community with the highest number of total votes; Bosniak community three (3) seats, Turkish community two (2) seats and Gorani community one (1) seat, if the number of seats won by each community is less than the number of guaranteed seats (hereinafter: deputies representing other non-majority communities in Kosovo).
80. Therefore, the Court notes that Article 64 of the Constitution as regards the twenty seats guaranteed in the Assembly for non-majority communities in Kosovo, divides between: (i) deputies representing the “Serb community”, who are represented in the Assembly by ten (10) guaranteed seats; and (ii) the deputies that represent “other non-majority communities”, namely: Roma, Ashkali, Egyptian, Bosniak, Turk and Gorani communities, who, together, are represented in the Assembly with ten (10) guaranteed seats, according to the division defined between them in the abovementioned article of the Constitution. Therefore, in this Judgment, the Court will refer to this division between non-majority communities in the Assembly.
81. In the following, with regard to the Applicants’ Referral, the Court will refer to the constitutional criteria regarding the election, composition and representation of communities in the Government, in particular the criteria and

procedure for the appointment of the “third” Minister representing the non-majority communities.

82. The Court notes that the criteria for the election, composition and representation of communities in the Government are set out in Chapter VI [Government of the Republic of Kosovo] of the Constitution, which in Articles 92-101 thereof, *inter alia*, set out the general principles for the Government, the competencies of the Government and the Prime Minister, the procedures for the election of the Government, as well as the manner of representation of the communities in the Government. The Court will further elaborate Articles 92 [General Principles], 95 [Election of the Government] and 96 [Ministries and Representation of Communities] of the Constitution, which are relevant to the present case..
83. In this respect, the Court first refers to Article 92 [General Principles] of the Constitution which stipulates that the Government exercises executive power and which consists of the Prime Minister, Deputy Prime Ministers and Ministers.
84. The Court also refers to Article 95 [Election of the Government] of the Constitution which determines the manner of election of the Government. More precisely, as explained in the Judgment of the Court in case KO72/20, paragraph 1 of Article 95 of the Constitution, determines 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. Paragraphs 2 and 3 stipulate that this candidate, no later than fifteen (15) days after the appointment, presents the composition of the Government to the Assembly of the Republic of Kosovo and requests the approval of the Assembly. The Government is considered elected if it receives the majority of votes of all deputies of the Assembly of Kosovo, namely the vote of sixty one (61) deputies (see in this context, Judgment of the Constitutional Court KO72/20, Applicant: *Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 28 May 2020, published on 1 June 2020, paragraph 428).
85. However, the Court notes that the specific criteria for the composition of the Government and the representation of communities are set out in Article 96 [Ministries and Representation of Communities] of the Constitution. Article 96 of the Constitution in paragraphs 1 and 2 stipulates that ministries and other executive bodies are established to perform functions within the competencies of the Government and that the number of members of the Government is determined by its internal act. Whereas paragraph 6 of Article 96 of the Constitution provides that the Prime Minister, Deputy Prime Ministers and Government Ministers may be elected from among the deputies of the Assembly or other qualified persons who are not members of the Assembly.
86. Whereas, despite the fact that in accordance with paragraph 2 of Article 96 of the Constitution, the number of members of the Government is determined by its internal act, paragraphs 3, 4 and 5 of the same Article of the Constitution establish special criteria for the composition of the Government, which

specifically refer to the representation of non-majority communities in the Government.

