



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

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Prishtina, 15 April 2015  
Ref. no.: AGJ 788/15

## JUDGMENT

in

Case No. KO26/15

**Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433/DO-318**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge and  
Arta Rama-Hajrizi, Judge

#### The Applicant

1. On 9 March 2015 the President of the Assembly of the Republic of Kosovo (hereinafter: the “Applicant”), in accordance with Articles 113.9 and 144.3 of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), referred an Amendment (Amendment no. 24) to the Constitution to the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”), proposed by the Government of the Republic of Kosovo (hereinafter: the “Government”).

## **Subject matter**

2. The subject matter of the Referral is the prior assessment by the Court whether the proposed Amendment to the Constitution “[...] *does not diminish any of the rights and freedoms guaranteed by Chapter II of the Constitution*” in accordance with Article 113.9 of the Constitution.
3. The proposed Amendment consists in adding a new Article 162 after Article 161 [Transition of Institutions] of the Constitution.

## **Legal basis**

4. The Referral is based on Articles 113.9 and 144.3 of the Constitution and Articles 20 and 54 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the “Law”).

## **Proceedings before the Court**

5. On 9 March 2015 the Applicant referred the Amendment to the Court.
6. On 10 March 2015 the President of the Court, by Decision No. GJR. KO26/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KO26/15, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 11 March 2015 the Court notified the Applicant of the registration of the Referral and a copy of the Referral was communicated to the President of the Republic of Kosovo, the Prime Minister, the Deputies of the Assembly and the Ombudsperson.
8. On 18 March 2015 the Parliamentary Group of Vetëvendosje submitted their comments in respect to Case KO26/15.
9. On 14 April 2015 the Judge Rapporteur presented the Report to the Review Panel. The Review Panel endorsed it and unanimously recommended to the full Court that the Referral be declared admissible for consideration and to confirm that the proposed Amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court’s case law.
10. On the same date, the Court deliberated and voted on the case.
11. Judge Kadri Kryeziu did not participate in the Court’s proceedings and ruling on the current Case KO26/15 based on Decision KK124/14 of 19 August 2014 of the Constitutional Court.

## **Summary of facts**

12. On 7 March 2015 the Government decided to propose to the Assembly of the Republic of Kosovo an Amendment to the Constitution.

13. On the same date the Government, pursuant to Article 144 [Amendments], paragraph 1, of the Constitution, proposed to the President of the Assembly the Amendment to the Constitution.
14. On 9 March 2015 the President of the Assembly referred to the Court the Amendment to the Constitution, requesting the Court to make a prior assessment whether the proposed Amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

### **Admissibility of the Referral**

15. In order for the Court to adjudicate the Applicant's Referral it is necessary to examine whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law.
16. Firstly, the Court needs to determine if the Referral has been submitted by an authorized party and, secondly, whether it has jurisdiction to assess the Amendment to the Constitution proposed by the Government in accordance with Article 113.9 of the Constitution.
17. The Court recalls that, pursuant to Article 113.9 of the Constitution, "*The President of the Assembly of Kosovo refers proposed Constitutional Amendments [...]*".
18. The Court notes that the President of the Assembly, Mr. Kadri Veseli, referred the proposed Amendment. Thus, the Court concludes that it was submitted by the authorized party, pursuant to Article 113.9 of the Constitution.
19. Therefore, pursuant to the same Article 113.9, the Court has "*[...] to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution*".
20. Consequently, the Court has jurisdiction to assess whether or not the proposed Amendment diminishes the rights and freedom guaranteed by Chapter II of the Constitution.
21. Since it is referred by the authorized party and the Court has jurisdiction to adjudicate the case, the Referral is admissible.

### **Scope of the assessment**

22. The scope of the assessment of the proposed Amendment is based on Chapter II [Fundamental Rights and Freedoms], Chapter III [Rights of Communities and their Members] and the letter and spirit of the Constitution (See, Cases Nos. KO29/12 and KO48/12, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 20 July 2012; see, also Case No. KO61/12, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 31 October 2012).

