



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 20 July 2012
Ref. No.: AGJ 284/12

JUDGMENT

in

Cases K.O. 29/12 and K.O. 48/12

**Proposed Amendments of the Constitution submitted by
the President of the Assembly of the Republic of Kosovo
on 23 March 2012 and 4 May 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Ivan Čukalović, Judge

The Applicant

1. By virtue of Article 144.1 of the Constitution, 31 Deputies of the Assembly of the Republic of Kosovo proposed a number of amendments to the Constitution. On 23 March 2012, under his powers laid down in Article 144.3 of the Constitution, the President of the Assembly of the Republic of Kosovo (hereinafter, “the President of the Assembly”) referred a set of proposed amendments for a prior review as to whether they would diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
2. On 4 May 2012, the President of the Assembly submitted a further set of amendments to the Court. This second set of amendments differed in some respects to the first set of amendments.
3. The President of the Assembly is the Applicant in the Referrals before the Constitutional Court.

Legal basis

4. The Referral is based on Articles 113.9 and 144.3 of the Constitution, Article 20 and 54 of the Law on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, (No. 03/ L-121), (hereinafter, “Law”), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, “Rules of Procedure”).

Proceedings before the Court

5. On 23 March 2012, the President of the Assembly submitted a Referral to the Constitutional Court, requesting it to review whether the set of amendments proposed by the 31 Deputies would diminish any of the rights and freedoms set forth in Chapter II of the Constitution. These proposed amendments are set out in Annex A.
6. On 26 March 2012, the President appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Snezhana Botusharova.
7. On 27 March 2012, the Court requested the Applicant to submit information and supporting documents, regarding the procedures undertaken pursuant to Article 144 of the Constitution.
8. On 29 March 2012, the Referral was communicated to Her Excellency, Mrs. Atifete Jahjaga, President of the Republic, and to the Ombudsperson, Mr. Sami Kurteshi.
9. On 30 March 2012, the Court received the requested additional information and supporting documents from the Applicant.
10. On 24 April 2012, the Ombudsperson replied to the Court and gave his observations of the proposed amendments. The response of the Ombudsperson is set out below.
11. On 3 May 2012, the President of the Republic submitted observations on the proposed amendments, as set out below.
12. On 4 May 2012, the President of the Assembly submitted to the Court a further set of proposed amendments to the Constitution. This second set of proposed amendments

differed to those submitted on 23 March 2012. The second set of amendments was supported by half of the Deputies that have appended their names to the original amendments and half by new Deputies. The second set of amendments was registered under number K.O. 48-12. These proposed amendments are set out in Annex B.

13. On 7 May 2012, the President of the Court requested the President of the Assembly to indicate which set of amendments were to be considered by the Constitutional Court.
14. On 10 May 2012, the President of the Assembly responded, indicating that the second set of amendments was the one to be considered by the Court.
15. On 10 May 2012, the Court decided to join the two Referrals due to the relationship of one another as to the subject matter and as to the persons making the Referrals.
16. The same Judge Rapporteur and Review Panel were assigned to the second set of amendments.
17. By the letter of 22 June 2012, the Ombudsperson provided his comments on the second set of proposed amendments.

Summary of the facts

18. The Assembly of the Republic of Kosovo approved the text of the Constitution of the Republic of Kosovo and it entered into force on 15 June 2008. In its Chapter XIII [Final Provisions], Article 144 [Amendments] of the Constitution empowers the Government, the President or one fourth (1/4) of the deputies of the Assembly of Kosovo, as set forth in the Rules of Procedure of the Assembly, to propose changes and amendments to this Constitution.
19. The leaders of the AKR (New Kosova Alliance), the Democratic League of Kosovo (LDK), and the Democratic Party of Kosovo (PDK), respectively, Mr. Behxhet Pacolli, Mr. Isa Mustafa and Mr. Hashim Thaçi signed a Memorandum of Agreement, dated 6 April 2011.
20. According to that Agreement, Her Excellency Mrs. Atifete Jahjaga would be nominated as candidate for President of the Republic and the respective parties would give their full support for her candidacy.
21. The Agreement further stated that the leaders agreed to immediately form a "Commission for Presidential Elections Reforms", which would draft constitutional amendments and any related legislation necessary to provide for a direct election of the President of Kosovo by the people, and that direct presidential elections in Kosovo should be held not later than six months from the day when these changes and necessary amendments of the Constitution and the legislation would enter into force.
22. According to the Agreement, the leaders further agreed that the reformed Law on General Elections would include a provision stipulating that the first general elections under the amended Law would be held not later than 18 months from the date on which the reformed Law and related constitutional amendments would enter into force.
23. The Agreement finally stated that the leaders would present the changes mentioned in the Agreement in the assembly meeting where the President of Kosovo is elected.

24. On 7 April 2011, the Assembly by 75 votes for, 2 abstentions and none against, adopted Resolution No. 04-R-2, endorsing the aforementioned Memorandum of Agreement.
25. On the same date, the Assembly by 80 votes for, 10 invalid and 10 for the other candidate, adopted Decision No. 04-V-11, by which Her Excellency Mrs. Atifete Jahjaga was elected President of the Republic and that the mandate of the President would be five (5) years.
26. On 15 April 2011, the heads of parliamentary groups PDK, LDK, AAK, SLS, AKR and Group 6+ submitted a proposal to the Assembly for establishing two committees: a Committee on the Amendments of the Constitution of the Republic of Kosovo and a Committee on the Amendments of the Law on General Elections in the Republic of Kosovo.
27. On 22 April 2011, the Assembly by 76 votes for, 4 abstentions and 6 against, adopted Decision No. 04-V-12 on Establishing the Committee on the Amendments of the Constitution of the Republic of Kosovo (hereinafter, the "Committee").
28. On 6 May 2011, the President of the Assembly informed the Committee in detail about the status and the competencies of the Committee.
29. On 23 December 2011, the Committee requested an extension of its mandate.
30. On 20 January 2012, the Assembly by 62 votes for, 1 abstention and 2 against adopted decision 04-V-227, by which the request for the extension of the mandate of the Committee for two additional months was approved.
31. On 20 March 2012, the Chairman of the Committee submitted the proposed amendments to the Constitution to the Assembly, followed by the list of signatures of 31 deputies of the Assembly.
32. On 23 March 2012, the President of the Assembly sent the proposed amendments to the President of the Constitutional Court, requesting the Court to review whether the proposed amendments reduced any rights and freedoms, provided in Chapter II of the Constitution.
33. The above letter contained an enclosure, dated 19 March 2012, from the Chairman of the Committee for Constitutional Amendments of the Republic of Kosovo, addressed to the President of the Assembly, *stating "Pursuant to Article 144 of the Constitution of the Republic of Kosovo, I am sending the package of the constitutional amendments for further proceeding"*.

Review of the admissibility of the Referral

34. The Court shall now examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure
35. The Court needs first to determine whether the Applicant can be considered as an authorized party, pursuant to Article 113.9 of the Constitution, stating that: *"The President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution"*.

36. The President of the Assembly, Dr. Jakup Krasniqi, submitted to this Court the request for a prior review of the proposed amendments of the Constitution. Therefore, by virtue of Article 113.9 of the Constitution, the Applicant is an authorized party entitled to refer this case to the Court.
37. Therefore, the Court concludes that the Applicant has complied with the admissibility requirements and the Referral is admissible.

Response of the Ombudsperson

38. As to Amendment 1, Article 84.10 of the Constitution, the Ombudsperson requested that the term “cooperation” be more clearly determined to avoid possible differences of interpretation.
39. As to Amendment 1, Article 84.21 of the Constitution, the Ombudsperson requested that the term “together” be more clearly determined.
40. As to Amendment 1, Article 84.22 of the Constitution, the Ombudsperson considered that the Prime Minister ought to be more involved in the decision to declare a state of emergency.
41. As to Amendment 1, Article 84.30 of the Constitution, the Ombudsperson felt that the President could not be responsible for reporting on the situation in the Republic of Kosovo.
42. As to Amendment 1, Article 84.31 of the Constitution, the Ombudsperson considered that the Ombudsperson should be appointed by the Assembly.
43. As to Amendment 3, Article 86.1 of the Constitution, the Ombudsperson considered that there ought to be a further clause at the end: “as set forth by the Law.”
44. As to Amendment 4, Article 87.2 of the Constitution, the Ombudsperson considered that the oath of the President should be taken before the Assembly.
45. As to Amendment 7, Article 90 of the Constitution, the Ombudsperson considered that much of the proposed Article should be included in the Law on the President of the Republic. The Ombudsperson was also of the view that competences such as the granting of individual pardons or the appointment of Judges should continue to be exercised by the Acting President. He emphasized that the absence and/or inability of the President ought not to impact on the progress of judicial power if it lasted too long.
46. As to Amendment 8, Article 91.1 of the Constitution, the Ombudsperson considered that a letter of resignation should be submitted to the President of the Assembly who, automatically, would start to exercise the post of President.
47. As to Amendment 8, Article 91.6 of the Constitution, the Ombudsperson considered that, in the event of the inability of the President of the Assembly to act, the power to act should pass to the senior Deputy-President and so on.
48. By the letter of 22 June 2012, the Ombudsperson provided his comments on the second set of proposed amendments, stating that Article 84.31 should be deleted and that Article 134.1 must remain with the addition: “*With the right of reelecting the Ombudsperson*”.

Response of the President of the Republic

49. On 3 May 2012, the President of the Republic responded only in relation to Amendment 10 regarding the Announcement of the first Presidential Elections], replacing the existing Article 162 of the Constitution.
50. The President considered that the proposal foresaw the dismissal, specifically the interruption of the constitutional mandate of the President. This, the President argued, was done through a retroactive action of the proposed constitutional amendment and would undoubtedly lead to “dismissal”, albeit the word itself was not used.
51. The dismissal under the proposal would interrupt the mandate of the President in a manner unforeseen by Article 45 [Freedom of Election and Participation] of the Constitution by violating the right to elect and to be elected. The right to be elected also contemplated the duration of the mandate. Consequently, this element of the right to be elected cannot be changed once an individual has been elected to the public function. The Constitution did not allow for a reservation or restriction of this element of the right, once elected.
52. The President pointed out that Article 91 [Dismissal of the President] of the Constitution provided the specific instances when a President could be removed from office, thus, demonstrating that a President may not be dismissed through a constitutional amendment.
53. The President claimed that proposed amendment would contradict a universal principle of justice of not applying retroactively constitutional and legal dispositions, or their amendments.
54. The proposed amendment violates the principle of non discrimination as foreseen in Article 24 [Equality Before the Law] of the Constitution.
55. The President also argued that the proposed amendment violates the principle of the separation of powers.

Constitutionality of the proposed amendments

Scope of the constitutional jurisdiction

56. As pointed out above - Proceedings before the Court - a second set of proposed amendments was submitted to the Court by the President of the Assembly. This second set of amendments differed in some respects from the first set submitted.
57. The Court recalls that the President of the Assembly informed the Court that it was only the second set of amendments that was to be considered.
58. The Court is mindful of the necessity for legal certainty in relation to this issue. Therefore, the Court considers that the second set of amendments has subsumed and overridden the first set of proposed amendments and the review contained in this Judgment will address only the second set of amendments.
59. The Court thus will perform that review, based on its jurisdictional competence under Article 113.9 of the Constitution, meaning the confirmation that the proposed

amendments do not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.

60. The Court also emphasizes that, pursuant to Article 112 [General Principles] of Chapter VIII [Constitutional Court] of the Constitution, it is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.
61. In this regard, the Court considers that, as to the constitutional review of any proposed amendment to the Constitution under Article 144.3, such amendment must be considered in light of Chapter II [Fundamental Rights and Freedoms] of the Constitution, which by virtue of its Article 21 [General Principles], consists of the human rights and fundamental freedoms which are the basis of the legal order of the Republic of Kosovo.
62. Moreover, the Court considers that Chapter III [Rights of Communities and Their Members] and other rights may be applicable in this process since the specific rights set forth therein are an extension of the human rights and freedoms provided in Chapter II of the Constitution, in particular, of those laid down in Article 24 [Equality before the Law].
63. This is particularly so, also, in light of the provisions of Article 21.2 of the Constitution which provides that the Republic of Kosovo shall protect and guarantee human rights and fundamental freedoms as provided by the Constitution, not necessarily those contained in Chapter II alone.
64. Therefore, the evaluation of the constitutionality of the proposed amendments by this Court will not only be made taking into account the human rights and freedoms contained in Chapter II, but also all human rights and freedoms guaranteed by the Constitution and contemplated by the letter and spirit of the constitutional order of the Republic of Kosovo.
65. It is important to point out that the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. This is an *ex-post* jurisdiction of the Court as the guarantor of the Constitution to ensure the compliance of legislation with the highest legal act of the State i.e. the Constitution.
66. In addition to this jurisdiction, the Court has also the so-called *ex-ante* jurisdiction for a prior review of the constitutionality of the proposed amendment. This jurisdiction is given to the Court, as the guardian of the Constitution, in order to ensure that any proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of this Constitution.
67. The Court considers that the Constitution is clear in that respect. Amendments to the Constitution may be adopted by the Assembly only after the President of the Assembly of Kosovo has referred the proposed amendment to the Constitutional Court for a prior confirmation that the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of this Constitution.
68. The Court also considers that Article 21 of the Constitution should be read in conjunction with Article 7.1 of the Constitution that defines the values of the constitutional order of the Republic of Kosovo that is based “*on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of the law, non-discrimination, the right to property, the protection of*

environment, social justice, pluralism, separation of state powers and a market economy.”

69. According to Article 56 [Fundamental Rights and Freedoms during a State of Emergency] of the Constitution, derogation of the fundamental rights and freedoms protected by this Constitution may only occur following the declaration of a State of Emergency as provided by this Constitution and only to the extent necessary under the relevant circumstances. Moreover, derogation of the fundamental rights and freedoms guaranteed by Articles 23, 24, 25, 27, 28, 29, 31, 33, 34, 37 and 38 of this Constitution shall not be permitted under any circumstances.
70. Therefore, it is the task of the Constitutional Court to ensure the protection of these basic values of the constitutional order. In that respect, Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo, as established by paragraph 1 of Article 116 [Legal Effect of Decisions] of the Constitution which provides:

“Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.”