87. In this regard, the Court notes that it is a clear constitutional requirement established in paragraph 3 of Article 96 of the Constitution for the Government to have at least one (1) minister from the Serb community, and one (1) minister from the other non-majority communities in Kosovo. Furthermore, according to paragraph 3 of Article 96, if the Government consists of more than twelve ministers, it will also have a “third” minister, who represents one of the non-majority communities in Kosovo.
88. Therefore, as stated by both the Applicants and the Prime Minister, as a representative of the Government, the Government elected under paragraph 3 of Article 95 of the Constitution must also meet the criteria set out in Article 96, paragraph 3 of the Constitution, and that in its composition should be: one (1) minister from the Serb community and one (1) minister from other non-majority communities in Kosovo, as well as the criteria set out in Article 96, paragraph 4 that in its composition to have at least two (2) Deputy Ministers from the Kosovo Serb community and two (2) Deputy Ministers from other non-majority communities in Kosovo. This division of representation in the Government is in line with the definition of representation of non-majority communities in the Assembly and the terminology used in Article 64. of the Constitution, explained above.
89. Furthermore, if the Government consists of more than twelve (12) ministers, then an additional minister is appointed, namely the “third” minister who represents one of the non-majority communities in the Government, as well as one (1) third deputy minister, who represents the Serb community, and one (1) other Deputy Minister, who represents one of the other non-majority communities in Kosovo. The Court notes that with regard to the “third” minister from the non-majority communities, neither paragraph 3 of Article 96 of the Constitution nor any other provision of the Constitution determines whether the “third” minister must be from the Serb community or other non-majority communities. The language used in paragraph 3 of Article 96 of the Constitution is clear when talking about the “*third*” minister, namely this provision only determines that the latter represents “*one of the non-majority communities in Kosovo*”. The Court considers that the “third” seminar in the Government is appointed by “*one of*” the communities defined in paragraph 2 of Article 64 of the Constitution represented in the Assembly, which in this case means: either by (i) the Serb community, or by (ii) other non-majority communities in the Assembly. This fulfills the constitutional criterion for the “third” minister to represent the majority communities in the Government.
90. Therefore, the Court concludes that according to the Constitution, the appointment of a “third” Minister to the Government by non-majority communities is a constitutional obligation if the Government consists of more than twelve (12) ministers. However, the Constitution does not specify the constitutional obligation which non-majority community defined in paragraph 2 of Article 64 of the Constitution, is represented by the “third” minister. Thus, this does not mean but does not exclude the possibility that the “third” Minister

in the Government from the non-majority communities, is appointed by the Serb community in Kosovo.

91. The Court also notes that the representation of communities in the Government according to paragraph 3 of Article 96 of the Constitution is the minimum representation of non-majority communities in the Government of Kosovo. Relevant constitutional provisions on the composition of the Government enable non-majority communities to have greater representation in the Government, as part of political agreements or coalitions with other parties in the Assembly, which have won elections and/or managed to obtain the required majority of at least sixty one (61) deputies, in accordance with paragraph 3 of Article 95 of the Constitution, to form the Government.
92. In this context, the Court notes that the Government of Kosovo elected through the challenged decision, in addition to the fact that it consists of three (3) ministers from the non-majority community, is composed of a Deputy Prime Minister from the non-majority communities who came, not as a result of constitutional requirements, but as a result of agreements between political entities in the Assembly, which represent the non-majority communities. This is in full compliance with Article 96 of the Constitution which provides for the minimum representation of communities in Government, and is not limited to what the Constitution stipulates as minimum representation, but allows political entities, including those of the non-majority communities, to reach a political agreement on division of ministerial positions and representation in Government, beyond minimum representation and guaranteed participation. In the following, the Court will elaborate the procedure to be followed regarding the appointment of ministers representing the non-majority community in the Government.

(ii) Whether the appointment of ministers from non-majority communities, including the appointment of a “third” minister in the Government, requires formal approval from all non-majority communities

93. Considering what the Court explained above that the “third” Minister in the Government from non-majority communities, if the Government has more than twelve (12) ministers, may be appointed by each non-majority community represented in the Assembly, in accordance with the division of seats in the Assembly, in accordance with paragraph 2 of Article 64 of the Constitution, the Court will further elaborate on the procedure for electing ministers representing non-majority communities in the Government, and if the appointment of the “third” minister requires the formal approval of all non-majority communities in the Assembly. This procedure is defined in paragraph 5 of Article 96 of the Constitution.
94. Paragraph 5 of Article 96 of the Constitution establishes: *“The selection of these Ministers [...] shall be determined after consultations with parties, coalitions or groups representing Communities that are not in the majority in Kosovo. If appointed from outside the membership of the Kosovo Assembly, these Ministers and Deputy Ministers shall require the formal endorsement of the majority of Assembly deputies belonging to parties, coalitions, citizens’*

initiatives and independent candidates having declared themselves to represent the Community concerned”.