**Proposed Amendment no. 24: new Article 162 of the Constitution to be added following Article 161 of the Constitution**

23. The proposed Amendment consists in adding a new Article 162 of the Constitution, reading as follows:

“ ...

*Article 162 [The Specialist Chambers and the Specialist Prosecutor's Office]*

*Notwithstanding any provision in this Constitution:*

1. *To comply with its international obligations in relation to the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011, the Republic of Kosovo may establish Specialist [N.B. The word “Specialist” in the English text reads as “Specialized” in the Albanian text and as “Special” in the Serbian text.] Chambers and a Specialist Prosecutor's Office within the justice system of Kosovo. The organisation, functioning and jurisdiction of the Specialist Chambers and Specialist Prosecutor's Office shall be regulated by this Article and by a specific law.*
2. *The Specialist Chambers and Specialist Prosecutor's Office shall uphold the protections enshrined within Chapter II of the Constitution, and in particular shall act in compliance with the international human rights standards guaranteed by Article 22 and subject to Article 55.*
3. *A Specialist Chamber of the Constitutional Court, composed of three international judges appointed in addition to the judges referred to in Article 114 (1), shall exclusively decide any constitutional referrals under Article 113 of the Constitution relating to the Specialist Chambers and Specialist Prosecutor's Office in accordance with a specific law.*
4. *The Specialist Chambers and the Specialist Prosecutor's Office shall have full legal and juridical personality and shall have all the necessary powers and mandate for their operation, judicial co-operation, assistance, witness protection, security, detention and the service of sentence outside the territory of Kosovo for anyone convicted, as well as in relation to the management of any residual matters after finalisation of the mandate. Arrangements arising from the exercise of these powers are not subject to Article 18.*
5. *Before entering into any international treaty with a third state relating to judicial cooperation, which would otherwise require ratification under Article 18, the Specialist Chambers shall seek the agreement of the Government.*
6. *The Specialist Chambers may determine its own Rules of Procedure and Evidence, in accordance with international human rights*

standards as enshrined in Article 22 and be guided by the Kosovo Code of Criminal Procedure. The Specialist Chamber of the Constitutional Court shall review the Rules to ensure compliance with Chapter II of the Constitution.

7. *The Specialist Chambers and the Specialist Prosecutor's Office may have a seat in Kosovo and a seat outside Kosovo. The Specialist Chambers and the Specialist Prosecutor's Office may perform their functions at either seat or elsewhere, as required.*
8. *Consistent with international law and pursuant to international agreements, any persons accused of crimes before the Specialist Chambers may be detained on remand and transferred to the Specialist Chambers sitting outside the territory of Kosovo. If found guilty and sentenced to imprisonment, any such persons may be transferred to serve their sentence in a third country, outside the territory of Kosovo, pursuant to arrangements concluded under paragraph 4.*
9. *The official languages of the Specialist Chambers and the Prosecutor's Office shall be Albanian, Serbian and English. The Specialist Chambers and the Specialist Prosecutor may decide on the official use of language(s) for the exercise of their mandate.*
10. *Appointment and oversight of judges and prosecutors and the oversight and administration of the Specialist Chambers and Specialist Prosecutor's Office shall be in accordance with a specific law.*
11. *A separate Ombudsperson of the Specialist Chambers with exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office shall be appointed and his/her function and reporting obligations determined by [a specific law]. Articles 133(2), 134, 135 (1) and (2) shall not apply to the Ombudsperson for the Specialist Chambers. The Ombudsperson of Kosovo may also refer matters as provided by Article 135 (4).*
12. *Specific administrative procedures, modalities, the organisation and functioning of the Specialist Chambers and Specialist Prosecutor's Office, the oversight, budgeting, auditing and other functions will be regulated by international agreement, by a specific law and through arrangements made under paragraph 4.*
13. *The mandate of the Specialist Chambers and the Specialist Prosecutor's Office shall be for a period of five years, unless notification of completion of the mandate in accordance with Law No. 04/L-274 occurs earlier.*
14. *In the absence of notification of completion of the mandate under paragraph 12, the mandate of the Specialist Chambers and the Specialist Prosecutor's Office shall continue until notification of*

*completion is made in accordance with Law No. 04/L-274 and in consultation with the Government.*

II.