71. Article 116 of the Constitution is applicable for all Decisions of the Court, including its Judgment on the constitutionality of the proposed amendments.
72. The Court will now deal in turn with each of the proposed second set amendments as set out in Annex B.

I. Proposed Amendment 1: Article 84 [Powers of the President]

73. Amendment 1 proposes to amend paragraphs 1, 9, 10, 20, 21, 22, 23, 24, 26, and 30 of Article 84 and to add to it two new paragraphs 31 and 32.

As to the proposed amendment of Article 84.1 of the Constitution

74. According to the current Article 84.1, the President of the Republic:

“represents the Republic of Kosovo, internally and externally;”

75. According to the proposed amendment, Article 84.1 would read as follows:

“[the President of the Republic of Kosovo] represents the Republic of Kosovo:”

Constitutionality of the proposed amendment of Article 84.1 of the Constitution

76. The Court considers that the proposed amendment does not change the substance of Article 84.1. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 84.1 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.9 of the Constitution

77. According to the current Article 84.9, [the President of the Republic of Kosovo]:

“may refer constitutional questions to the Constitutional Court;”

78. According to the proposed amendment, Article 84.9 would read as follows:

"[the President of the Republic of Kosovo] raises constitutional issues in the Constitutional Court, in accordance with the Constitution".

Constitutionality of the proposed amendment of Article 84.9 of the Constitution

79. The Court considers that the proposed amendment does not change the substance of Article 84.9. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 84.9 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.10 of the Constitution

80. According to the current Article 84.10, [the President of the Republic of Kosovo]:

"leads the foreign policy of the country;"

81. According to the proposed amendment, Article 84.10 would read as follows:

"cooperates with the Government regarding the foreign policies of the country;"

Constitutionality of the proposed amendment of Article 84.10 of the Constitution

82. The Court considers that the proposed amendment does not change the substance of Article 84.10. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 84.10 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.20 of the Constitution

83. According to the current Article 84.20 [the President of the Republic of Kosovo]:

"appoints the Commander of the Kosovo Security Force upon recommendation of the Government;"

84. According to the proposed amendment, Article 84.20 would read as follows:

"appoints the Commander of the Kosovo Security Forces, upon recommendation by the Prime Minister;"

Constitutionality of the proposed amendment of Article 84.20 of the Constitution

85. The Court notes that the competence of recommending with regards to appointment of the Commanded of the Kosovo Security Forces has been moved from the Government to the Prime Minister. The Court concludes that the proposed amendment to Article 84.20 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.21 of the Constitution

86. According to the current Article 84.21 [the President of the Republic of Kosovo]:

“with the Prime Minister, jointly appoints the Director, Deputy Director and Inspector General of the Kosovo Intelligence Agency;”

87. According to the proposed amendment, Article 84.21 would read as follows:

“appoints the Director of the Kosovo Intelligence Agency;”

Constitutionality of the proposed amendment of Article 84.21 of the Constitution

88. The Court notes that the President will appoint the Director of the Kosovo Intelligence Agency without the Prime Minister. The Court concludes that the proposed amendment to Article 84.21 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.22 of the Constitution

89. According to the current Article 84.22, [the President of the Republic of Kosovo]:

“decides to declare a State of Emergency in consultation with the Prime Minister;”

90. According to the proposed amendment, Article 84.22 would read as follows:

“declares a State of Emergency, after notifying the Prime Minister”.

Constitutionality of the proposed amendment of Article 84.22 of the Constitution

91. The Court notes that the President may declare a State of Emergency without consultation with the Prime Minister. The Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court concludes that the proposed amendment to Article 84.22 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.23 of the Constitution

92. According to the current Article 84.23, [the President of the Republic of Kosovo]:

“may request meetings of the Kosovo Security Council and chairs them during a State of Emergency;”

93. According to the proposed amendment, Article 84.23 would read as follows:

“chairs the Kosovo Security Council.”

Constitutionality of the proposed amendment of Article 84.23 of the Constitution

94. The Court considers that the proposed amendment does not change the substance of Article 84.23. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes

that the proposed amendment to Article 84.23 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.24 of the Constitution

95. According to the current Article 84.24, [the President of the Republic of Kosovo]:

“decides on the establishment of diplomatic and consular missions of the Republic of Kosovo in consultation with the Prime Minister;”

96. According to the proposed amendment, Article 84.24 would read as follows:

“establishes diplomatic and consular missions of the Republic of Kosovo, upon the proposal of the Government;”

Constitutionality of the proposed amendment of Article 84.24 of the Constitution

97. The Court considers that the proposed amendment does not change the substance of Article 84.24. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 84.24 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.26 of the Constitution

98. According to the current Article 84.26, [the President of the Republic of Kosovo]:

“appoints the Chair of the Central Election Commission;”

99. According to the proposed amendment, Article 84.26 would read as follows:

“appoints the Chair of the Central Election Commission, in accordance with this Constitution;”

Constitutionality of the proposed amendment of Article 84.26 of the Constitution

100. The Court considers that the proposed amendment does not change the substance of Article 84.26. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 84.26 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 84.30 of the Constitution

101. According to the current Article 84.30, [the President of the Republic of Kosovo]:

“addresses the Assembly of Kosovo at least once a year in regard to her/his scope of authority.”

102. According to the proposed amendment, Article 84.30 would read as follows:

“addresses the Assembly of Kosovo at least once a year in regard to the state of affairs in the Republic of Kosovo;”

Constitutionality of the proposed amendment of Article 84.30 of the Constitution

103. The Court considers that the proposed amendment does not change the substance of Article 84.30. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 84.30 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed additional Article 84.31 of the Constitution

104. According to the proposed amendment, the new Article 84.31 would read as follows:

“appoints the Ombudsperson, upon proposal of the Assembly;”

Constitutionality of the proposed new Article 84.31 of the Constitution

105. The Ombudsperson in his responses to the Referrals pointed out that the Ombudsperson should be appointed by the Assembly due to the close relationship between the Ombudsperson and the Assembly. He pointed out that that institution had recommendation powers and the Assembly could respond to his recommendations with legislative initiatives and/or interpellations for executive agencies that violate human rights.
106. The Court notes that the proposal is that the Ombudsperson, a constitutional office, the role of which is defined under Articles 132 to 135 of the Constitution, shall be appointed by the President upon the proposal of the Assembly. The circumstances as to when a President could decline to appoint the Ombudsperson proposed by the Assembly are not defined in the Constitution. While the question does not directly arise in the context of the current Referral, it is likely that, if the President declined to make such an appointment, it would be subject to review unless justified grounds were presented by the President.
107. Bearing in mind the foregoing, the Court considers that the proposed new Article 84.31 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed additional Article 84.32 of the Constitution

108. According to the proposed amendment, the new Article 84.32 would read as follows:

“performs other duties, provided with the Constitution and the law.”

Constitutionality of the proposed new Article 84.32 of the Constitution

109. The Court considers that the proposed amendment does not change the substance of Article 84 save as to give further powers as contemplated by the Constitution and the Law. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed new Article 84.32. The Court, therefore, concludes that the proposed new Article 84.32 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

II. Proposed Amendment 2: Article 85 [Qualifications for Election of the President]

110. Amendment 2 proposes to delete Article 85 and replace it with a new Article 85.

As to the proposed amendment of Article 85 of the Constitution

111. The terms of the current Article 85 are as follows:

“Every citizen of the Republic of Kosovo who is thirty five (35) years old or older may be elected President of the Republic of Kosovo.”

112. According to the proposed amendment, Article 85 would read as follows:

“1. The President of the Republic of Kosovo may be any citizen of the Republic of Kosovo, which at the time of running has reached the age of 35 (thirty five) years old.

2. To qualify as a candidate for the President, every citizen of the Republic of Kosovo must have been a permanent resident of the Republic of Kosovo during the last five years before running for the President.

3. Before taking the oath as the President of the Republic of Kosovo, the candidate elected for the President shall resign from every public office.

4. Other than conditions specified in this Article, the candidates for the President must fulfill other conditions specified by the law.”

Constitutionality of the proposed new Article 85.1 of the Constitution

113. The Court considers that the proposed amendment does not change the substance of Article 85 in relation to the age requirement to be eligible to stand for the office of President of the Republic. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the new Article 85.1 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 85.2 of the Constitution

114. The proposal to restrict the eligibility of candidates for the Presidency who have permanently resided in the Republic of Kosovo for five years prior to running for the office causes some difficulties. At first glance, it may seem reasonable to restrict the holder of the office to this residency term in order to ensure that a President was firmly connected with the people and the State before he/she could enter into the highest political office in the country.

115. However, Article 45.1 [Freedom of Election and Participation] of the Constitution provides that:

“Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the date of election, has the right to elect and be elected, unless this right is limited by a court decision.”

116. The right to participate in the electoral process is an inherent human right in a democratic society. This Court has emphasised the importance of this right, not just to elect, i.e. vote in free and fair regular elections, but also the right to be elected (see Resolution on Inadmissibility in Case No. KI 73/09, MIMOZA KUSARI-LILA vs. The

Central Election Commission, dated 23 March 2010). The Court emphasised the importance of elections in the following terms in paragraph 24 of that Resolution:

“The [European Court of Human Rights] ECtHR has consistently expressed the importance of free elections and of democracy in its Judgments. In the same Judgment (see Sadak and Others (no. 2) v. Turkey, nos. 25144/94 et al., § 31, ECHR 2002-IV) the Court expressed its view in the following terms “Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it.” The ECtHR in the same Judgment quoted, with approval, The Code of Good Practice which was adopted by the European Commission for Democracy through Law (Venice Commission) at its 51st (Guidelines) and 52nd (Report) sessions on 5-6 July and 18-19 October 2002 (Opinion no. 190/2002, CDL-AD (2002) 23 rev.). There the Venice Commission stated:

The five principles underlying Europe's electoral heritage are universal, equal, free, secret and direct suffrage. Furthermore, elections must be held at regular intervals.”

117. In addition, the Constitution of Kosovo is based on the principle of equality of its citizens in the exercise of their rights. This is clear from Article 24 [Equality before the Law] which provides that everyone enjoys the right to equal legal protection without discrimination and that no one can be discriminated against on a very wide number of grounds including “personal status”. The proposed Article would prohibit persons who have not been residents of the State of Kosovo from being permitted to be a candidate for the office of President of the Republic.
118. Article 155 [Citizenship] of the Constitution provides that all legal residents of Kosovo at the date of the adoption of the Constitution, 15 June 2008, and all persons who resided in Kosovo on 1 January 1998 and their direct descendents were entitled to citizenship of Kosovo regardless of their current residence or of any other citizenship they may hold. These were broad categories of persons who were and still are entitled to citizenship.
119. The recent history of Kosovo shows that there are a great number of such persons who were present in Kosovo on 1 January 1998. Great numbers of the diaspora left Kosovo for many varied reasons, not least of which was economic necessity. These persons who hold citizenship or who are entitled to take out citizenship of Kosovo cannot be discriminated against on the basis of their current personal status as economic or other emigrants. The proposed amendment would put these persons in an unequal position vis-a-vis the citizens who have been residing in Kosovo for five years.
120. The proposed amendment amounts to a restriction of the right to any citizen of the Republic of Kosovo who has not maintained permanent residency in Kosovo for a full five years prior to running for office. The Court therefore concludes that there could be a diminution of the right to be elected for citizens who do not meet that residency restriction and therefore the proposal to amend the Constitution by the addition of this new Article 85.2 diminishes the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 85.3 of the Constitution

121. The Court considers that the proposed amendment is compatible with the existing Article 88 of the Constitution in relation to the President not exercising any other

public function nor exercising any political party function. The Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the new Article 85.3 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 85.4 of the Constitution

122. The proposed new Article reads as follows:

4. Other than conditions specified in this Article, the candidates for the President must fulfil other conditions specified by the law.

123. The Court observes that the provision requiring the candidates for the President to fulfill other conditions specified by the Law cannot operate as a mechanism to modify the requirements for access to or the exercise of the office of the President of the Republic, unless such modifications are contemplated by the Constitution itself.

124. The Court considers that this provision shall not be used to bring in a Law that would alter the requirements for access to or the exercise of the office of the President of the Republic in a manner contrary to the Constitution. Any such modifications can only be done by a constitutional amendment. Thus, the Court determines that, if such a constitutional alteration would be proposed, it should be for the Court to confirm whether or not the proposed modification would diminish the rights and freedoms set forth in Chapter II of the Constitution.

III. Proposed Amendment 3: Article 86 [Election of the President]

125. Amendment 3 proposes to delete Article 86 and replace it with a new Article 86.

126. The terms of the current Article 86 are as follows:

“1. The President of the Republic of Kosovo shall be elected by the Assembly in secret ballot.

2. The election of the President of the Republic of Kosovo shall take place no later than thirty (30) days before the end of the current president’s term of office.

3. Every eligible citizen of the Republic of Kosovo may be nominated as a candidate for President of the Republic of Kosovo, provided he/she presents the signatures of at least thirty (30) deputies of the Assembly of Kosovo. Deputies of the Assembly can only sign for one candidate for the President of the Republic.

4. The President of the Republic of Kosovo shall be elected by a two thirds (2/3) majority of all deputies of the Assembly.

5. If a two thirds (2/3) majority is not reached by any candidate in the first two ballots, a third ballot takes place between the two candidates who received the highest number of votes in the second ballot, and the candidate who receives the majority of all deputies of the Assembly shall be elected as President of the Republic of Kosovo.

6. If none of the candidates is elected as President of the Republic of Kosovo in the third ballot, the Assembly shall dissolve and new elections shall take place within forty five (45) days.”

127. According to the proposed amendment, Article 86 would read as follows:

“1. The President of the Republic of Kosovo shall be elected directly by the citizens eligible to vote.

2. Presidential elections shall be announced by the President of the Assembly, not later than six months before the end of the regular mandate of the President of the Republic of Kosovo.