95. The Court notes that according to the abovementioned provisions of paragraph 5 of Article 96 of the Constitution the appointment of ministers from non-majority communities can be made as follows:
- 1) when a representative of the non-majority community who is a deputy of the Assembly is appointed Minister, where according to paragraph 5 of Article 96 of the Constitution, in addition to the consultation with parties, coalitions or groups representing non-majority communities in Kosovo, no formal approval is required from the deputies of the non-majority communities, on the condition that one (1) minister from the Serb community and one (1) minister from the other non-majority communities in Kosovo be elected. Similarly, also in regard to the “third” minister from non-majority communities, if the Government consists of more than twelve (12) ministers, the Constitution does not require any formal approval from the deputies of non-majority communities, provided that after consultation a minister is appointed representing non-majority communities, if the latter is a deputy of the Assembly; and
 - 2) when a representative of a non-majority community is appointed as a minister who is not a deputy of the Assembly and where according to paragraph 5 of Article 96 of the Constitution, in addition to preliminary consultations, that candidate is specifically required to receive formal approval of the majority of deputies representing the community in question. In this respect, this procedure takes place both in cases when one (1) minister is elected from the Serb community, and one (1) minister from another non-majority community in Kosovo, who must necessarily receive the votes of the majority of the deputies of “other non-majority” community. Similarly, a formal approval from the community “*in question*” is required also in cases when a person belonging to the non-majority community in Kosovo, the Serb community or another non-majority community is appointed as a “third” minister, but is not a deputy of the Assembly of Kosovo.
96. In this regard, the Court notes that the Constitution, namely paragraph 5 of its Article 96, regarding the formal approval of candidates from non-majority communities refers to a party, coalitions or groups “*representing Communities that are not in the majority in Kosovo*”, but putting the emphasis at the end of this paragraph on “*the community in question*”.
97. In this context, the Court finds that (i) regarding the Minister representing the Serb community, consultation with/approval is required (depending on whether the candidate is a deputy or not) parties, coalitions or groups representing the Serb community in the Assembly. In this regard, it is about ten (10) deputies who hold guaranteed seats for parties, coalitions, civic initiatives, from the Serb community, according to Article 64, paragraph 2, subparagraph 1 of the Constitution, elaborated above. Similar to (ii) the appointment of 1 (one) Minister from “other non-majority communities”, in which case the candidate for this position must consult/obtain approval from (depending on whether the

candidate is a deputy or not) parties, coalitions or with groups representing other non-majority communities in the Assembly. This refers to the ten (10) deputies holding guaranteed seats for parties, coalitions, civic initiatives, and Roma; Ashkali; Egyptian, Bosnian, Turkish and Gorani communities, as established in Article 64, paragraph 2, subparagraph 2.

98. Whereas, for the appointment of the “third” Minister, the candidate for Prime Minister, in accordance with paragraph 3 of Article 96, has the possibility, after consultation/approval by (depending on whether the candidate is a deputy of Parliament or not) to appoint a candidate belonging to “*one of the non-majority communities*” represented in the Assembly. Thus, in this case, either by (i) parties, coalitions or groups “*representing the Serb community (as a whole)*”; or by (ii) parties, coalitions or groups “*representing other non-majority communities*” (as a whole), according to the division provided for in Article 64 of the Constitution.
99. Therefore, the Court considers that the candidate for Prime Minister is obliged for the appointment of a minister from the non-Serb community to consult/obtain approval only from the Serb community, while for the appointment of a minister from other non-majority communities, he should consult/obtain approval (depending on whether the candidate for minister is a deputy of the Assembly or not) only from other non-majority communities.
100. In contrast, for the appointment of the “third” Minister in the Government, in this case the candidate for Prime Minister decides from which community “in question”, namely the “Serb community” or “the other non-majority” community wants to appoint the third Minister. And in this case the candidate for Prime Minister (i) consults with the community “in question”; or (ii) obtains their approval (if the candidate is not a deputy of the Assembly), namely: either (i) the Serb community, or (ii) other non-majority communities.
101. This interpretation is also consistent with the position of the Applicants that “*The reserved representation of non-majority communities in the Government constitutes the so-called “broad government” principle in terms of multiethnicity, and is a key condition of consociational democracy [...].*”
102. Consequently, and based on the above, the Court considers that neither Article 96 nor any other provision of the Constitution requires formal approval of the “third” minister from all deputies representing the non-majority communities, in case the “third” minister that is appointed from among the non-majority communities, is a deputy of the Assembly.
103. Formal approval of ministers from the non-majority community “in question”, from the Serb community or from other non-majority communities, is required only if a candidate is appointed from the non-majority community in question who is not a deputy of the Assembly, and this division is made clear in the Constitution. If a formal approval were required for candidates who are also deputies of the Assembly, then the division made in the Constitution as to whether a person is a deputy of the Assembly or not, to be appointed a minister representing non-majority communities, would not have sense.