*Constitutional amendments shall enter into force immediately upon their adoption by the Assembly of the Republic of Kosovo.*

...”

**Comments of the Parliamentary Group of Vetëvendosje**

24. On 18 March 2015 the Parliamentary Group of Vetëvendosje submitted their comments to the Court in respect of the Amendment to the Constitution. Their comments state that the Amendment is in contradiction with the character and legal status of the Republic of Kosovo and not in compliance with Article 1 [Definition of State], paragraphs 1 and 2, Article 3 [Equality Before the Law], Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution in connection with Article 7 of the Universal Declaration of Human Rights, Article 24 [Equality Before the Law], Article 35 [Freedom of Movement], Article 45 [Freedom of Election and Participation], Article 65 [Competencies of the Assembly], point 4 of the Constitution in connection with Article 18 [Ratification of International Agreements], Article 102 [General Principles of the Judicial System], Article 103 [Organization and Jurisdiction of Courts], Article 104 [Appointment and Removal of Judges], Article 114 [Composition and Mandate of the Constitutional Court], Article 132 [Role and Competencies of the Ombudsperson], Article 134 [Qualification, Election and Dismissal of the Ombudsperson], Article 135 [Ombudsperson Reporting] of the Constitution.
25. They allege that the Draft Amendment aims to create parallel judicial bodies whereas nowhere in the Draft Amendment are any “[...] *elements of dependence of these parallel bodies* [...]” specified in respect of the constitutional bodies. Thus, appointments, selection and responsibility are not sanctioned in the Draft Amendment.
26. According to the Parliamentary Group of Vetëvendosje, the Draft Amendment is creating “[...] *the constitutional basis that in the legal system of the judiciary of the Republic of Kosovo are established legal norms of sui generis nature, which will recognize the right of a completely separate body which would not be subject to generalis regulation of Kosovo.*”
27. They consider that “*The specialized chamber, as named by the sponsor, is in full contradiction with the provisions of Article 114 of the Constitution in terms of its composition. Another element regarding the collision that these norms are creating in this draft amendment is the subject matter jurisdiction of this "specialized" chamber in relation to Article 112 and 113 of the Constitution.*”
28. Moreover, according to the Parliamentary Group of Vetëvendosje, “*Under paragraph 4, the specialized Chambers and specialized Prosecutor's Office will have full legal capacity that in a general sense enter the international*

*relations and thus [...] the Assembly of Kosovo was excluded from ratification, or granting of internal instrument (consent) for the conclusion of these agreements with international character.”*

29. *The Parliamentary Group of Vetëvendosje, in respect to the proposed Amendment of Article 162, paragraph 5, of the Constitution consider that “[...] with this draft amendment, the provisions of paragraph 5 violate the competencies of the Assembly of Kosovo, as provided by Article 65, item 4 of the Constitution related to the competence for ratification of international agreements. Thus, the consent for conclusion of international agreements by the specialized chambers and office of specialized prosecutor will be taken only by the Government and not by the Assembly of Kosovo as provided by Article 18 of the Constitution.”*
30. *They allege that “Under paragraph 6 of the draft amendment [...] with granting of constitutional authority that these chambers and Office of the Prosecutor to have the right to issue new procedural rules, make the accused in conducted procedures before them discriminated against in terms of their protection from the law and use of legal remedies through rules that are provided with the applicable laws of the state, which citizens they are.”*
31. *In respect to the proposed Amendment of Article 162, paragraphs 7 and 8, of the Constitution, it “[...] relates to the extradition of citizens of the Republic of Kosovo and which under Article 35, paragraph 4, the extradition of citizens of Kosovo, within their fundamental right to free movement shall not be extradited from Kosovo against their will except for cases when otherwise required by international law and agreements.”*
32. *The Parliamentary Group of Vetëvendosje considers that “Paragraph 10 of the draft amendment excludes in entirety application of the provisions of Article 104 of the Constitution of Kosovo. Making available that the issue of appointment of judges be left to legal regulation, which again under preclusive clause to regulate the appointment of judges outside the standard prescribed by Article 104 of the Constitution and the provisions of the Law on the Kosovo Judicial Council [...].”*
33. *They further submit that “Under paragraph 11 of the draft amendment is envisaged the establishment of a special Ombudsperson of Specialized Chambers which will not be elected, nor shall report to the Assembly of Kosovo under the provisions of Article 132, par. 2 and Articles 134 and 135 par. 1 and 2 of the Constitution of Kosovo.”*
34. *In conclusion, the Parliamentary Group of Vetëvendosje considers that “It is not foreseen either in theory or practice of drafting constitutional norms that the constitutional provisions are referred to a legal act which is subordinate to the constitutional act. This creates legal and constitutional uncertainty and such a norm violates legal order in general because while constitutional provisions undergo special constitutional procedure and approval by the double qualified majority in accordance with Article 144, par. 2, of the Constitution [...]”.*