3. Every citizen of the Republic of Kosovo, who meets the conditions specified in this Constitution, may be nominated for the President: (a) by parliamentary political entities, which, in accordance with law, have passed the electoral threshold in the last election, (b) by political entities holding guaranteed seats in the Assembly and (c) through a petition submitted to the Central Election Commission, with signatures of at least 15,000 (fifteen thousand) qualified voters in the Republic of Kosovo. Only one candidate may be nominated from one parliamentary political entity. The nomination process takes place according to time limits and procedures established by the law.

4. If the candidate for President receives an absolute majority (more than 50%) of the valid votes in the first round, then President of the Republic of Kosovo is elected. If no candidate receives an absolute majority of votes in the first round, the second round of elections is held between the two candidates who received the largest number of votes in the first round. The second round of elections is held not later than 30 days from the first round. The candidate who receives the majority of votes in the second round of elections, is elected the President of the Republic of Kosovo.”

Constitutionality of the proposed new Article 86.1 of the Constitution

128. The Court considers that the proposed amendment of the Constitution providing for the election of the President of the Republic by the citizens eligible to vote is an enhancement of the rights of the citizens. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed new Article 86.1 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 86.2 of the Constitution

129. The Court considers that the provision for announcing the election of a new President of the Republic six months before the end of the regular mandate of the President does not affect human rights and fundamental freedoms under the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed new Article 86.2 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 86.3 of the Constitution

130. The new paragraph in Article 86.3 proposes the nomination criteria for candidates to the office of President of the Republic when the citizens elect the President directly. At present, because it is only the deputies of the Assembly that elect the President the requirement for nomination is that he/she can present the signature of at least 30 deputies. As each deputy may nominate only one candidate it means that, at most, four candidates can compete under the present system. There is, in theory, no reason why there cannot be a much greater number of candidates when the system changes to direct election by the citizens.
131. It is now proposed that parliamentary political entities which, in accordance with law, have passed the electoral threshold may nominate candidates for the office of President, and political entities holding guaranteed seats in the Assembly and, at least, 15,000 qualified voters, through a petition submitted with their signatures. Time limits and other procedures are to be prescribed by law.
132. There would seem to be a justification for the right of political entities holding guaranteed seats in the Assembly to have the right to nominate, particularly, bearing in mind the values of the multiethnic and other diversities protected by the Constitution, as provided for in Article 3 [Equality before the Law].
133. Similarly, the nomination by public petition of the proposed figure of 15,000 qualified voters meets a standard that is present in many democratic states. However, the proposal denies the rights of political entities who have not yet passed the electoral threshold to nominate their candidate for the office of the Presidency.
134. Thus, a political party which is legitimately registered and entitled to participate in elections like any other political party is denied the right to put forward a candidate of their choice.
135. The Court considers that such a restriction discriminates against lawful entities that one would expect to be entitled to participate in public life. It would deny the members and the supporters of such political entities to put forward their proposed candidate for the office of Presidency. Such a prohibition does not meet the test of proportionality that would be expected to be passed for their exclusion from this aspect of participation in the political life of the State.
136. In fact, Article 24 of the Constitution prohibits discrimination against a person on a great many grounds. One of these is "political or other opinion". Persons who wish to express political opinion have a clear right to do so as a member of a lawfully established political party. Political parties have a special protected status in the law. Political parties may be formed according to criteria determined by laws and when established must be treated in a non-discriminatory manner.
137. The Court considers that there would be unjustified discrimination against political parties, if they were not entitled to nominate candidates for the Presidency.
138. The Court, therefore, concludes that the proposed new Article 86.3, in so far as it does not allow nomination by all registered political entities, diminishes the rights and freedoms set forth in Chapter II of the Constitution.
139. The Court notes that nomination for President of the Republic can only be secured by the involvement of either political parties or by petition and support of 15,000 citizens. No one can predict how many candidates may be nominated by petition of

the citizens. This leaves the political parties having a great say in who may be nominated for the office of President.

140. The Court further notes that Article 88 [Incompatibility] of the Constitution, both as to their present form and as to what is proposed in the amendment to Article 88, prohibits exercising any function in a political party. The balance to be achieved by any future incumbent President exercising the office of President and seeking support from political parties should be borne in mind if that incumbent President wishes to seek to be re-elected. The difficulty of steering a path between ensuring that Article 88 is not infringed and engaging with the political process will need careful thought.

Constitutionality of the proposed new Article 86.4 of the Constitution

141. The Court considers that the provision for holding a second round of voting, in the event that no candidate receives an absolute majority of votes in the first round, does not affect human rights and fundamental freedoms under the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed new Article 86.4 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

IV. Proposed Amendment 4: Article 87 [Mandate and Oath]

142. Amendment 4 proposes to delete Article 87 and replace it with a new Article 87.

143. The terms of the current Article 87 are as follows:

“1. The President of the Republic of Kosovo begins her/his term of office after taking the oath before the Assembly of Kosovo. The text of the Oath will be provided by law.

2. The President’s term of office is five (5) years.

3. Upon completion of his/her first term of office, the President of the Republic of Kosovo may be re-elected only once.”

144. According to the proposed amendment, Article 87 would read as follows:

“1. Term of Office of the President of the Republic of Kosovo is 5 (five) years and the term begins after the elected candidate has taken the oath.

2. President takes the oath before the President of the Constitutional Court at a public venue determined by law. The text of the oath is:

"I swear that with my entire being I will preserve and protect the independence, sovereignty and territorial integrity of the Republic of Kosovo, guarantee the rights and freedoms to all citizens, respect and protect the Constitution and laws, preserve peace and welfare of all citizens, will be loyal only to the Republic of Kosovo, by giving up all obligations to any other state that are in contradiction with my responsibilities in the Republic of Kosovo, and with all my strength represent the unity of citizens of the Republic of Kosovo."

3. The President may be re-elected only for another mandate.”

Constitutionality of the proposed new Article 87 of the Constitution

145. The Court considers that the proposed amendment does not change the substance of Article 87, other than to provide for the wording of the oath of office to be inserted into the Constitution. Nothing in the oath of office gives rise to issues that would fall for consideration as affecting human rights and fundamental freedoms provided for in Chapter II. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 87 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 5: Article 88 [Incompatibility]

146. Amendment 5 proposes to delete Article 88 and replace it with a new Article 88.

147. The terms of the current Article 88 are as follows:

1. *"The President shall not exercise any other public function.*
2. *After election, the President cannot exercise any political party functions."*

148. According to the proposed amendment, Article 88 would read as follows:

1. *The President shall not exercise or hold any other public function.*
2. *The President shall not hold or exercise any function in a political entity or be a member of any political entity."*

Constitutionality of the proposed new Article 88 of the Constitution

149. The Court considers that the proposed amendment does not change the substance of Article 88. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 88 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

VI. Proposed Amendment 6: Article 89 [Immunity]

150. Amendment 6 proposes to delete Article 89 and replace it with a new Article 89.

151. The terms of the current Article 89 are as follows:

- "The President of the Republic of Kosovo shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of responsibilities of the President of the Republic of Kosovo."*

152. According to the proposed amendment, Article 89 would read as follows:

- "The President of the Republic of Kosovo shall enjoy immunity from criminal prosecution and civil lawsuits for actions and decisions that are within the scope of his competences."*

Constitutionality of the proposed new Article 89 of the Constitution

153. The Court considers that the proposed amendment does not change the substance of Article 89. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 89 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Proposed Amendment 7: Article 90 [Temporary Absence of the President]

154. Amendment 7 proposes to delete Article 90 and to replace it with a new Article 90.

155. The terms of the current Article 90 are as follows:

“1. If the President of the Republic of Kosovo is temporarily unable to fulfill her/his responsibilities, he/she may voluntarily transfer the duties of the position to the President of the Assembly who shall then serve as Acting President of the Republic of Kosovo. The President’s order of transfer shall state in particular the reason for the transfer and the duration of the transfer if known. The President of the Republic of Kosovo shall resume exercise of the duties of the position when she/he is able to do so and the President of the Assembly shall relinquish the position as Acting President.

2. When there is no voluntary transfer of power, the Assembly of the Republic of Kosovo determines by two thirds (2/3) vote of all deputies, after consultation with the medical consultants team, that the President of the Republic of Kosovo is temporarily unable to fulfil his/her responsibilities. The President of the Assembly shall serve as Acting President until the President of the Republic of Kosovo is able to resume carrying out her/his duties as President.

3. The position of Acting President of the Republic of Kosovo may not be exercised for a period longer than six (6) months.”

156. According to the proposed amendment, Article 90 would read as follows:

1. “If the President of the Republic of Kosovo is temporarily unable to exercise his powers, he may voluntarily transfer the exercising of his powers to the President of the Assembly, who becomes Acting President of the Republic of Kosovo. The President’s written decision on transfer of responsibilities shall contain, in particular, reasons and duration of the transfer of responsibilities, if the duration time can be foreseen. The President of the Republic of Kosovo shall resume exercising his powers when he is able to do that and in this case the Acting President’s position of the President of the Assembly ends.

2. If the President, due to health reasons, is unable to exercise his powers and there was no voluntary transfer of responsibilities, the Assembly of the Republic of Kosovo, with a majority vote of all deputies, may initiate a procedure to evaluate if the medical condition does not allow the President exercising of his powers. The Assembly shall require from a competent health institution to establish a medical consilium to evaluate the medical condition of the President, and submit a report to the Assembly. If in the consilium report it is concluded that the President is unable to exercise his powers, the Assembly, with 2/3 (two thirds) vote of all deputies, may decide to temporary replace the President. In this case, the President of the Assembly of Kosovo shall act as the President. The President of the Republic of Kosovo may at any time request new evaluation of the medical condition and resume his duty, if medical consilium determines that the President is able to resume to exercise his responsibilities.

3. *If for any other reason, except the medical reasons, the President of the Republic of Kosovo is unable to exercise his powers and there was no voluntary transfer of responsibilities, the Assembly of the Republic of Kosovo, with a majority vote of all deputies, may initiate a procedure for temporary replacement of the President. If the Assembly decides by 2/3 (two thirds) vote of all deputies that the President is temporarily unable to exercise his powers, the President of the Assembly shall act as the President until the President of the Republic of Kosovo becomes able to resume to exercise his powers.*

4. *Except if stated otherwise in this Constitution, the position of Acting President of the Republic of Kosovo may not be exercised for a period longer than 6 (six) months.*

5. *The Acting President of the Republic of Kosovo shall exercise all powers of the President with the exception of:*

- (1) Proposing Constitutional amendments;*
- (2) Declaring a state of emergency, without approval of the Prime minister;*
- (3) Appointment and dismissal of judges of the Republic of Kosovo, the Chief State Prosecutor and prosecutors of the Republic of Kosovo;*
- (4) Appointment and dismissal of heads of diplomatic missions of the Republic of Kosovo;*
- (5) Granting of medals, awards and prices, pursuant to the law; and*
- (6) Granting of Individual Pardon.*

6. *If the President of the Republic of Kosovo is unable to exercise his powers for 6 (six) months, the Acting President immediately declares the position of the President vacant and announces early presidential elections, which shall be held no later than 3 (three) months after the office of President becomes vacant. The Acting President continues to exercise the powers of the President, until the new president is elected and sworn in.*

7. *If the Medical Consilium determines that the President of the Republic of Kosovo is unable to exercise his powers for a period longer than 6 (six) months, the Assembly, by 2/3 (two thirds) vote of all deputies declares the position of the President vacant. Acting President immediately announces early presidential elections, which are to be held no later than 3 (three) months from the date when the Assembly declared the office of President vacant. Acting President continues to exercise the powers of the President, until the new president is elected and sworn in."*

Constitutionality of the proposed new Articles 90.1, 90.3 and 90.4 of the Constitution

157. The Court considers that the changes contemplated by these amendments do not give rise for consideration of the human rights and fundamental freedoms under Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore,

concludes that the proposed new Articles 90.1, 90.3 and 90.4 do not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Articles 90.5 of the Constitution

158. The new Article 90.5 restricts the ability of an Acting President to exercise all the powers and functions of the President. This Court in its Judgment in Case No. KO 97/10, (*In the matter of the Referral submitted by Acting President of the Republic of Kosovo, Dr. Jakup Krasniqi, concerning the holding of the office of Acting President and at the same time the position of Secretary-General of the Democratic Party of Kosovo*) dated 22 December 2010, observed as follows:

“The Acting President is not an elected President and there may be questions as to the powers of an Acting President raised from time to time. No such question has been raised in the present Referral. Such questions are constitutional issues and the Court will address these issues upon proper request being made to it bearing in mind the doctrine of the separation of powers, as set out in Article 4.1 of the Constitution...”

159. There is a question now before the Court as to whether the restriction on the exercise of some of the powers by an Acting President under Article 84 of the Constitution could diminish the rights and freedoms guaranteed by Chapter II of the Constitution.
160. The new Article 90.5 in particular states that some of the important powers of the President, as set out in Article 84, must lie in abeyance while a President is not in place. Some of these restrictions relate to issues of grave importance for the safety of the State in a time of emergency. Others relate to the proper and orderly running of the State as when there is a necessity to appoint Judges or Prosecutors.
161. As to the restriction on being able to declare a State of Emergency under the proposed Article 90.5 (2), the current position under Article 84 is that the President decides to declare a State of Emergency in consultation with the Prime Minister and the current proposal is to change that to declaring a State of Emergency after notifying the Prime Minister. The situation is such that the State of Emergency can only be declared with the involvement of the President. There is no scope for the Prime Minister to make the declaration on his/her own initiative. If circumstances arose that would require the State to be secured and the hands of an Acting President were tied then a constitutional crisis could arise. The human rights and freedoms of all citizens in the State could be in jeopardy in such a situation. The Court therefore considers that restricting the Acting President in declaring a State of Emergency diminishes the rights and freedoms in Chapter II of the Constitution.

Constitutionality of the proposed new Articles 90.5(3) of the Constitution

162. Another question concerns the restriction on an Acting President appointing and dismissing Judges and Prosecutors of the Republic of Kosovo. At present the President appoints and dismisses Judges pursuant to Article 104 [Appointment and Removal of Judges] and Article 84(16), appoints and dismisses the Chief Prosecutor under Article 84 (17) and appoints other prosecutors under Article 84 (18) of the Constitution. These appointments and dismissals are done upon the proposal of the Kosovo Judicial Council and the Kosovo Prosecutorial Council. There is little scope for the President, under the current terms of the Constitution, to withhold or to refuse to make the appointments or dismissals when proposals are made. However, the proper administration of justice and confidence in the administration of justice are fundamental aspects to the enforcement of rights and freedoms guaranteed by the

Constitution, in particular those rights and freedoms that are encompassed by Chapter II of the Constitution.