(iii) If the aforementioned criteria have been applied in the present case

104. As to the present case, the Court notes that on 14 February 2021, early elections for the Assembly were held. While after counting the votes, on 13 March 2021, the CEC certified the election results in which case, LVV was the winning party with fifty eight (58) deputies while twenty (20) seats in the Assembly which are guaranteed by the Constitution were allocated for non-majority communities, in which case, the Serb List, which was declared to represent the Serb community in Kosovo had about ten (10) deputies, while ten (10) other seats were allocated to other non-majority communities in Kosovo, in accordance with Article 64 of the Constitution.
105. The Court also notes that after the announcement of the election results by the CEC, the President of the LVV, as the winning party in the elections, started consultations with political entities in Kosovo, including those of non-majority communities. In this context, on 16 March 2021, a meeting was held between the representatives of LVV and those of the Serb List. Similar meetings were held with representatives of political entities of other non-majority communities in Kosovo. Moreover, on 21 March 2021, respectively on 22 March 2021 there were letter exchanges between Mr. Albin Kurti, in his capacity as President of the LVV and candidate for Prime Minister and Mr. Goran Rakić, in the capacity of the latter as President of the Serb List, regarding the appointment of representatives of the Serb community in the Government.
106. On 22 March 2021, the Acting President issued Decree no. 61/2021 whereby *“Mr. Albin Kurti 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”* On the same date, by the challenged decision, no. 08/V-005, the Assembly with 67 votes “for”, 30 “against” and no abstentions elected the Government of the Republic of Kosovo, consisting of fifteen (15) ministries. Three (3) ministerial positions in the Government and one (1) position of Deputy Prime Minister were assigned to representatives from the non-majority community, as follows: *a)* Mr. Goran Rakić, Minister of the Ministry of Communities and Returns, from the Serb community, who after not being a deputy of the Assembly, had previously been voted and received 10 out of 10 votes of the representatives of the Serb community in the Assembly, in accordance with paragraph 5 of Article 96 of the Constitution; *b)* Fikrim Damka, Minister of the Ministry of Regional Development, from another non-majority community, in this case the Turkish community; and *c)* Elbert Krasniqi, Minister of the Ministry of Local Government Administration, from the non-majority community, in this case from the Egyptian community in Kosovo, as the “third” minister in the Government. Whereas, *d)* Emilija Redžepi, from the non-majority community, in this case from Bosniak community in Kosovo, Deputy Prime Minister for Minority Affairs and Human Rights.
107. The Court recalls that before the Court it is disputable the manner and procedure regarding the appointment of a “third” Minister in the Government. The Court has concluded above that the Constitution does not require the approval of the proposal of the “third” minister by the deputies representing the

non-majority communities, in case the “third” minister from the non-majority communities is a deputy of the Assembly.