## Assessment of the proposed Amendment

35. The proposed Amendment will be reviewed by the Court in accordance with the scope of assessment defined above. Initially, the Court will examine the structural elements introduced by the Amendment for their inter-relationship with the existing structures of the justice system of the Republic of Kosovo.
36. The Court notes that the proposed Amendment to the Constitution contains four structural elements related to the justice system of the Republic of Kosovo.
  - a. The first one is to establish Specialist Chambers within the justice system of the Republic of Kosovo;
  - b. The second one is to create a Specialist Prosecutor's Office within the justice system of the Republic of Kosovo;
  - c. The third one is to introduce a Specialist Chamber within the Constitutional Court composed of three international judges, who shall exclusively decide any constitutional referrals under Article 113 of the Constitution relating to the Specialist Chambers and Specialist Prosecutor's Office;
  - d. The fourth one is to appoint an Ombudsperson of the Specialist Chambers with exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office.
37. The Court recalls that the introduction of the above Constitutional Amendment derives from the International Agreement between the Republic of Kosovo and the European Union dated 14 April 2014.
38. On 23 April 2014 the Assembly, by a two-thirds majority, adopted Law No. 04/L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union, on the European Union Rule of Law Mission in Kosovo (hereinafter: Law No. 04/L-274). This Law entered into force on 30 May 2014.
39. The Court notes that the Amendment states that the establishment of Specialist Chambers and a Specialist Prosecutor's Office within the justice system of the Republic of Kosovo is a requirement for the Republic of Kosovo to comply with its international obligations in relation to the Report of the Parliamentary Assembly of the Council of Europe (Doc. 12467) of 7 January 2011.
40. In order to examine the inter-relationship of the structural elements of the Amendment with the justice system, the Court refers to Article 4 [Form of Government and Separation of Power], paragraph 5, of the Constitution which provides that: *"The judicial power is unique and independent and is exercised by courts."*
41. The nature of the exercise of judicial power is further developed in Chapter VII of the Constitution, which determines the structure of the Justice System of the



Republic of Kosovo. Article 102 [General Principles of the Judicial System] of the Constitution reads as follows:

- “1. *Judicial power in the Republic of Kosovo is exercised by the courts.*
  2. *The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.*
  3. *Courts shall adjudicate based on the Constitution and the law.*
  4. *Judges shall be independent and impartial in exercising their functions.*
  5. *The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal.”*
42. Furthermore, Article 103 [Organization and Jurisdiction of Courts], paragraph 7, of the Constitution foresees a constitutional right of the Republic of Kosovo to establish specialized courts. It reads as follows: “*Specialized courts may be established by law when necessary, but no extraordinary court may ever be created.*”
43. The Court considers that a specialized court, as foreseen by this provision, means a court with a specifically defined scope of jurisdiction, and which remains within the existing framework of the judicial system of the Republic of Kosovo and operates in compliance with its principles. Unlike a specialized court, an “extraordinary court” would be placed outside the structure of the existing court system and would operate without reference to the existing systems.
44. As such, the Court finds that, in order for a specialized court to be in compliance with the constitutional provision authorizing the establishment of such courts, the structure, scope of jurisdiction and method of functioning of such a court need to be in compliance with the rights provided by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court’s case law related to the overall framework of the judicial system of the Republic of Kosovo.
45. In addition, the Court notes that there are two formal requirements foreseen under Article 103, paragraph 7, of the Constitution for the creation of a specialized court. Firstly, it needs to be based upon law and secondly, there needs to be a necessity for its establishment.
46. As to the first requirement, the Court notes that the proposed Amendment foresees under Article 162, paragraph 1, that:
- a. The Specialist Chambers will be established within the already established existing courts within the justice system of the Republic of