163. Furthermore, justice cannot be administered if Judges and Prosecutors are not in place. This hindrance to the appointment of Judges and Prosecutors may be considered as an impediment to the administration of justice and as diminishing the rights and freedoms in Chapter II. The Ombudsperson expressed this same view in his response to the Court, as set out above.
164. Indeed, the restriction of the power of an Acting President to appoint Judges to the Constitutional Court, who are also potentially prohibited from being appointed by this proposed amendment, could lead to the Court, at times, lacking a quorum to conduct its business.
165. This potential blocking of an important organ of the State would have considerable effects on the implementation of human rights and freedoms guaranteed by the Constitution, in that it could cause a constitutional paralysis which would hinder the Court to conduct its business by the lack of competence of an Acting President to appoint Judges.
166. Bearing in mind that it is the Assembly of the Republic of Kosovo that elects the Judges of the Constitutional Court, it is all the more reason for an Acting President to have such powers as are necessary to appoint Judges not only to the Constitutional Court but also to appoint and dismiss such Judges and Prosecutors as have been lawfully vetted by the Kosovo Judicial Council and the Kosovo Prosecutorial Council appointed for that purpose.
167. The Court, therefore, concludes that the proposed amendment to Article 90.5 (3) diminishes the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 90.5 (5) of the Constitution

168. The proposed new Article 90.5 (5) also prohibits an Acting President from granting individual pardons. The original power under Article 84 (29) is for the President who “*grants individual pardons in accordance with the law*”. It is now proposed that, when an individual deserves a pardon in accordance with the law, such a pardon may not be granted.
169. For instance, such a pardon may not be granted in an extreme case of a person who is serving a sentence and who may merit being released in accordance with the power to grant an individual pardon, since this person will be restricted in his/her liberty until a new President takes the oath of office. In such a case there may be no other remedy available to secure his/her liberty.
170. The Court considers that such an instance has considerable potential to affect a basic right and freedom, that of liberty, as provided for, inter alia, in Article 29 [Right to Liberty and Security] of the Constitution and Article 5 of the European Convention on Human Rights and Fundamental Freedoms.
171. The Court, therefore, concludes that the proposed new Article 90.5 (5) diminishes the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 90.5 (1), Article 90.5 (4) and Article 90.5 (6) of the Constitution

172. The proposed new Article 90.5 (1), Article 90.5 (4) and Article 90.5 (6) deal with the restriction on the power of an Acting President to propose constitutional amendments, appoint and dismiss heads of Diplomatic Missions and the granting of medals, awards and prizes. These are matters that can be dealt with in their ordinary course without touching upon existing rights and freedoms guaranteed by the Constitution. The Court, therefore, concludes that the proposed new amendment to Article 90.5 (1), Article 90.5 (4) and Article 90.5 (6) does not diminish the rights and freedoms set forth in Chapter II of the Constitution.

VIII. Proposed Amendment 8: Article 91 [Dismissal of the President]

173. Amendment 8 proposes to delete Article 91 and replace it with a new Article 91.

174. The terms of the current Article 91 are as follows:

“1. The President of the Republic of Kosovo may be dismissed by the Assembly if he/she has been convicted of a serious crime or if she/he is unable to exercise the responsibilities of office due to serious illness or if the Constitutional Court has determined that he/she has committed a serious violation of the Constitution.

2. The procedure for dismissal of the President of the Republic of Kosovo may be initiated by one third (1/3) of the deputies of the Assembly who shall sign a petition explaining the reasons for dismissal. If the petition alleges serious illness, the Assembly shall consult the medical consultants team on the status of the President’s health. If the petition alleges serious violation of the Constitution, the petition shall be immediately submitted to the Constitutional Court, which shall decide the matter within seven (7) days from the receipt of the petition.

3. If the President of the Republic of Kosovo has been convicted of a serious crime or if the Assembly in compliance with this article determines that the President is unable to exercise her/his responsibilities due to serious illness, or if the Constitutional Court has determined that he/she has seriously violated the Constitution, the Assembly may dismiss the President by two thirds (2/3) vote of all its deputies.”

175. According to the proposed amendment, Article 91 would read as follows:

“1. The President of the Republic of Kosovo shall resign by submitting a letter of resignation to the President of the Constitutional Court. The resignation is valid upon receipt of the resignation letter by the President of the Constitutional Court and it shall be irrevocable.

2. President of the Republic of Kosovo may be dismissed if he is punished for committing a serious crime during exercising his duty, or if the Constitutional Court finds that he has committed a serious violation of the Constitution, or if he carries out an act of treason against the state.

3. For cases specified in paragraph 2 of this Article a procedure for dismissing the President of the Republic of Kosovo may be initiated by 1/3 (one third) of the deputies of the Assembly, or by 30.000 (thirty thousand) citizens eligible to vote. Before submitted it to the Constitutional Court for review, the petition must be approved by 2/3 (two thirds) vote of all deputies of the Assembly.

4. If the Constitutional Court, by a vote of at least 7 (seven) judges decides that the President of the Republic of Kosovo is responsible for any of the reasons

specified in paragraph 2 of this Article, it shall be considered that the President is dismissed from duty.

5. If the President of the Republic of Kosovo resigns, is dismissed in accordance with the provisions of this article, or dies, the President of the Assembly of Kosovo shall serve as the Acting President of the Republic of Kosovo, in accordance with the restrictions laid down in Article 90, until the new President is elected and sworn in. The President of the Assembly shall immediately declare the early presidential elections in the Republic of Kosovo, which are held no later than 3 (three) months from the date when the post of president has become vacant.

6. When the President of the Assembly, for reasons specified in Articles 90 and 91, is unable to serve as Acting President, the duty is passed to the Vice President of the Assembly. Other matters of the transfer of responsibility related to the duties of the acting President are regulated by law.”

Constitutionality of the proposed new Article 91 of the Constitution

176. The Court considers that while there are some changes of practice contemplated by the proposed amendment it does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 91 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

IX. Proposed Amendment 9: Articles 18, 45, 65, 80, 82, 93, 94, 104, 109, 113, 114, 127, 131, 134 and 139

177. Amendment 9 proposes to amend Articles, 18, 45, 65, 80, 82, 93, 94, 104, 109, 113, 114, 127, 131, 134 and 139 of the Constitution.

As to the proposed amendment of Article 18 of the Constitution

178. The terms of the current Article 18 are as follows:

“1. International agreements relating to the following subjects are ratified by two thirds (2/3) vote of all deputies of the Assembly:

(1) territory, peace, alliances, political and military issues;

(2) fundamental rights and freedoms;

(3) membership of the Republic of Kosovo in international organizations in accordance with the Law;

(4) the undertaking of financial obligations by the Republic of Kosovo.

2. International agreements other than those in paragraph 1 are ratified upon signature of the President of the Republic of Kosovo.

3. The President of the Republic of Kosovo or the Prime Minister notifies the Assembly whenever an international agreement is signed.

4. Amendment of or withdrawal from international agreements follows the same decision making process as the ratification of such international agreements.

5. The principles and procedures for ratifying and contesting international agreements are set forth by law."

179. According to the proposed amendment, Article 18 would read as follows:

1. "The Assembly of the Republic of Kosovo, with at least two-thirds (2/3) of the deputies, ratifies international agreements for these issues:

(1) The territory, the peace, alliances, political and military issues

(2) Basic rights and freedom,

(3) The membership of the Republic of Kosovo in International Organizations,

(4) The undertaking of financial obligations from the Republic of Kosovo, in accordance with Law.

2. International agreements other than those in paragraph 1 shall be considered as ratified upon signature of the President of the Republic of Kosovo, upon recommendation of the Government.

3. The President of the Republic of Kosovo or the Government notifies the Assembly whenever an international agreement is signed.

4. Amendment of or withdrawal from international agreements follows the same decision making process as the ratification of such international agreements.

5. The principles and procedures for ratifying and contesting international agreements are set forth by law.

Constitutionality of the proposed amendment of Article 18 of the Constitution

180. The Court considers that the proposed amendment does not change the substance of Article 18. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 18 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 45.1 of the Constitution

181. The terms of the current Article 45.1 [Freedom of Election and Participation] are as follows:

"1. Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.

182. According to the proposed amendment, Article 45.1 would read as follows:

"1. Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision, or the provisions of this Constitution."

Constitutionality of the proposed amendment of Article 45.1 of the Constitution

183. The Court considers that the proposed amendment does not alter the substance of Article 45.1. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, 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.

As to the proposed amendment of Article 65.7 of the Constitution

184. The terms of the current Article 65.7 are as follows:

“The Assembly of the Republic of Kosovo:...

(7) elects and may dismiss the President of the Republic of Kosovo in accordance with this Constitution;...”

185. According to the proposed amendment, Article 65.7 would read as follows:

“(7) Submits a petition to the Constitutional Court to discharge the President of the Republic of Kosovo in accordance with Article 91;”

Constitutionality of the proposed amendment of Article 65.7 of the Constitution

186. The Court considers that while there are some changes of practice contemplated by this proposed amendment, in conjunction with the proposed amendment to Article 91 of the Constitution, it does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 65.7 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 80 of the Constitution

187. The terms of the current Article 80 are as follows:

“1. Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.

2. Laws adopted by the Assembly are signed by the President of the Assembly of Kosovo and promulgated by the President of the Republic of Kosovo upon her/his signature within eight (8) days from receipt.

3. If the President of the Republic of Kosovo returns a law to the Assembly, he/she should state the reasons of return. The President of the Republic of Kosovo may exercise this right of return only once per law.

4. The Assembly decides to adopt a law returned by the President of the Republic of Kosovo by a majority vote of all its deputies and such a law shall be considered promulgated.

5. If the President of the Republic of Kosovo does not make any decision for the promulgation or return of a law within eight (8) days from its receipt, such a law shall be considered promulgated without her/his signature and shall be published in the Official Gazette.

6. A law enters into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo, except when otherwise specified by the law itself."

188. According to the proposed amendment Article 80 would have a new paragraph inserted which would read as follows:

"The Assembly can outvote (reject) the President's veto on an adopted law by majority vote of all its deputies plus ten percent of other additional votes and such a law shall be considered adopted. If the President of the Republic exercises his right to veto the Law on Budget, the Assembly may vote to reject (outvote) the veto law by vote of absolute majority of all deputies of the Assembly and the law shall be considered adopted. If the Assembly accepts changes proposed by the President for a law he/she exercised the right to veto, the Assembly shall decide on adopting such a law by majority vote of all deputies present and voting, and the respective law shall be considered promulgated."

189. Whilst not stated as such in the proposed amendments sent to the Court it is presumed that this amendment is in substitution for Article 80.4.

Constitutionality of the proposed amendment of Article 80.4 of the Constitution

190. The Court considers that while there are some changes of practice contemplated by this proposed amendment, it does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 80.4 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 82 of the Constitution

191. The terms of the current Article 82 are as follows:

"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."

192. According to the proposed amendment, Article 82 would be amended by the abrogation of Article 82.1 (3) in its entirety.

Constitutionality of the proposed amendment of Article 82 of the Constitution

193. The Court considers that while there are some changes of practice in relation to the dissolution of the Assembly and calling of elections contemplated by this proposed amendment it does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 82 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 93 (10) and the addition of Articles 93 (12) and (13) of the Constitution

194. The terms of the current Article 93 (10) are as follows:

“The Government has the following competencies: ...

(10) may refer Constitutional questions to the Constitutional Court;...”

195. According to the proposed amendment, Article 93 (10) would read as follows:

“...(10) refers Constitutional questions to the Constitutional Court, pursuant to the Constitution;...”

196. According to the proposed amendment, the new Articles 93 (12) and (13) would read as follows:

“(12) proposes establishment of diplomatic and consular missions of the Republic of Kosovo to the President;

(13) leads foreign policy of the country.

Constitutionality of the proposed amendment of Article 93 of the Constitution

197. The Court considers that while there is no change in substance in relation to the proposed amendment of Article 93 (10) there is a different emphasis on the establishment of diplomatic and consular missions and a clarification of who leads the foreign policy of the State. The proposed amendment does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 93 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 94 (5) and Article 94 (9) of the Constitution

198. The terms of the current Article 94 (5) and Article 94 (9) are as follows:

“The Prime Minister has the following competencies: ...

... (5) chairs the Kosovo Security Council; ...

... (9) consults with the President on the implementation of the foreign policy of the country; ...”

199. According to the proposed amendment, Article 94.5 would read as follows:

“... (5) is a member the Kosovo Security Council;...”

200. According to the proposed amendment, Article 94 (9) would be abrogated.

Constitutionality of the proposed amendment of Article 94 of the Constitution

201. The Court considers that while there is a change as to who is to chair the Kosovo Security Council and that the Prime Minister will no longer consult with the President on the implementation of the foreign policy of the State these do not alter the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 94 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 104.1 of the Constitution

202. The terms of the current Article 104.1 is as follows:

“1. The President of the Republic of Kosovo shall appoint, reappoint and dismiss judges upon the proposal of the Kosovo Judicial Council.”

203. According to the proposed amendment, Article 104.1 would read as follows:

“The President of the Republic of Kosovo shall appoint, reappoint and dismiss judges upon the proposal of the Kosovo Judicial Council. The President may turn back any proposed candidate to the Kosovo Judicial Council for review. This right can be exercised only once for one candidate. The Kosovo Judicial Council can propose the same candidate again only if the Kosovo Judicial Council secures 2/3 (two thirds) vote of the KJC members.”

Constitutionality of the proposed amendment of Article 104.1 of the Constitution

204. When considering Article 90.5 (3) above the Court considered how a restriction on the power of an Acting President to appoint Judges and Prosecutors diminished rights and freedoms guaranteed by Chapter II. The same reasoning applies to the proposed suspensive veto on a President to send back the names of Judges proposed to be appointed by the Kosovo Judicial Council. That Council is an independent office established under the Constitution and under Article 108 [Kosovo Judicial Council] it is the body charged to ensure the independence and impartiality of the judicial system.