108. In the present case, the “third” Minister from the non-majority communities, Elbert Krasniqi, in relation to whom the Applicants complain before the Court, was a deputy of the Assembly elected in the elections of 14 February 2021, stating that he represents one of the other non-majority communities in the Assembly, within the meaning of Article 64 of the Constitution, and who was appointed to this position after consultation with the representatives of other non-majority communities in the Assembly, before the vote of the Government.
109. In this context, the other non-majority communities have not even made any allegations that they have not been consulted regarding the appointment of the latter as Minister, although they have been enabled by the Court to submit their comments regarding the Referral submitted by Applicants. The Applicants either do not dispute the fact that there were discussions regarding the appointment of ministers from non-majority communities before the election of the Government, but allege that the “third” minister should have had the approval of the majority of all twenty (20) deputies of the non-majority community.
110. The Court also recalls that the Applicants relate their argument for the election of the third Minister by comparing it with other Assembly positions in which non-majority communities are represented, as well as with other positions elected in the Assembly, where non-majority communities are represented. An example of this is the election of the Deputy President of the Assembly proposed by the Serb community, but also the appointment of judges of the Constitutional Court.
111. However, the cases when the approval of the majority of all representatives of non-majority communities is required, namely of the 20 deputies of the non-majority community (the Serb community and other non-majority communities as a whole), are explicitly defined in the Constitution. In this context, in accordance with paragraph 3 of Article 114 [Composition and Mandate of the Constitutional Court], regarding the proposal of two (2) judges, out of nine (9) that the Constitutional Court has, the fact remains that the Decision to propose two (2)) other judges, is made with the majority of votes of the deputies of the Assembly, who are present and voting, but which can be done only after giving the consent of the majority of the deputies of the Assembly, who hold the seats that are guaranteed for representatives that are not majority communities in Kosovo. But, as noted, in this case, such a request is expressly provided in paragraph 3 of Article 114 of the Constitution.
112. In contrast to the above case, in the case of the election of members of the Government representing non-majority communities, such a constitutional requirement for voting the members of the Government by all non-majority communities is not provided for in the Constitution as Article 96 paragraph 5 of the Constitution emphasizes approval by the community “*in question*”, and not by all non-majority communities. And such a request was implemented in the case of approval of the proposal of Minister Goran Rakić, from the Serb community, who, as he was not a deputy of the Assembly, according to the

transcript of the Extraordinary Meeting of the Assembly, of 22 March 2021, was initially voted by the deputies representing the Serb community and was then included for voting in the full composition of the Government. If the intention of the constitution-maker was for the “third” minister to be appointed after the approval of the majority of deputies representing the non-majority communities in the Assembly, this would be specified in the relevant provisions of the Constitution, as explained above, when electing judges of the Constitutional Court.

113. Therefore, based on the above, the Court considers that the allegation of the Applicants of violation of paragraphs 3 and 5 of Article 96 of the Constitution, when appointing the “third” Minister in the Government, is ungrounded.
114. Therefore, the Court finds that the challenged decision is in compliance with paragraphs 3 and 5 of Article 96 [Ministries and Representation of Communities] of the Constitution.

Regarding the request to hold a hearing

115. The Court recalls that the Applicants also requested the Court to hold a hearing in which it would invite all deputies representing non-majority communities in Kosovo to determine issues related to the representation of non-majority communities in the Government.
116. In this regard, the Court recalls that based on 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”*.
117. 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).
118. In the circumstances of the present case, the Court does not consider that there is any uncertainty regarding the *“evidence or law”* and therefore does not consider it necessary to hold a hearing. The documents and letters that are part of the case file KO61/21 are sufficient to decide the merits of this case.
119. Therefore, the Applicants’ request to hold a hearing is rejected as ungrounded.

As to the request for interim measure regarding the challenged decision

120. The Court recalls that the Applicants also request the Court to render a decision on the imposition of an interim measure “*which would put in a state of calm the position of the Minister who was appointed Minister of Local Government Administration - Elbert Krasniqi because he does not have the support of (11) eleven deputies who compose the majority of (20) twenty deputies who represent non-majority communities*”.
121. The Court has just concluded that the challenged decision is in compliance with Article 96 [Ministries and Representation of Communities] of the Constitution.
122. Therefore, in accordance with paragraph 1 of Article 27 [Interim Measures] of the Law and Rule 57 [Decision on Interim Measures] of the Rules of Procedure, the request for interim measure is without the subject of review and, as such, is rejected.