Kosovo similar to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters. This Special Chamber was established by the Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, No. 04/L-033, dated 31 August 2011, which based on Article 21.2 of the Law on Courts No. 03/L-199, is part of the Supreme Court.

- b. The establishment of the Specialist Chambers will be established through the adoption of a specific law by the Assembly, which will regulate its “[...] *organisation, functioning and jurisdiction* [...].”
47. In this respect, the Court refers to the European Court of Human Rights (hereinafter: the “ECtHR”) case of *Fruni v Slovakia* (See Case *Fruni v. Slovakia*, application no. 8014/07, Judgment of 21 June 2011).
48. In this case, the ECtHR held that “[...] *Article 6 § 1 cannot be read as prohibiting the establishment of special criminal courts if they have a basis in law* (see *Erdem v. Germany* (dec.), no. 38321/97, 9 December 1999). The ECtHR reiterated that “[...] *the object of the term “established by law” in Article 6 of the Convention is to ensure “that the judicial organisation in a democratic society [does] not depend on the discretion of the Executive, but that it [is] regulated by law emanating from Parliament”.*
49. Consequently, given that the proposed Amendment aims to establish the Specialist Chambers by law, it is in compliance with that requirement of Article 103, paragraph 7, of the Constitution.
50. As to the second requirement contained in Article 103, paragraph 7, namely that the Specialized Court must be “necessary”, the Court notes that the proposed Amendment states that the establishment of Specialist Chambers and a Specialist Prosecutor's Office within the justice system of the Republic of Kosovo is a requirement for the Republic of Kosovo to comply with its international obligations.
51. These international obligations stem from the Report of the Parliamentary Assembly of the Council of Europe (Doc 12462) of 7 January 2011, which outlines a number of highly specific criminal allegations and recommends them for investigation and prosecution. These obligations were incorporated into the legal framework of the Republic of Kosovo through the adoption by a two-thirds majority by the Assembly of Law No. 04/L-274.
52. In this respect, the Court refers to the above-mentioned ECtHR case of *Fruni v Slovakia*, wherein the ECtHR acknowledged that “[...] *fighting corruption and organised crime may well require measures, procedures and institutions of a specialised character.*”
53. Therefore, the Court finds that the scope of jurisdiction of the Specialist Chambers as provided by the Amendment is also in compliance with the requirement of “necessity” contained in Article 103, paragraph 7, of the Constitution.