205. It is a fully independent institution in the performance of its functions. There is a danger that the safe and continued administration of justice, guaranteed by the Constitution, would be interfered with if sufficient Judges are not appointed in a timely manner as contemplated by the mechanisms already established in the

Constitution. Justice delayed is justice denied; justice is administered in the Courts and if there is a delay in the appointment of Judges, as contemplated by the proposed amendment then the delay in access to justice diminishes the rights and freedoms guaranteed under Chapter II.

206. The human rights and fundamental freedoms guaranteed by the Constitution, in particular those in Chapter II, are enforced by the Courts established by the Constitution and by Laws. Article 102.1 [General Principles of the Judicial System] clearly states that the Judicial power in the Republic of Kosovo is exercised by the courts. Article 32 [Right to Legal Remedies] provides that *“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner prescribed by law.”* Here, the Constitution emphasises the right of the citizens to *legal* remedies for redress. Without the appointment of Judges in a timely manner there can be no access to legal remedies.
207. Also, Article 54 [Judicial Protection of Rights] provides that *“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.”* This is a basic provision that ensures that persons have the right to access to Judges for the determination of their cases.
208. There is a risk of the violation of this Article of the Constitution with an untimely appointment of Judges. Both Articles, 32 and 54, reiterate the principle of the separation of powers to the extent that they repeat that the exercise of judicial power and access to legal remedies are cornerstones of one of those pillars i.e. the judicial branch of the State.
209. Therefore, any potential infringement of access to the courts and, by implication, to the Judges making decisions in the courts, diminishes human rights and fundamental freedoms guaranteed in Chapter II of the Constitution.

As to the proposed amendment of Article 109.7 of the Constitution

210. The terms of the current Article 109.7 is as follows:

“7. The Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment.”

211. According to the proposed amendment, Article 109.7 would read as follows:

“7. The Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The President may turn back any proposed candidate to the Kosovo Prosecutorial Council for review. This right can be exercised only once for one candidate. Kosovo Prosecutorial Council can propose the same candidate again only if Kosovo Prosecutorial Council secures 2/3 (two thirds) vote of the Council members. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment.”

Constitutionality of the proposed amendment of Article 109.7 of the Constitution

212. The Court considers that while the President is to be given a suspensive veto in relation to the appointment of the Chief State Prosecutor this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. The office of the State Prosecutor, established by Article 109 [State Prosecutor], is one of the offices established under the Constitution that can be performed by Deputies pending his/her replacement. Accordingly, the nature of the office differs from that of Judges who must sit to hear and adjudicate upon cases pending before the Courts. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 109 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 113.3(5) of the Constitution

213. The terms of the current Article 113.3 (5) are as follows:

“Assembly of Kosovo, the President of the Republic of Kosovo and the Government are authorized to refer the following matters to the Constitutional Court:

“(5) questions whether violations of the Constitution occurred during the election of the Assembly.”

214. According to the proposed amendment, Article 113.3 (5) would read as follows:

“5. questions whether violations of the Constitution occurred during the election of the President and the Assembly.”

Constitutionality of the proposed amendment of Article 113.3 (5) of the Constitution

215. The Court considers that the proposed amendment gives to the Constitutional Court a competence in relation to questions concerning the election of the President under the proposed system for his/her election directly by the people but that this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 113.3 (5) does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 113.6 of the Constitution

216. The terms of the current Article 113.6 are as follows

“6. Thirty (30) or more deputies of the Assembly are authorized to refer the question of whether the President of the Republic of Kosovo has committed a serious violation of the Constitution.”

217. According to the proposed amendment, Article 113.6 would read as follows:

“6. The Assembly of Kosovo is authorized to submit a petition, requesting dismissal of the President of the Republic of Kosovo in accordance with Article 91 of the Constitution.”

Constitutionality of the proposed amendment of Article 113.6 of the Constitution

218. The Court considers that the proposed amendment changes the role of the Constitutional Court when dealing with the dismissal of the President but that this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 113.6 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 114.2 of the Constitution

219. The terms of the current Article 114.2 is as follows:

“2. Judges shall be appointed by the President of the Republic of Kosovo upon the proposal of the Assembly and shall serve for a non-renewable mandate of nine (9) years.”

220. According to the proposed amendment, Article 114.2 would read as follows:

“2. Judges shall be appointed by the President of the Republic of Kosovo upon the proposal of the Assembly and shall serve for a non-renewable mandate of nine (9) years. The President may turn back a candidate proposed by the Assembly. This right can be exercised only once for one candidate. The Assembly can propose the same candidate again only if the Assembly secures 2/3 (two thirds) vote of all deputies.”

Constitutionality of the proposed amendment of Article 114.2 of the Constitution

221. The Court in an earlier part of this Judgment addressed the question of an Acting President lacking the power to appoint Judges and also addressed the proposed suspensive veto of the President to send back the appointment of Judges to the Kosovo Judicial Council.
222. The same reasoning in relation to the risk to the administration of Justice by not making timely appointments of Judges to the regular Courts applies likewise to the appointment of Judges to the Constitutional Court. All of the reasoning used to come to the conclusions apply *mutatis mutandis* to the appointment of Judges to the Constitutional Court.
223. Furthermore, according to Article 112 [General Principles] the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. The Constitution provides that it is to be fully independent in the performance of its responsibilities.
224. At present, the Assembly is the body responsible for the appointment of the Judges to the Constitutional Court. Other than for two Judges, for whom seats are reserved or guaranteed as representing Communities not in the majority in Kosovo, a two thirds majority of the Deputies must vote for their appointment.

225. The position in relation to the appointment of Judges to the Constitutional Court is one that can unnecessarily be retarded by the President if he/she sends back a nominated Judge of the Constitutional Court.
226. The quorum of the Court, as established by Article 17 of the Law on the Constitutional Court is seven Judges. The danger of the Court not being able to conduct its business and adjudicate on Referrals by virtue of the lack of a quorum, for however short a period, would interfere with the rights of Applicants to have their constitutional complaints resolved.
227. This is a diminution of the rights and freedoms guaranteed by Chapter II. The Court, therefore, concludes that the proposed amendment to Article 114.2 diminishes the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 127.2 of the Constitution

228. The terms of the current Article 127.2 are as follows:

“2. The Security Council of the Republic of Kosovo shall be chaired by the Prime Minister with the support of the Government, except during a State of Emergency as provided by this Constitution.”

229. According to the proposed amendment, Article 127.2 would read as follows:

“2. The Security Council of the Republic of Kosovo shall be chaired by the President of the Republic of Kosovo with the support of the Government.”

Constitutionality of the proposed amendment of Article 127.2 of the Constitution

230. The Court considers that the proposed amendment changes the role of Chairman of the Security Council but that this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 127 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 129.3 of the Constitution

231. The terms of the current Article 129.3 are as follows:

“3. The President of the Republic of Kosovo and the Prime Minister, upon consultation with the Government, shall jointly appoint the Director, Deputy Director and Inspector General of Kosovo Intelligence Agency. Qualifications and terms of office shall be determined by law.”

232. According to the proposed amendment, Article 129.3 would read as follows:

“3. The President of the Republic of Kosovo shall appoint the Director of the Kosovo Intelligence Agency. The Prime minister shall appoint the Deputy Director and the General Inspector of the Kosovo Intelligence Agency. Qualifications and mandate shall be regulated by law.”

Constitutionality of the proposed amendment of Article 129.3 of the Constitution

233. The Court considers that the proposed amendment is introduced to make it conformable with the proposed amendment to Article 84.21 dealt with above and therefore the Court concludes that the proposed amendment to Article 129.3 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 131.8 of the Constitution

234. The terms of the current Article 131.8 are as follows:

“8. The Security Council of the Republic of Kosovo, only during the State of Emergency, shall exercise executive functions which shall be limited to those functions which specifically relate to the State of Emergency. In a State of Emergency the Security Council of the Republic of Kosovo shall be chaired by the President of the Republic of Kosovo, as provided by law. During the State of Emergency, the Security Council of the Republic of Kosovo shall closely cooperate with the Government, the Assembly and international authorities.”

235. According to the proposed amendment, Article 131.8 would read as follows:

“8. The Security Council of the Republic of Kosovo, only during the State of Emergency, shall exercise executive functions which shall be limited to those functions which specifically relate to the State of Emergency. During the State of Emergency, the Security Council of the Republic of Kosovo shall closely cooperate with the Government, the Assembly and international authorities.”

Constitutionality of the proposed amendment of Article 131.8 of the Constitution

236. The Court considers that the proposed amendment changes the Chairmanship of the Security Council during a State of Emergency but that it does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 131 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 134.1 and Article 134.5 of the Constitution

237. The terms of the current Article 134.1 are as follows:

“1. The Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term.”

238. The terms of the current Article 134.5 are as follows:

“5. The Ombudsperson may be dismissed only upon the request of more than one third (1/3) of all deputies of the Assembly and upon a vote of two thirds (2/3) majority of all its deputies.”

239. According to the proposed amendment, Article 134.1 would read as follows:

“The Ombudsperson is by the President upon proposal of the Assembly for a non-renewable five (5) year term. The President may turn back the proposed candidate to the Assembly. This right can be exercised only once for one candidate. The Assembly can propose the same candidate again only if the Assembly secures 2/3 (two thirds) vote of all deputies.”

240. According to the proposed amendment, Article 134.5 would be abrogated.

Constitutionality of the proposed amendment of Article 134.1 and Article 134.5 of the Constitution

241. The Court considers that while the President is to be given a suspensive veto in relation to the appointment of the Ombudsperson and there are to be changes to the manner of the dismissal of the Ombudsperson these do not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. The Court also notes the response of the Ombudsperson dealt with earlier in this Judgment, as well as his proposal that the Ombudsperson should be entitled to be reelected.
242. As stated above, when dealing with the office of the State Prosecutor, established by Article 109 [State Prosecutor], the office of the Ombudsperson is one of the offices established under the Constitution that can be performed by Deputies pending his/her replacement. Accordingly, the nature of the office differs from that of judges who must sit to hear and adjudicate cases pending before the courts.
243. Furthermore, there may be good reasons to propose the possibility for the reelection of the Ombudsperson, but the proposal does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 134 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

As to the proposed amendment of Article 139.3 of the Constitution

244. The terms of the current Article 139.3 are as follows:

“3. The Chair of the Central Election Commission is appointed by the President of the Republic of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction.”

245. According to the proposed amendment, Article 139.3 would read as follows:

“3. The Chair of the Central Election Commission is appointed and dismissed by the President of the Republic of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction.”

Constitutionality of the proposed amendment of Article 139.3 of the Constitution

246. The Court considers that while the President is to be given a role in relation to the dismissal of the Chair of the Central Election Commission this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter

II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 139 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

X. Proposed Amendment 10: [Announcement of the first Presidential Election] replaces Article 162

247. The amendment proposes to insert a new Article 162 [Announcement of the first Presidential Election] providing that:

“Regardless to other provisions in this Constitution:

- 1. First Presidential Elections in the Republic of Kosovo shall be held after 6 (six) months from entry into force of Constitutional amendments and adoption of relevant laws;*
- 2. The term of office of the President of the Republic of Kosovo, elected by the Assembly, pursuant to provisions of the previous Constitution, shall continue until the new President is elected and sworn in;*
- 3. Presidents who served before the entry into force of these amendments have the right to be elected and re-elected again as the President of the Republic of Kosovo.”*

Constitutionality of the proposed new Article 162.1 of the Constitution

248. The Court considers that the holding of the first presidential elections under the new electoral system, within six (6) months from the date of the entry into force of the constitutional amendments and relevant laws, would shorten the mandate of five (5) years of the current President.

249. When considering the wording of the proposed new Article 86, which is dealt with above, the Court concluded that the election of the President of the Republic by the citizens eligible to vote is an enhancement of their democratic rights and does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

250. Therefore, the question must be addressed whether or not the early termination of the mandate of five (5) years of the current President, caused by the introduction of the new electoral system, diminishes any of the rights and freedoms in Chapter II of the Constitution.

251. Article 83 [Status of the President] provides as follows:

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

252. By Decision No. 04-V-277 on the Election of the President of the Republic, dated 7 April 2011, the Assembly decided that (1) Her Excellency, Mrs. Atifete Jahjaga was elected President of the Republic and that (2) the mandate of the President was five (5) years.

253. That Decision was sent to the Kosovo Presidency, the Kosovo Government and the Assembly Archives. On 7 April 2011, Her Excellency, Mrs Atifete Jahjaga assumed her

mandate as President of the Republic, by taking the oath before the Assembly, pursuant to Article 87 of the Constitution.

254. From the date of the election of the President of the Republic by the Assembly, the President became the legitimate representative of the country, internally and externally, as well the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in the Constitution.
255. In the case of the current President of the Republic, this means that the entire people of Kosovo had an expectation that she would be their President for the next five (5) years. Thus, to shorten that mandate, as proposed by Amendment 10, would deprive the people of Kosovo of their legitimate representative and guarantor at an earlier date than they were made to believe and expect.
256. The authority of the President stems ultimately from the people who through their democratically elected representatives in the Assembly elect him/her. In initial rounds of voting, the President must achieve a two thirds majority of the deputies of the Assembly. In a third round, if it is necessary to hold one, the President may be elected by a majority of all the deputies of the Assembly. The current President was elected by an overwhelming majority of the deputies in the first round.
257. Article 4 [Form of Government and Separation of Power] of the Constitution states that “[T]he President of the Republic of Kosovo represents the unity of the people ... [and] ...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.” This statement as to the role of the President is central to one of the principles underpinning the Constitution of Kosovo which is the doctrine of the Separation of Powers.
258. This principle was emphasized by the Constitutional Court in its Judgment in Case No K.O. 98/11, of 20 September 2011, concerning the immunities of Deputies of the Assembly of the Republic of Kosovo, the President of the Republic and Members of the Government of the Republic of Kosovo, at paragraph 44 where the Court stated:

“The Republic of Kosovo is defined by its Constitution as a democratic Republic based on the principle of the separation of powers and the checks and balances among them. The separation of powers is one of the bases that guarantee the democratic functioning of a State. The essence of the independence and effective functioning of these branches is the immunity provided to the people embodying these powers.”
259. When elected the President holds office for up to five years. The current President holds the office legitimately and she is, by virtue of her election as President, the guarantor of the democratic functioning of the institutions in the State. The office of the President of Kosovo is a composite of the legitimacy of his/her election, the term of the mandate (five years) and the competences bestowed on the Presidency by the Constitution, not least, those powers given by Article 84 [Competencies of the President].
260. The nature of the office of the President is also one of a political nature that stems from the passive right of the President to be elected guaranteed under Article 45 [Freedom of Election and Participation], particularly Article 45.1 which states that all citizens have the right to be elected. The international instruments that have direct effect in Kosovo by virtue of Article 22 [Direct Applicability of International Agreements and Instruments] include the International Covenant on Civil and

Political Rights (hereinafter, ICCPR) where the same right is emphasized in Article 25 which provides:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.”