Conclusion

123. The main issue in this case relates to the manner in which the ministers representing the non-majority communities in the Government are appointed. Before the Court, the manner of appointing one (1) Minister who is mandatorily appointed by the Serb community was not challenged; or one (1) Minister who is mandatorily appointed by other non-majority communities, but the appointment of the “third” Minister in the Government by non-majority communities, which is a constitutional obligation in case the Government consists of more than twelve (12) Ministers. In this regard, the Applicants alleged that the appointment of the “third” Minister in the Government requires consultation/approval by a majority of all deputies representing non-majority communities in the Assembly, namely by at least eleven (11) out of twenty (20) deputies representing the non-majority communities.
124. The Constitutional Court stated that, for the purposes of the constitutionality of the composition of the Government, based on Article 96 of the Constitution, the Government should have at least one (1) Minister from the Serb community and one (1) Minister from other non-majority communities. The manner of election of these Ministers varies depending on whether the candidate nominated for Minister is a deputy of the Assembly or not. In order to appoint a candidate for Minister from among the deputies of the Assembly, *consultation with parties*, coalitions or groups representing non-majority communities in Kosovo is necessary. Whereas, for the appointment of a candidate for Minister outside the ranks of the deputies of the Assembly, the formal approval of the majority of the deputies of the Assembly, who belong to parties, coalitions, civic initiatives and independent candidates, who have declared that they represent the community in question is necessary. The Constitutional Court also stated that the Constitution stipulates that if the composition of a Government has more than twelve (12) Ministers, the Government must also have a third Minister, “*representing a Kosovo non- majority Community*”. The Court further emphasized that, with regard to the third Minister, the Constitution provides for the discretion of the candidate for Prime Minister regarding the ranks of the respective communities, from which a third Minister may be elected, without necessarily stipulating that this Minister should be proposed/approved from the deputies representing the Serb community or from the deputies representing

other non-majority communities, but requesting that the same procedure be followed, namely consultation/approval of the “*community in question*”, depending on whether the respective candidate is a deputy of the Assembly or not.

125. In the circumstances of the present case, the Court noted that the “third” minister from the non-majority communities, namely the Minister of Local Government Administration, was a deputy of the Assembly elected in the elections of 14 February 2021, declaring that he represents one of the other non-majority communities in the Assembly within the meaning of Article 64 [Structure of the Assembly] of the Constitution and who is proposed for this position in consultation with the deputies representing other non-majority communities in the Assembly. Considering that the respective candidate was an elected member of the Assembly, formal approval by the community in question is not a constitutional obligation, while before the Court there was no claim that the deputies representing other non-majority communities were not consulted in the proposal of this candidate for Minister, despite the fact that the Court had enabled them to submit their comments on the Referral submitted by the Applicants.
126. The Court finally clarified that based on Article 96 of the Constitution, the consultation or the approval of the deputies representing the “*community in question*” is mandatory, namely the deputies representing the Serb community or representing other non-majority communities, depending on whether the respective candidate is a deputy of the Assembly or not, and not the majority of all deputies representing non-majority communities. In the circumstances of the present case, the candidate nominated for Minister was a member of the Assembly and consequently his formal approval was not a constitutional obligation, while before the Court there was no claim that the obligation to consult the “*community in question*” had not been exhausted. Therefore, **the Court found that the challenged Decision** of the Assembly of Kosovo on the election of the Government **was not rendered in contradiction** with paragraphs 3 and 5 of Article 96 of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113, paragraph 5 of the Constitution, Articles 27, 42 and 43 of the Law and pursuant to Rules 42, 57, 59 (1) and 74 of the Rules of Procedure, on 24 September 2021;

DECIDES

- I. TO DECLARE, unanimously, the Referral admissible;
- II. TO HOLD, by majority of votes, that the procedure followed for rendering Decision No. 08/V-05 of the Assembly of the Republic of Kosovo on the Election of the Government of the Republic of Kosovo, of 22 March 2021, was conducted in accordance with paragraphs 3 and 5 of Article 96 [Ministries and Representation of Communities] of the Constitution;
- III. TO REJECT, unanimously, the request for imposition of interim measure;
- IV. TO REJECT, with majority of votes, the request for holding a hearing;
- V. TO NOTIFY this Judgment to the parties;
- VI. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20, paragraph 4 of the Law; and
- VII. TO DECLARE that this Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi



Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.