54. In addition, on the basis of the jurisprudence of the ECtHR as quoted above, the specialized court chambers to be established by the Amendment are also in compliance with the requirement to be based in law and to come within a specialized scope of jurisdiction. Therefore, the Amendment complies with the requirements of an independent and impartial tribunal, as stipulated by Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR.
55. Furthermore, the Amendment provides that the specific administrative procedures, modalities, organization and functioning of the Specialist Chambers, oversight, budgeting, auditing and other functions will be regulated, *inter alia*, by a specific law. The Specialist Chambers may determine Rules of Procedure and Evidence, in accordance with international human rights standards as enshrined in Article 22 of the Constitution, which shall be reviewed by the Specialist Chamber of the Constitutional Court for compliance with Chapter II of the Constitution. Such rules shall be guided by the provisions of the Kosovo Code of Criminal Procedure.
56. The Court also notes that it is envisaged in paragraphs 13 and 14 of Amendment no. 24 that the mandate of the Specialist Chambers is foreseen to be for a period of five years, unless a notification of completion of the mandate is made in accordance with the Law 04/L-274 and in consultation with the Government.
57. In addition, the Court notes that, pursuant to the proposed Amendment of Article 162, paragraph 2, the Constitution shall be upheld by the established Specialist Chambers, in particular the protections enshrined within its Chapter II, and they shall act in compliance with the international human rights standards guaranteed by Article 22 and subject to Article 55. These are procedural guarantees for those who will be subject to the jurisdiction of the Specialist Chambers.
58. Therefore, the Court finds that the means of functioning of the Specialist Chambers is within the framework of the justice system of the Republic of Kosovo.
59. The Court concludes that the proposed Specialist Chambers will be established within the *unique and independent judicial power that is exercised by courts* based on the Constitution. The structure, scope of jurisdiction and functioning of the Specialist Chambers will be regulated by further laws in compliance with the Constitution. Therefore, the Specialist Chambers do not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.
60. As far as the proposal to establish the Specialist Prosecutor's Office is concerned, the Court notes that its establishment follows the same principle as for the Specialist Chambers. The scope of jurisdiction of the Specialist Prosecutor's Office will be for the same specific crimes as for the Specialist Chambers. Furthermore, as with the Specialist Chambers, under paragraph 2 of the Amendment, the Specialist Prosecutor's Office has to apply and uphold standards and principles enshrined within Chapter II of the Constitution and

act in compliance with the international human rights standards guaranteed by Articles 22 and 55 of the Constitution.

61. The Court also notes that it is envisaged in paragraphs 13 and 14 of Amendment no. 24 that the mandate of the Specialist Prosecutor's Office is foreseen to be for a period of five years, unless a notification of completion of the mandate is made in accordance with the Law 04/L-274 and in consultation with the Government.
62. As such, the Specialist Prosecutor's Office will be established within the already existing prosecutorial system of the Republic of Kosovo. The Specialist Prosecutor's Office will be established by law, which will regulate its "[...] *organisation, functioning and jurisdiction* [...]."
63. Accordingly, the Court finds that the proposed Amendment is in compliance with Constitutional safeguards for the protection of human rights, and that further laws and regulations will be established within the framework of the justice system to further protect the fundamental rights of persons coming within the jurisdiction of the Specialist Prosecutor's Office.
64. The Court concludes that the Amendment to establish a Specialist Prosecutor's Office does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.
65. As to the proposed Amendment to establish a Specialist Chamber of the Constitutional Court, the Court reiterates its above findings and notes also that the Specialist Chamber will be established within the existing Constitutional Court. This Specialist Chamber will exercise, through its Constitutional review of proposed Rules of Procedure and Evidence, and through the mechanism of individual constitutional complaints, a supervisory jurisdiction over the Specialist Chambers within the regular courts and the Specialist Prosecutor's Office.
66. Therefore, the Court concludes that the proposed Amendment to establish a Specialist Chamber within the Constitutional Court does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.
67. As to the proposed Amendment to establish a separate Ombudsperson of the Specialist Chambers with the exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office, the Court reiterates its above findings and concludes that the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.
68. In conclusion, the Court finds that the four new structural elements introduced into the Constitution by the Amendment will (a) be established by law, (b) conform with the existing structure of the justice system of the Republic of

Kosovo, (c) have a specific scope of jurisdiction, (d) function within the legal framework of criminal justice, and (e) is necessary for the Republic of Kosovo to comply with its international obligations. Therefore, the Court concludes that the establishment of the four structural elements to the justice system of the Republic of Kosovo comes within the existing justice system of the Republic of Kosovo and responds to the characteristics of the Constitutional system of independent judicial power.

69. With respect to the comments submitted by the Parliamentary Group of Vetëvendosje, the Court observes that these comments are exclusively directed at the fact that the Amendment establishes new structural elements which have not been foreseen previously by the Constitution. However, the Court has found that the establishment of these new structural elements does not, in and of itself, create any contradiction with the provisions of the Constitution, because their structure, scope and functioning are in compliance with Chapter II and Chapter III of the Constitution and with the letter and spirit of the Constitution as established in the Court's case-law.
70. The Court will review the Amendment paragraph by paragraph of the proposed Article 162.