261. The Court notes that the expression “*to take part in the conduct of public affairs*”, in Article 25 (a) of the ICCPR, is central to the exercise of a duly and legitimately elected President under the Constitution as part of his/her role as contemplated by Article 4, quoted above.

262. Indeed, the phrase “*(c) To have access, on general terms of equality, to public service in his country.*”, it can be argued, may be applied to the position of the President of the Republic, under the current terms of the Constitution, in so far as equality implies the right, along with any person inequitably treated, to have an effective remedy under law for the curtailment of office. There would be no such remedy available to the current holder of the office if the proposed amendment were to be adopted.

263. Unless the incumbent President is protected and given an effective remedy for the curtailing of the mandate, then the protection of human rights and freedoms under Chapter II of the Constitution is jeopardized. That right to an effective remedy is enshrined in the Constitution in Chapter II by Article 54 which provides:

“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.”

264. The right is further protected by Article 13 of the Convention which provides:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

265. All the more, the exercise of these fundamental rights are guaranteed by the provisions of equality which also underpin the norms of the Constitution, not least, Article 24 [Equality before the Law] where in the first paragraph is states, inter alia, that “*Everyone enjoys the right to equal legal protection without discrimination.*” This also applies, perforce, to the protection of the office of the President.

266. Chapter II of the Constitution embraces many other basic human rights and fundamental freedoms that this Court does not, at this stage, have to rely upon or elaborate further in deciding on this particular proposed amendment, such as those set out in Article 45 [Freedom of Election and Participation] and Article 46 [Protection of Property].

267. The issue of the mandate of holders of Constitutional offices was also dealt with by the Court in the above mentioned Judgment in Case No K.O. 98/11, in paragraphs 87 and 88:

"87. Article 66 of the Constitution uses the term "mandate" to describe the duration of the Assembly. It states that the four years commences with the constitutive session held after the announcement of the election results and ends with the dissolution of the Assembly.

88. The Constitution also uses the term "mandate" in relation to the deputies of the Assembly whereby as representatives of the people they are not bound by any obligatory mandate. Each deputy has an individual mandate which commences on the date of the certification of the results of the election. While the mandate of the Assembly commences on the constitutive session of the newly elected Assembly the mandate of each deputy may commence earlier. The mandate for a deputy ends at the occurrence of any of the circumstances set out in Article 70 (3) of the Constitution. The mandate of the deputy embodies his/her representative function."

268. The emphasis on the importance and attributes of the mandate were closely related to the reasoning of the Court in that Judgment in that the immunities were inseparable from the mandate. The mandate was based on the Constitution. So it is with the mandate of the President of the Republic. That mandate is inviolable so as to ensure adherence to the principle of the Separation of Powers and to preserve certainty in the legal and constitutional order.
269. Furthermore, the early termination of the term of office of the President of the Republic is an event which is foreseen by Article 91 of the Constitution [Dismissal of the President] only in limited circumstances, as conviction of a serious crime, serious illness or commission of a serious violation of the Constitution.
270. However, the early termination of the President's mandate as envisaged by the proposed amendment touches upon fundamental constitutional principles, in particular, the principle of the prohibition of the shortening of a legitimately obtained mandate of a constitutional office as well as the principle of protecting the justified confidence of the citizens in the laws of Kosovo and the election and mandate of their President based upon such laws.
271. For all of the above reasons, the Court concludes that the proposed amendment, where it prematurely shortens the mandate of the current President of the Republic, diminishes rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 162.2 of the Constitution

272. The Court considers that the proposed amendment continues the mandate of a President elected by the Assembly until the swearing in of a President according to the new provisions and that this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed new Article 162.2 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Constitutionality of the proposed new Article 162.3 of the Constitution

273. The Court considers that the proposed amendment proposes to allow previous Presidents elected under the Constitution to be elected and re-elected again and that this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed new Article 162.3 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

XI. Proposed Amendment 11: Article 162

As to the proposed amendment of Article 162 of the Constitution to become Article 163

274. The terms of the current Article 162 are as follows:

“This Constitution shall enter into force and effect on 15 June 2008.”

275. According to the proposed amendment, newly numbered as Article 163 would read as follows:

“This Constitution shall enter into force and effect on 15 June 2008. Amendments 1-11 to this Constitution shall enter into force after being passed in the Assembly of Kosovo. After the Constitutional amendments enter into force, harmonization of Laws and other general acts shall be made.”

Constitutionality of the proposed amendment of Article 162 of the Constitution

276. The Court considers that effect is given to the proposed changes to the Constitution after being passed in the Assembly of Kosovo and that this does not change the Constitution in a manner that affects the rights and freedoms guaranteed by Chapter II of the Constitution. For that reason, the Court does not deem it necessary to further review the constitutionality of the proposed amendment. The Court, therefore, concludes that the proposed amendment to Article 162 does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

FOR THESE REASONS

Based on Article 113.9 and Article 144.3 of the Constitution, Article 20 of the Law and Rule 56.1 of the Rules of Procedure

THE COURT, UNANIMOUSLY, DECIDES AS FOLLOWS:

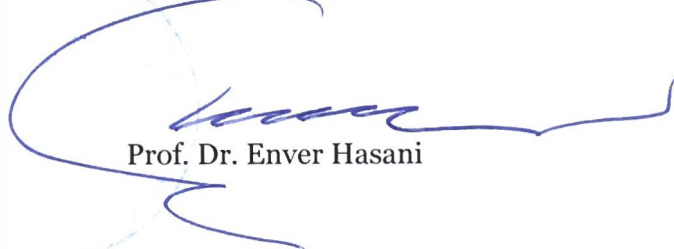
- I. The Referrals submitted by the President of the Assembly on 23 March 2012 and 4 May 2012 with proposed amendments to the Constitution of the Republic of Kosovo (set out in Annexes A and B) are admissible;
- II. The proposed amendments set out in Annex B subsume those in Annex A and this Judgment refers only to Annex B;
- III. The following proposed amendments diminish human rights and freedoms set forth in Chapter II of the Constitution:
 1. The proposed new Article 85.2 (Regarding the restriction of the right to be a candidate for President only to those citizens who were permanent residents of the Republic of Kosovo for five years);
 2. The proposed new Article 86.3 (Regarding nominations for the office of the President of Kosovo - in so far as it applies only to parliamentary political entities which have passed the electoral threshold in the last election);
 3. The proposed new Article 90.5 (2) (Regarding the restriction of the power of an Acting President to declare a State of Emergency);
 4. The proposed new Article 90.5 (3) (Regarding the restriction of the power of an Acting President to appoint Judges and Prosecutors);
 5. The proposed new Article 90.5 (5) (Regarding the restriction of the power of an Acting President to grant pardons);
 6. The proposed new Article 104.1 (Regarding the suspensive veto of the President on appointing Judges of the regular courts);
 7. The proposed new Article 114.2 (Regarding the suspensive veto of the President on appointing Judges of the Constitutional Court);
 8. The proposed new Article 162.1 (Regarding the early termination of the mandate of the President of the Republic of Kosovo).
- IV. This Judgment shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law, and
- V. This Judgment is effective immediately.

Judge Rapporteur



Kadri Kryeziu

President of the Constitutional Court



Prof. Dr. Enver Hasani

Annex A



Republika e Kosovës
Republika Kosovo - Republic of Kosovo
Kuvendi-Skupština-Assembly

COMMITTEE FOR CONSTITUTIONAL AMENDMENTS

PACKAGE OF CONSTITUTIONAL CHANGES

19 March 2012

Amendment 1

Article 84 [Powers of the President] is amended as follows:

President of the Republic of Kosovo:

- (1) represents the Republic of Kosovo
- (2) guarantees the constitutional functioning of the institutions established by this Constitution;
- (3) announces elections for Kosovo Assembly and calls its first meeting,
- (4) issues decrees in accordance with this Constitution;
- (5) promulgates laws approved by the Assembly of the Republic of Kosovo;
- (6) has the right to return for review the approved laws, if it considers that they are harmful for the legitimate interests of the Republic of Kosovo or for one or more of its communities. The right of return of a law can be used only once.
- (7) signs international agreements in accordance with this Constitution;
- (8) proposes amendments for this Constitution;

(9) **raises** constitutional issues in the Constitutional Court, **in accordance with the Constitution;**

(10) **cooperates with the Government regarding the** foreign policies of the country;

(11) receives credentials of the heads of diplomatic missions accredited in the Republic of Kosovo;

(12) is the Supreme Commander of the Kosovo Security Forces;

(13) chairs the Communities Consultative Council;

(14) assigns the candidate to form the Government, upon the proposal by a political party or the coalition holding the majority in the Assembly;

(15) appoints and dismisses the President of the Supreme Court, by a proposal of the Kosovo Judicial Council;

(16) appoints and dismisses judges of the Republic of Kosovo upon the proposal Kosovo Judicial Council,

(17) appoints and dismisses the Chief State Prosecutor of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;

(18) appoints and dismisses prosecutors of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;

(19) appoints judges to the Constitutional Court with the proposal of the Assembly;

(20) appoints the Commander of the Kosovo Security Forces, upon recommendation by the Prime Minister;

(21) together with Prime Minister, appoints the Director and Deputy Director and General Inspector of the Kosovo Intelligence Agency;

(22) declares a state of emergency, **after it notifies** the Prime Minister;

(23) **chairs** Kosovo Security Council;

(24) **establishes** diplomatic and consular missions of the republic of Kosovo **with the proposal of the Government;**

(25) appoints and dismisses heads of diplomatic missions of the Republic of Kosovo upon the proposal of the Government;

(26) appoints the Chairman of the Central Election Commission, **in accordance with this Constitution;**

(27) appoints and dismisses Governor of Central Bank of the Republic of Kosovo, who also serves as Managing Director and appoints other members of the Board of the Bank;

(28) gives medals, awards and prizes, in accordance with the law;

(29) grants individual pardons in accordance with the law;

(30) at least once a year addresses the Assembly of Kosovo in relation to the **situation in the Republic of Kosovo;**

(31) **appoints Ombudsperson, upon the proposal of the Assembly**

(32) performs other duties, provided with the Constitution and the law.

Amendment 2

[Article 85-Qualifications for Election of the President] is deleted and replaced as follows:

1. President of the Republic of Kosovo may be any citizen of the Republic of Kosovo, which at the time of running has reached the age of 35 (thirty five) years old.

2. To qualify as a candidate for President, every citizen of the Republic of Kosovo must have been a permanent resident of the Republic of Kosovo during the last five years before running for President.

3. Before taking the oath as the President of the Republic of Kosovo, the candidate elected for the President should resign from every public office.
4. Besides the conditions specified in this Article, the candidates for the President must fulfill other conditions specified by the law.

Amendment 3

[Article 86-Running and election of the President] is deleted and replaced as follows:

1. President of the Republic of Kosovo shall be elected directly by the citizens entitled to vote.
2. Presidential elections shall be announced by the Assembly Speaker, not later than six months before the end of the regular mandate of the President of the Republic of Kosovo.
3. Every citizen of the Republic of Kosovo, who meets the conditions specified in this Constitution, may run for the President: (a) from the parliamentary political entities, which, in accordance with law, have passed the electoral threshold in the last election, (b) by political entities holding guaranteed seats in the Assembly and (c) through the petition submitted to the Central Election Commission, with the signatures of at least 15,000 (fifteen thousand) qualified voters in the Republic of Kosovo. Only one candidate may run from a parliamentary political entity. The running process takes place according to time limits and procedures established by the law.
4. If the candidate for President receives an absolute majority (more than 50%) of the valid votes in the first round, then President of the Republic of Kosovo is elected. If no candidate receives an absolute majority of votes in the first round, the second round of elections is held between the two candidates who received the largest number of votes in the first round. The second round of elections is held not later than 30 days from the first round. The candidate who receives the majority of votes in the second round of elections, is elected the President of the Republic of Kosovo.

Amendment 4

[Article 87-Mandate and Oath] is deleted and replaced as follows:

1. The mandate of the President of the Republic of Kosovo is 5 (five) years and begins after the elected candidate have taken an oath.

2. President takes oath before the President of the Constitutional Court in a public place determined by the law. The text of the oath is:

"I swear that with my entire being, I will save and protect the independence, sovereignty and territorial integrity of the Republic of Kosovo, guarantee the rights and freedoms to all citizens, respect and protect the Constitution and laws, preserve peace and welfare of all citizens, will be loyal only to the Republic of Kosovo, by giving up all obligations to any other country that are in contradiction with my responsibilities in the Republic of Kosovo, and to represent with all my strength the unity of citizens of the Republic of Kosovo . "

3. President can be re-elected only for another mandate.

Amendment 5

[Article 88-Incompatibility] is deleted and replaced as follows:

1. President can not exercise or hold any other public function.

2. President can not hold nor exercise any function in a political entity or be a member of any political entity.

Amendment 6

[Article 89-Immunity] is deleted and replaced as follows:

President of the Republic of Kosovo shall enjoy immunity from criminal prosecution and civil lawsuits for actions and decisions that are within the scope of his competences.

Amendment 7

[Article 90- Temporary absence of the President] is deleted and replaced as follows:

1. If the President of the Republic of Kosovo is temporarily unable to exercise his powers, he may voluntarily transfer the exercising of his powers to the President of the Assembly who becomes Acting President of the Republic of Kosovo. The written decision of the President on transfer the responsibilities contains in particular the reasons and duration of the transfer of responsibilities, if the duration of time can be foreseen. The President of the Republic of Kosovo resumes the exercise his powers when he is able to do that and, in this case, the position of Speaker of the Assembly's ends as the Acting President.

2. If the President, due to health reasons, is unable to exercise his powers and there was no voluntary transfer of responsibilities, the Assembly of the Republic of Kosovo, with a majority vote of all deputies, may initiate the procedure to evaluate if the health condition does not allow to the President exercising of his powers. The Assembly requires from competent health institution to establish a doctors' consilium to evaluate the health of the President, and to submit the report in the Assembly. If in the report of the consilium is concluded that the President is unable to exercise his powers, the Assembly, with 2/3 (two thirds) vote of all deputies, may decide to on temporary replacement of the President. In this case, the President of the Assembly of Kosovo shall act as President. President of the Republic of Kosovo may at any time request the new evaluation of health condition and return to duty, if doctors' consilium finds that the President is able to resume the exercise of his responsibilities.

3. If for any other reason, besides the health one, the President of the Republic of Kosovo is unable to exercise his powers and there was no voluntary transfer of responsibilities, the Assembly of the Republic of Kosovo, with the majority of the votes of all the members, may start the procedure on temporary replacement of the President. If the Assembly decides by 2/3 (two thirds) of votes of all deputies that the President is temporarily unable to exercise his powers, the President of the Assembly shall act as President until the President of the Republic of Kosovo becomes able to resume the exercise of powers.

4. Except if it is not stated otherwise in this Constitution, the position of Acting President of the Republic of Kosovo can not be exercised for a longer period than 6 (six) months.

5. Acting President of the Republic of Kosovo shall exercise all powers of the President with the exception of:

- (1) Constitutional amendment proposal;
- (2) declaring a state of emergency, without approval of the Prime minister;
- (3) appointment and dismissal of judges and prosecutors of the Republic of Kosovo;
- (4) Appointment and dismissal of heads of diplomatic missions of the Republic of Kosovo;
- (5) Promulgation of individual prayer, and
- (6) award of medals, awards and prices.

6. If the President of the Republic of Kosovo is unable to exercise his powers for 6 (six) months, Acting President immediately declared vacant position of President and announce

early elections for president, which held no later than 3 (three) months after the office of President remains vacant. Acting President continues to exercise the powers of the President, until the new president to be elected and sworn.

7. If the Consilium of Physicians states that the President of the Republic of Kosovo will not be able to exercise his powers for a period longer than 6 (six) months, the Assembly, the votes of 2/3 of the deputies, declaring vacant post of President. Acting President immediately announce early elections for president, which held no later than 3 (three) months from the date when the Assembly has declared vacant the office of President. Acting President continues to exercise the powers of the President, until the new president to be elected and sworn.

Amendment 8

[Article 91 resignation, discharge and death of the President] is deleted and - substituted as follows:

1. President of the Republic of Kosovo resigns by submitting a letter of resignation to the President of the Constitutional Court. The resignation is valid at the time of acceptance of resignation letter from the President of the Constitutional Court and is irrevocable.

2. President of the Republic of Kosovo may be dismissed if he is punished for committing a serious crime during the execution of his duty, or if the Constitutional Court finds that he has committed a serious violation of the Constitution, or if he carries out an act of treachery against the state.

3. The procedure for dismissal of the President of the Republic of Kosovo, for the cases specified in paragraph 2 of this Article may be initiated by 1/3 (one third) of the members of Parliament, or by 30,000 (thirty thousand) citizens entitled to vote . Before it is submitted at the Constitutional Court for review, the petition must be approved by 2/3 (two thirds) votes of all members of the Assembly.

4. If the Constitutional Court, by a vote of at least 7 (seven) judges, shall decide that the President of the Republic of Kosovo is responsible for any of the reasons specified in paragraph 2 of this Article, the President deemed dismissed.

5. If the President of the Republic of Kosovo resigns, is discharged in accordance with the provisions of this section, or dies, the Kosovo Assembly President serves as the Acting President of the Republic of Kosovo, in accordance with the restrictions laid down in Article 90, until the new President Assembly President is elected and gives the oath . The President of the Assembly immediately declares the early elections for the President of the Republic of Kosovo, which are held no later than 3 (three) months from the date when the post of president has remained vacant.

6. When the President of the Assembly, for any of the reasons specified in Article 90 and 91, is unable to serve as Acting President, the job passes to the Vice President of the Assembly. Other matters of the transfer of responsibility related to the duties of the acting President are regulated by law.

Amendment 9

The following articles of the Constitution of the Republic of Kosovo are amended as follows:

Article 18 [Ratification of International Agreements]

1. The Assembly of the Republic of Kosovo, with at least two-thirds (2/3) of the deputies, ratifies international agreements for these issues:

(1) The territory, the peace, alliances, political and military issues

(2) Basic rights and freedom,

(3) The membership of the Republic of Kosovo in International Organizations

(4) Taking over the financial liabilities from the Republic of Kosovo, in accordance with the Law.

2. International agreements, in the exception of point 1, **are considered as ratified** are ~~ratified~~, after the signature of the President of the Republic of Kosovo, _____
Government

3. The President of the Republic of Kosovo or the Government informs the ~~Prime Minister,~~ **Assembly** whenever there is a signature of an international agreement.

4. Amendment or the withdrawal from international agreements will have the same decision procedure, as the ratification of international agreements.

5. Principles and procedures for ratifying and contesting international agreements are regulated by law.

Article 45 [Voting and Participation Rights] paragraph 1, is amended as follows:

1. Every citizen of the Republic of Kosovo that has reached the age of eighteen , even on the date of the elections, has the right to elect and be elected, unless this right is limited by judicial decision, **or with the provisions of this Constitution.**

Article 65 [Assembly Powers] Paragraph 7, is amended as follows:

~~7) elects and can discharge,~~ **Submits in the Constitutional Court the petition for discharge** of the President of the Republic of Kosovo, **in accordance with the Article 91,** of the Constitution;

Article 82 [Assembly Dissolution] the paragraph 1 (3) is abrogated:

~~(3) if within the time limit of 60 (sixty) days, from the day when the election procedure starts, the President of the Republic of Kosovo is not elected.~~

Article 93 [Government Powers]

~~(10) can refer~~ **raises** the constitutional issue in the Constitutional Court, **in accordance with the Constitution.**

(12) Proposes to the President the establishment of diplomatic and consular missions of the Republic of Kosovo

(13) Leads the foreign politics of the country,

Article 94 [Prime Minister Powers]

(5) Leads, is the member of the Kosovo Security Council

~~(9) advises with the President on the implementation and leads the foreign politics of the country,~~

Article 104 [Nomination and Dismissal of the Judges]

1. The Judges are nominated, re-nominated and dismissed is done by the President of the Republic of Kosovo, with the proposal of the judicial Advisor of Kosovo. **The President can return the proposed candidate on the review before in the Judiciary Council of Kosovo. This right can be exercised only once for one candidate. The Judiciary Council can propose the same candidate only if securing the support of the 2/3 (two thirds) of the Council Members.**

Article 107 [State Prosecutor]

7. The State Chief Prosecutor is nominated and dismissed by the President of the Republic of Kosovo, based on the proposal of the Kosovo Prosecutorial Council. **The President can return the proposed candidate for the review before the** proposes same, only securing support 2/3 (thirds) The
mandate of the State Chief Prosecutor is seven (7) years, without the possibility of re-nomination.

Article 113 [Jurisdiction and Authorized Parties]

Paragraph 3 (5) is amended as follows:

5. If the Constitution is violated during the election of **the President** and the Parliament **Paragraph 6 is amended as follows:**

6 (thirty) or more deputies of the Assembly of Kosovo **is authorized to submit the petition, where it is asked to dismiss** the President of the Republic of Kosovo, in accordance with the Article 91 of the Constitution ~~committed serious violations of the Constitution.~~

Article 131 [State of Emergency]

8. The Security Council of the Republic of Kosovo, only during the state of emergency, exercises the executive functions that are limited with the functions that are related especially with the State of Emergency. ~~During the State of Emergency the Security Council of the republic of Kosovo will be led by the President of the Republic of Kosovo, as regulated per Law.~~ During the State of Emergency, the Security Council of the Republic of Kosovo will cooperate with the Government, Assembly and International Authorities.

Article 134 [Qualification, Election Nomination and the Dismissal of the Ombudsperson]

1. The Ombudsperson, is elected by the Kosovo Assembly, with the majority votes from all the deputies, **by the President, proposal in the Assembly,** for a (5) five year mandate, without the right of being reelected. **The President can return the proposed**

candidate by the Assembly. This right can be exercised only once per candidate. The Assembly can propose the same candidate, only if securing the support of the 2/3 (two thirds) votes of all the deputies.

~~5, The Ombudsperson can be dismissed **only with the request of the majority of one thirds (1/3) of all deputies, and in this case** by the Assembly, decides with the majority of two thirds (2/3) of all their deputies.~~

Article 139 (Central Election Commission)

3. The Chairperson of the Central Election Commission is nominated **and dismissed** by the President of the Kosovo Republic from the lines of the judges from the Supreme Court and the Courts with the jurisdiction of appeal.

Amendment 10

[Announcement of the first Presidential Election), replaces the existing section 162, as follows:

Regardless of other provisions of this Constitution:

1. Elections for the President of the Republic of Kosovo, in accordance with Article 86 of the Constitution, are held within 6 (six) months from the date of entry into force of the Constitutional amendments and relevant laws
2. The mandate of the President of the Republic of Kosovo, elected by the Assembly, under the provisions of the previous Constitution continues until the new President is elected and sworn
3. Presidents who have served before the entry into force of these amendments, have the right to be elected and re-elected again as President of the Republic of Kosovo

Amendment 11

The existing Article 162 [Entry into Force], becomes Article 163 and is amended as follows:
Constitution of the Republic of Kosovo shall enter into force on June 15, 2008. Amendments 1-11 of this Constitution enter into force on the day of approval in the Assembly of Kosovo.
After the entry into force of the Constitutional amendments, harmonization of the Laws and other general acts is made.

Annex B



Republika e Kosovës
Republika Kosovo - Republic of Kosovo
Kuvendi-Skupština-Assembly

COMMITTEE ON CONSTITUTIONAL AMENDMENTS

CONSTITUTIONAL AMENDMENTS PACKAGE

04 May 2012

Amendment 1

Article 84 [Powers of the President] is amended as follows:

President of the Republic of Kosovo:

- (1) represents the Republic of Kosovo, ~~internally and externally~~;
- (2) guarantees the constitutional functioning of the institutions established by this Constitution;
- (3) announces elections for Kosovo Assembly and calls its first meeting,
- (4) issues decrees in accordance with this Constitution;
- (5) promulgates laws approved by the Assembly of the Republic of Kosovo;
- (6) has the right to return for review the approved laws, if it considers that they are harmful for the legitimate interests of the Republic of Kosovo or for one or more of its communities. The right of return of a law can be used only once.
- (7) signs international agreements in accordance with this Constitution;
- (8) proposes amendments for this Constitution;
- (9) **raises** constitutional issues in the Constitutional Court, **in accordance with the Constitution**;

- (10) cooperates with the Government regarding the foreign policy of the country;
- (11) receives credentials of the heads of diplomatic missions accredited in the Republic of Kosovo;
- (12) is the Supreme Commander of the Kosovo Security Forces;
- (13) chairs the Communities Consultative Council;
- (14) assigns the candidate to form the Government, upon the proposal by a political party or the coalition holding the majority in the Assembly;
- (15) appoints and dismisses the President of the Supreme Court, by a proposal of the Kosovo Judicial Council;
- (16) appoints and dismisses judges of the Republic of Kosovo upon the proposal Kosovo Judicial Council,
- (17) appoints and dismisses the Chief State Prosecutor of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;
- (18) appoints and dismisses prosecutors of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;
- (19) appoints judges to the Constitutional Court with the proposal of the Assembly;
- (20) appoints the Commander of the Kosovo Security Forces, upon recommendation by the Government; *[interpreters note: Albanian and Serbian versions of the original Constitutions say: Prime Minister]*
- (21) ~~together with Prime Minister,~~ appoints the Director ~~and Deputy Director and General Inspector~~ of the Kosovo Intelligence Agency;
- (22) ~~decides to declares~~ a State of Emergency ~~in consultation with,~~ after notifying the Prime Minister;

(23) ~~may request meetings of chairs~~ the Kosovo Security Council ~~and chairs them during a State of Emergency~~

(24) ~~decides on the establishment of~~ _____ iatic and consular missions of the Republic of Kosovo ~~in consultation with the Prime Minister upon proposal of the Government;~~

(25) appoints and dismisses heads of diplomatic missions of the Republic of Kosovo upon the proposal of the Government;

(26) appoints the Chair of the Central Election Commission, in accordance with this Constitution;

(27) appoints and dismisses Governor of Central Bank of the Republic of Kosovo, who also serves as Managing Director and appoints other members of the Board of the Bank;

(28) gives medals, awards and prizes, in accordance with the law;

(29) grants individual pardons in accordance with the law;

(30) addresses the Assembly of Kosovo at least once a year in regard to ~~her/his scope of authority~~ the state of affairs in the Republic of Kosovo;

(31) appoints the Ombudsperson, upon proposal of the Assembly

(32) performs other duties, provided with the Constitution and the law.

Amendment 2

[Article 85-Qualifications for Election of the President] is deleted and replaced as follows:

1. President of the Republic of Kosovo may be any citizen of the Republic of Kosovo, which at the time of running has reached the age of 35 (thirty five) years old.

2. To qualify as a candidate for the President, every citizen of the Republic of Kosovo must have been a permanent resident of the Republic of Kosovo during the last five years before running for the President.

3. Before taking the oath as the President of the Republic of Kosovo, the candidate elected for the President shall resign from every public office.

4. Other than conditions specified in this Article, the candidates for the President must fulfill other conditions specified by the law.

Amendment 3

[Article 86-Running and election of the President] is deleted and replaced as follows:

1. President of the Republic of Kosovo shall be elected directly by the citizens eligible to vote.

2. Presidential elections shall be announced by the President of the Assembly, not later than six months before the end of the regular mandate of the President of the Republic of Kosovo.