***Amendment to the Constitution, Article 162, paragraph 1, of the Constitution***

71. As to the proposed Amendment of Article 162, paragraph 1, of the Constitution, the Court notes that the creation of the four structural elements within the justice system stems from the sovereignty of the Republic of Kosovo, whereby the Assembly, by a two-thirds majority, adopted Law No. 04/L-274. This is in compliance with Article 103, paragraph 7, and Article 31 of the Constitution, because these new structural elements to the justice system of Kosovo are done by law and for the purpose of fighting specific crimes, which, in accordance with the case law of the ECtHR, requires measures, procedures and institutions of a specialized character.
72. Therefore, the Court confirms that paragraph 1 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 2, of the Constitution***

73. As to the proposed Amendment of Article 162, paragraph 2, of the Constitution, the Court notes that it entails the procedural guarantees for persons who will be subject to the jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office.
74. Paragraph 2 obliges the Specialist Chambers and the Specialist Prosecutor's Office to uphold the protections enshrined within Chapter II of the Constitution. In this respect, it is noted that, through Article 53 of the Constitution, the jurisprudence of the ECtHR must also be applied.

75. In addition to these procedural guarantees that are enshrined in Chapter II of the Constitution, it is noted that the Specialist Chambers and the Specialist Prosecutor's Office must act in compliance with the international human rights standards as guaranteed by Articles 22 and 55 of the Constitution, meaning that any limitation of fundamental human rights and freedoms must be done in accordance with Article 55. However, as foreseen by Article 56 of the Constitution, the derogation of some of the fundamental human rights and freedoms enshrined in Chapter II of the Constitution shall not be permitted under any circumstances.
76. Therefore, the Court confirms that paragraph 2 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 3, of the Constitution***

77. As to the proposed Amendment of Article 162, paragraph 3, of the Constitution, the Court notes that the creation of a Specialist Chamber within the Constitutional Court is an additional guarantor of the Constitution. The Specialist Chambers and the Specialist Prosecutor's Office will be under its supervisory jurisdiction through possible constitutional complaints in accordance with Article 113 of the Constitution.
78. This Specialist Chamber within the Constitutional Court will follow the same standards and principles enshrined in the Constitution as the existing Constitutional Court. However, the scope of Referrals that can come before this Chamber will be exclusively in respect to the Specialist Chambers and the Specialist Prosecutor's Office.
79. Therefore, the Court confirms that paragraph 3 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 4, of the Constitution***

80. As to the proposed Amendment of Article 162, paragraph 4, of the Constitution, the Court notes that it ensures that the Specialist Chambers and the Specialist Prosecutor's Office will take full care of all elements of the right to a fair and impartial trial and other procedural guarantees towards the persons who will be subject to the jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office. This will be done through powers and mandate necessary for their operation, judicial co-operation, assistance, witness protection, security, detention and the service of sentence outside the territory of the Republic of Kosovo for anyone convicted, as well as in relation to the management of any residual matters after finalization of the mandate.

81. Therefore, the Court confirms that paragraph 4 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 5, of the Constitution***

82. As to the proposed Amendment of Article 162, paragraph 5, of the Constitution, the Court notes that, although the arrangements arising from the exercise of the powers mentioned in paragraph 4 are not subject to Article 18, nonetheless these arrangements shall seek the agreement of the Government. Therefore, before entering into any international treaty on judicial cooperation, the procedure for seeking the agreement of the Government shall be in compliance with the provisions of the Constitution.
83. Therefore, the Court confirms that paragraph 5 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 6, of the Constitution***

84. As to the proposed Amendment of Article 162, paragraph 6, of the Constitution, the Court notes that these are additional guarantees which will be included in the Rules of Procedure and Evidence of the Specialist Chambers. The Rules of Procedure and Evidence will follow international human rights standards and the existing Kosovo legislation of the Code of Criminal Procedure.
85. Moreover, the Rules of Procedure and Evidence will be subject to review for their compliance with the Constitution by the Specialist Chamber within the Constitutional Court, as an additional guarantee that the procedural rights under Chapter II of the Constitution are respected.
86. Therefore, the Court confirms that paragraph 6 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 7, of the Constitution***