3. Every citizen of the Republic of Kosovo, who meets the conditions specified in this Constitution, may be nominated for the President: (a) by parliamentary political entities, which, in accordance with law, have passed the electoral threshold in the last election, (b) by political entities holding guaranteed seats in the Assembly and (c) through a petition submitted to the Central Election Commission, with signatures of at least 15,000 (fifteen thousand) qualified voters in the Republic of Kosovo. Only one candidate may be nominated from one parliamentary political entity. The nomination process takes place according to time limits and procedures established by the law.

4. If the candidate for President receives an absolute majority (more than 50%) of the valid votes in the first round, then President of the Republic of Kosovo is elected. If no candidate receives an absolute majority of votes in the first round, the second round of elections is held between the two candidates who received the largest number of votes in the first round. The second round of elections is held not later than 30 days from the first round. The candidate who receives the majority of votes in the second round of elections, is elected the President of the Republic of Kosovo.

Amendment 4

[Article 87-Mandate and Oath] is deleted and replaced as follows:

1. Term of Office of the President of the Republic of Kosovo is 5 (five) years and the term begins after the elected candidate has taken the oath.

2. President takes the oath before the President of the Constitutional Court at a public venue determined by law. The text of the oath is:

"I swear that with my entire being I will preserve and protect the independence, sovereignty and territorial integrity of the Republic of Kosovo, guarantee the rights and freedoms to all citizens, respect and protect the Constitution and laws, preserve peace and welfare of all citizens, will be loyal only to the Republic of Kosovo, by giving up all obligations to any other state that are in contradiction with my responsibilities in the Republic of Kosovo, and with all my strength represent the unity of citizens of the Republic of Kosovo."

3. The President may be re-elected only for another mandate.

Amendment 5

[Article 88-Incompatibility] is deleted and replaced as follows:

1. The President shall not exercise or hold any other public function.

2. The President shall not hold or exercise any function in a political entity or be a member of any political entity.

Amendment 6

[Article 89-Immunity] is deleted and replaced as follows:

The President of the Republic of Kosovo shall enjoy immunity from criminal prosecution and civil lawsuits for actions and decisions that are within the scope of his competences, **as the President of the Republic of Kosovo.**

Amendment 7

[Article 90- Temporary absence of the President] is deleted and replaced as follows:

1. If the President of the Republic of Kosovo is temporarily unable to exercise his powers, he may voluntarily transfer the exercising of his powers to the President of the Assembly, who becomes Acting President of the Republic of Kosovo. The President's written decision on transfer of responsibilities shall contain, in particular, reasons and duration of the transfer of responsibilities, if the duration time can be foreseen. The President of the Republic of Kosovo shall resume exercising his powers when he is able to do that and in this case the Acting President's position of the President of the Assembly ends.

2. If the President, due to health reasons, is unable to exercise his powers and there was no voluntary transfer of responsibilities, the Assembly of the Republic of Kosovo, with a majority vote of all deputies, may initiate a procedure to evaluate if the medical condition does not allow the President exercising of his powers. The Assembly shall require from a competent health institution to establish a medical consilium to evaluate the medical condition of the President, and submit a report to the Assembly. If in the consilium report it is concluded that the President is unable to exercise his powers, the Assembly, with 2/3 (two thirds) vote of all deputies, may decide to temporary replace the President. In this case, the President of the Assembly of Kosovo shall act as the President. The President of the Republic of Kosovo may at any time request new evaluation of the medical condition and resume his duty, if medical consilium determines that the President is able to resume to exercise his responsibilities.

3. If for any other reason, except the medical reasons, the President of the Republic of Kosovo is unable to exercise his powers and there was no voluntary transfer of responsibilities, the Assembly of the Republic of Kosovo, with a majority vote of all deputies, may initiate a procedure for temporary replacement of the President. If the Assembly decides by 2/3 (two thirds) vote of all deputies that the President is temporarily unable to exercise his powers, the President of the Assembly shall act as the President until the President of the Republic of Kosovo becomes able to resume to exercise his powers.

4. Except if stated otherwise in this Constitution, the position of Acting President of the Republic of Kosovo may not be exercised for a period longer than 6 (six) months.

5. Acting President of the Republic of Kosovo shall exercise all powers of the President with the exception of:

(1) Proposing Constitutional amendment;

(2) Declaring a state of emergency, without approval of the Prime minister;

(3) Appointment and dismissal of judges of the Republic of Kosovo, Chief State Prosecutor and prosecutors of the Republic of Kosovo;

(4) Appointment and dismissal of heads of diplomatic missions of the Republic of Kosovo;

(5) Granting of medals, awards and prizes; and

(6) Granting of Individual Pardon.

[Interpreters note: only the place was changed for 5.5 and 5.6]

6. If the President of the Republic of Kosovo is unable to exercise his powers for 6 (six) months, Acting President immediately declares the position of the President vacant and announces early presidential elections, which shall be held no later than 3 (three) months after the office of President becomes vacant. Acting President continues to exercise the powers of the President, until the new president is elected and sworn in.

7. If the Medical Consilium determines that the President of the Republic of Kosovo is unable to exercise his powers for a period longer than 6 (six) months, the Assembly, by 2/3 (two thirds) vote of all deputies declares the position of the President vacant. Acting President immediately announces early presidential elections, which are to be held no later than 3 (three) months from the date when the Assembly declared the office of President vacant. Acting President continues to exercise the powers of the President, until the new president is elected and sworn in.

Amendment 8

[Article 91 Resignation, dismissal and death of the President] is deleted and - substituted as follows:

1. The President of the Republic of Kosovo shall resign by submitting a letter of resignation to the President of the Constitutional Court. The resignation is valid upon receipt of the resignation letter by the President of the Constitutional Court and it shall be irrevocable.

2. President of the Republic of Kosovo may be dismissed if he is punished for committing a serious crime during exercising his duty, or if the Constitutional Court finds that he has committed a serious violation of the Constitution, or if he carries out an act of treason against the state.

3. For cases specified in paragraph 2 of this Article a procedure for dismissing the President of the Republic of Kosovo may be initiated by 1/3 (one third) of the deputies of the Assembly, or by 30.000 (thirty thousand) citizens eligible to vote. Before submitted it to the Constitutional Court for review, the petition must be approved by 2/3 (two thirds) vote of all deputies of the Assembly.

4. If the Constitutional Court, by a vote of at least 7 (seven) judges decides that the President of the Republic of Kosovo is responsible for any of the reasons specified in paragraph 2 of this Article, it shall be considered that the President is dismissed from duty.

5. If the President of the Republic of Kosovo resigns, is dismissed in accordance with the provisions of this article, or dies, the President of the Assembly of Kosovo shall serve as the Acting President of the Republic of Kosovo, in accordance with the restrictions laid down in Article 90, until the new President is elected and sworn in. The President of the Assembly shall immediately declare the early presidential elections in the Republic of Kosovo, which are held no later than 3 (three) months from the date when the post of president has become vacant.

6. When the President of the Assembly, for reasons specified in Articles 90 and 91, is unable to serve as Acting President, the duty is passed to the Vice President of the Assembly. Other matters of the transfer of responsibility related to the duties of the acting President are regulated by law.

Amendment 9

The following articles of the Constitution of the Republic of Kosovo are amended as follows:

Article 18 [Ratification of International Agreements]

1. The Assembly of the Republic of Kosovo, with at least two-thirds (2/3) of the deputies, ratifies international agreements for these issues:

- (1) The territory, the peace, alliances, political and military issues
- (2) Basic rights and freedom,
- (3) The membership of the Republic of Kosovo in International Organizations
- (4) The undertaking of financial obligations from the Republic of Kosovo, in accordance with the Law.**
2. International agreements other than those in paragraph 1 **shall be considered as ratified** ~~are ratified~~ upon signature of the President of the Republic of Kosovo, **upon recomr** ~~the Government~~
3. The President of the Republic of Kosovo or the ~~Prime Minister~~ **Government** notifies the Assembly whenever an international agreement is signed.
4. Amendment of or withdrawal from international agreements follows the same decision making process as the ratification of such international agreements.
5. The principles and procedures for ratifying and contesting international agreements are set forth by law .

Article 45 [Voting and Participation Rights] paragraph 1, is amended as follows:

1. Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the date of elections, has the right to elect and be elected, unless this right is limited by a court decision, **or the provisions of this Constitution.**

Article 65 [Competencies of the Assembly] Paragraph 7, is amended as follows:

~~7) elects and may dismiss~~ **Submits a petition to the Constitutional Court to discharge the** President of the F **this Constitution**
_____ **91;**

Article 80 [Adoption of Laws]

The Assembly can outvote (reject) the President's veto on an adopted law by			
majority	deputies plus	percent	d
adopted.			Republic
right	Budget,	Assembly may	reject
(outvote)	by	majority	deputies
Assembly	adopted.	Assembly accepts	

changes proposed by the President for a law he/she exercised the right to veto, the Assembly shall decide on adopting such a law by majority vote of all deputies present and voting, and the respective law shall be considered promulgated.

Article 82 [Dissolution of the Assembly] - paragraph 1 (3) is abrogated:

~~(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.~~

Article 93 [Competencies of the Government]

(10) ~~may refer~~ refers Constitutional questions to the Constitutional Court, pursuant to this Constitution;

(12) proposes _____ diplomatic
Republic _____ President;

(13) _____ foreign policy _____ country.

Article 94 [Competencies of the Prime Minister]

(5) ~~chairs~~ is a member the Kosovo Security Council

(8) appoints the Deputy Director and the General Inspector of the Kosovo Intelligence Agency;

~~(9) consults with the President on the implementation of the foreign policy of the country,~~

Article 104 [Appointment and Dismissal of Judges]

1. The President of the Republic of Kosovo shall appoint, reappoint and dismiss judges upon the proposal of the Kosovo Judicial Council. The President may turn back any proposed candidate to the Kosovo Judicial Council for review. This right can be exercised only once for one candidate. Kosovo Judicial Council can propose the same candidate again only if Kosovo Judicial Council secures 2/3 (two thirds) vote of the KJC members.

Article 109 [State Prosecutor]

7. The Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The President may turn back any proposed candidate to the Kosovo Prosecutorial Council for review. This right can be exercised only once for one candidate. Kosovo Prosecutorial Council can propose the same candidate again only if Kosovo Prosecutorial Council secures 2/3 (two thirds) vote of the Council members. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment.

[missing parts in this amendment have been added in this new version]

Article 113 [Jurisdiction and Authorized Parties]

Paragraph 3 (5) is amended as follows:

5. questions whether violations of the Constitution occurred during the election of the President and Assembly.

Paragraph 6 is amended as follows:

6 ~~Thirty (30) or more deputies of the~~ Assembly of Kosovo is authorized to submit a petition, requesting dismissal of the President of th Republic
91 ~~has committed a~~
~~serious violation of the Constitution.~~

Article 127 [Kosovo Security Council]

2. The Security Council of the Republic of Kosovo shall be chaired by the President of the Republic of Kosovo ~~Prime Minister~~ with the support of the Government, ~~except during a State of Emergency as provided by this Constitution.~~

Article 114 [Composition and Mandate of the Constitutional Court]

2. Judges shall be appointed by the President of the Republic of Kosovo upon the proposal of the Assembly and shall serve for a non-renewable mandate of nine (9) years. The President may turn back a candidate proposed by the Assembly. This right can be exercised only once for one candidate. The Assembly can propose the same candidate again only if the Assembly secures 2/3 (two thirds) vote of all deputies.

Article 129 [Kosovo Intelligence Agency]

3. President of the Republic of Kosovo shall appoint the Director of the Kosovo Intelligence Agency. Prime minister shall appoint the Deputy Director and the General Inspector of the Kosovo Intelligence Agency. Qualifications and mandate shall be regulated by law.

Article 131 [State of Emergency]

8. The Security Council of the Republic of Kosovo, only during the State of Emergency, shall exercise executive functions which shall be limited to those functions which specifically relate to the State of Emergency. ~~In a State of Emergency the Security Council of the Republic of Kosovo shall be chaired by the President of the Republic of Kosovo, as provided by law.~~ During the State of Emergency, the Security Council of the Republic of Kosovo shall closely cooperate with the Government, the Assembly and international authorities.

Article 134 [Qualification, ~~Election~~ Appointment and the Dismissal of the Ombudsperson]

1. The Ombudsperson ~~is elected by the Assembly of Kosovo by a majority of all its deputies,~~ shall be appointed and dismissed by the President upon

proposal of the Assembly for a non-renewable five (5) year term. The President may turn back the proposed candidate to the Assembly. This right can be exercised only once for one candidate. The Assembly can propose the same candidate again only if the Assembly secures 2/3 (two thirds) vote of all deputies. *[Interpreters note: Similar to previous comment, the pattern is the same the only forgot to put the word "appointed"]*

~~5. The Ombudsperson may be dismissed only upon the request of more than one third (1/3) of all deputies of the Assembly and upon a vote of two thirds (2/3) majority of all its deputies.~~

Article 139 [Central Election Commission]

3. The Chair of the Central Election Commission is appointed **and dismissed** by the President of the Republic of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction.

Amendment 10

[Announcement of the first Presidential Elections), replaces the existing Article 162, as follows:

Regardless to other provisions in this Constitution:

1. **First** Presidential Elections in the Republic of Kosovo shall be held **within after** 6 (six) months from entry into force of Constitutional amendments and **adoption of** relevant laws, **in accordance with Article 86 of the Constitution;**
2. The term of office of the President of the Republic of Kosovo, elected by the Assembly, pursuant to provisions of the previous Constitution, shall continue until the new President is elected and sworn in;
3. Presidents who served before the entry into force of these amendments have the right to be elected and re-elected again as the President of the Republic of Kosovo.

Amendment 11

Existing Article 162 [Entry into Force], becomes Article 163 and is amended as follows:

This Constitution shall enter into force and effect on 15 June 2008. Amendments 1-11 to this Constitution shall enter into force after being passed in the Assembly of Kosovo. **After the Constitutional amendments enter into force, harmonization of Laws and other general acts shall be made.**