87. As to the proposed Amendment of Article 162, paragraph 7, of the Constitution, the Court notes that it is linked to the established structural elements within the Justice System of the Republic of Kosovo and the established procedural guarantees.
88. Therefore, the Court confirms that paragraph 7 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the

Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 8, of the Constitution***

89. As to the proposed Amendment of Article 162, paragraph 8, of the Constitution, the Court notes that any actions to be taken in respect to a person that will become subject to the jurisdiction of the Specialist Chambers and the Specialist Prosecutor's must be consistent with the standards established by international law.
90. Therefore, the Court confirms that paragraph 8 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 9, of the Constitution***

91. As to the proposed Amendment of Article 162, paragraph 9, of the Constitution, the Court notes that the use of language is one of the guarantees of the right to fair trial. As such, the official use of Albanian and Serbian, which are the official constitutional languages of the Republic of Kosovo, is envisaged.
92. Therefore, the Court confirms that paragraph 9 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 10, of the Constitution***

93. As to the proposed Amendment of Article 162, paragraph 10, of the Constitution, the Court notes that the appointment and oversight of judges and prosecutors will be determined by law.
94. As such, all laws are subordinated to the principles enshrined in the Constitution when being adopted by the Assembly.
95. Therefore, the Court confirms that paragraph 10 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 11, of the Constitution***

96. As to the proposed Amendment of Article 162, paragraph 11, of the Constitution, the Court notes that it is an additional guarantee that the values, principles and standards of the Constitution will be protected. The foreseen



exclusion of some of the constitutional provisions related to the Ombudsperson of the Republic of Kosovo is a consequence of the exclusive competence of the separate Ombudsperson to deal with the Specialist Chambers and the Specialist Prosecutor's Office. The specific competence of this Ombudsperson will be determined by law.

97. Therefore, the Court confirms that paragraph 11 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraph 12, of the Constitution***

98. As to the proposed Amendment of Article 162, paragraph 12, of the Constitution, the Court notes that this Amendment is of a technical nature which will be foreseen in the law that will be adopted by the Assembly.
99. The Court reiterates that the law will be subordinate to the principles of the Constitution when being adopted by the Assembly.
100. Therefore, the Court confirms that paragraph 12 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Amendment to the Constitution, Article 162, paragraphs 13 and 14, of the Constitution***

101. As to the proposed Amendment of Article 162, paragraphs 13 and 14, of the Constitution, the Court notes that this is in compliance with the principle of legal certainty.
102. Therefore, the Court confirms that paragraphs 13 and 14 of the proposed Amendment do not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

***Entering into force of Amendment no. 24***

103. As to the entering into force of Amendment no. 24, the Court notes that the text under roman number II that regulates it is identical to Article 144, paragraph 4, of the Constitution which reads as follows:

*“Amendments to the Constitution enter into force immediately after their adoption in the Assembly of the Republic of Kosovo.”*

104. Therefore, the Court confirms that this text of the Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

105. In conclusion, for the above reasons, the Court confirms that the proposed Amendment no. 24 does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law. Therefore, the proposed Amendment is in compliance with the Constitution.

### FOR THESE REASONS

The Court, pursuant to Article 113.9 and Article 144.3 of the Constitution, Article 20 of the Law and Rule 56 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, in its session of 14 April 2015, unanimously

### DECIDES

- I. TO DECLARE admissible the Referral by the President of the Assembly submitted on 9 March 2015 with Amendment no. 24 to the Constitution of the Republic of Kosovo;
- II. TO CONFIRM that the Amendment no. 24 does not diminish human rights and freedoms set forth in Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law;
- III. TO NOTIFY this Judgment to the Parties and to publish it in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. TO DECLARE this Judgment effective immediately.

**Judge Rapporteur**

  
Snezhana Botusharova

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

