



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

Prishtina, 4 April 2017
Ref. no.:AGJ1053/17

JUDGMENT

in

Case No. KO01/17

Applicants

Aida Dërguti and 23 other Deputies of the Assembly of the Republic of Kosovo

**Constitutional review of the
Law on Amending and Supplementing the
Law No. 04/L-261 on the
War Veterans of the Kosovo Liberation Army**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicants

1. The Referral was submitted by Glauk Konjufca, Albin Kurti, Aida Dërguti, Albulena Haxhiu, Besa Baftija, Rexhep Selimi, Ismail Kurteshi, Mytaher Haskuka, Puhie Demaku, Faton Topalli, Fisnik Ismaili, Visar Ymeri, Driton Çaushti, Shqipe Pantina, Donika Kadaj-Bujupi, Salih Salihu, Pal Lekaj, Time Kadrijaj, Teuta Haxhiu, Lahi Ibrahimaj, Daut Haradinaj, Rrustem Berisha, Ali

Berisha, Bali Muharremaj (hereinafter, the Applicants), all of them Deputies of the Assembly of the Republic of Kosovo (hereinafter, the Assembly).

2. The Applicants have authorized the Deputy of the Assembly Aida Dërguti to represent them in the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

Challenged law

3. The Applicants challenge the constitutionality of certain provisions of the Law on Amending and Supplementing the Law No. 04/L -261 on the War Veterans of the Kosovo Liberation Army (hereinafter, the challenged Law), adopted by the Assembly on 30 December 2016.

Subject matter

4. The subject matter is the assessment of the constitutionality of Articles 3, 4 and 5 of the Challenged Law, which allegedly are not compatible with Articles 24 [Equality Before the Law], 31 [Right to a Fair and Impartial Trial], 46 [Protection of Property] and 51 [Health and Social Protection] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution); Articles 6 [Right to a Fair Trial], 14 [Prohibition of Discrimination] and Article 1 [Protection of Property] of Protocol No 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR); and Articles 7 and 22 of the Universal Declaration of Human Rights (hereinafter, the UDHR).

Legal basis

5. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, and Articles 42 [Accuracy of the Referral] and 43 [Deadline] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Court

6. On 10 January 2017, the Applicants submitted to the Court the Referral with attached documents.
7. On 10 January 2017, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (presiding), Ivan Čukalović and Bekim Sejdiu.
8. On 11 and 12 January 2017, respectively, the Court notified the Secretariat of the Assembly of the Republic of Kosovo (hereinafter, the Secretariat) and the President of the Republic of Kosovo reminding them that, in accordance with paragraph 2 of Article 43 [Deadline] of the Law, the contested Law cannot be decreed, enter into force, or produce legal effects until the Court finally decides regarding the matter raised before it.

9. On 12 January 2017, the Court notified the Applicants of the registration of the Referral.
10. On 12 January 2017, the Referral was communicated to: the President of the Republic of Kosovo; the President of the Assembly of the Republic of Kosovo (hereinafter, the President of the Assembly) with instructions to distribute the Referral to all Deputies of the Assembly; the Prime Minister of the Republic of Kosovo (hereinafter, the Prime Minister); the Secretariat which was asked to submit the final adopted version of the challenged Law as well as all documents relevant to the case; the Ombudsperson of the Republic of Kosovo (hereinafter, the Ombudsperson); and the Organization of War Veterans of the Kosovo Liberation Army.
11. The Deputies of the Assembly, the Prime Minister, the Ombudsperson and the Organization of War Veterans of the Kosovo Liberation Army were asked to submit their comments, if they have any, by 23 January 2017.
12. On 13 January 2017, the Applicants supplemented the Referral with additional allegations, namely requesting also the assessment of the constitutionality of Article 5 of the challenged Law.
13. On 13 January 2017, the supplemented Referral was communicated to: the President of the Republic of Kosovo; the President of the Assembly; the Prime Minister; the Ombudsperson; and the Organization of War Veterans of the Kosovo Liberation Army.
14. The Deputies of the Assembly, the Prime Minister of the Republic of Kosovo, the Ombudsperson and the Organization of War Veterans of the Kosovo Liberation Army were informed that they can submit additional comments, if they have any, by 23 January 2017. The Court did not receive any comments.
15. On 18 January 2017, the Secretariat submitted the final version of the challenged Law adopted by the Assembly as well as all documents relevant to the case.
16. The Court noted that Article 4 of the version of the challenged Law finally adopted by the Assembly differs from the text that the Applicants referred and attached to their initial Referral.
17. As a result, on 24 January 2017, the Court requested the Applicants to inform the Court, not later than 27 January 2017, whether they retain the same allegation as they specified in relation to the text they initially referred to or they want to amend or withdraw from that allegation. The Court did not receive any response from the Applicants.
18. On 30 January 2017, the Court informed, attaching a copy, the President of the Republic, the President of the Assembly, the Prime Minister, the Ombudsperson and the Organization of War Veterans that the version of the Law finally adopted by the Assembly differs from the text that Applicants referred to in their initial Referral.

19. The Deputies of the Assembly, the Prime Minister, the Ombudsperson and the Organization of War Veterans were informed that they could submit their additional comments, if they have any, by 6 February 2017. The Court did not receive any comments.
20. On 28 March 2017, the Review Panel considered the Report of the Judge Rapporteur and, by unanimity, made a recommendation to the Court to declare the Referral admissible and to assess the substance of the Referral.

Summary of facts

21. On 03 April 2014, the Assembly adopted the Law No. 04/L-261 on the War Veterans of the Kosovo Liberation Army (hereinafter, the basic Law). It was promulgated on 18 April 2014, published in the Official Gazette of the Republic of Kosovo on 23 April 2014 and entered into force on 09 May 2014.
22. On 28 December 2016, the Ministry of Health and Social Welfare submitted to the Government the draft Law on Amending the Law No. 04/L-261 on the War Veterans of the Kosovo Liberation Army (hereinafter, the draft Law) together with: the Explanatory Memorandum of the challenged Law (hereinafter, the Explanatory Memorandum); the Certificate of Compliance with the “EU-Acquis” issued by the Ministry of European Integration; the Certificate on Budgetary Impact Assessment issued by the Ministry of Finance; and the Certificate of Compliance with the Rules of Procedure of the Government.
23. On 29 December 2016, the Government of the Republic of Kosovo (Decision No. 02/124) adopted the draft Law. On the same day, the Prime Minister of the Republic of Kosovo submitted the draft Law to the President of the Assembly and requested an extraordinary session on the review and adoption of the draft Law. The extraordinary session was granted and scheduled to be held on 29 December 2016.
24. On that same day, the President of the Assembly distributed to the Deputies the text of the draft Law with the accompanying documents and requested the Assembly Committee on Health, Labour and Social Welfare to report on the draft Law.
25. On that same day, the Assembly Committee on Health, Labour and Social Welfare recommended the adoption in principle of the text of the draft Law as submitted by the Government.
26. On that same day, the President of the Assembly summoned all Deputies to an extraordinary session, scheduled for 29 December 2016, to begin at 15:15. However, due to the lack of quorum, that extraordinary session was postponed for 30 December 2016, to begin at 10:00.
27. On 30 December 2016, during the extraordinary session, the Head of the Parliamentary Group of PDK proposed to the Assembly that an expedited procedure in reviewing and adopting the draft Law within the same day be followed.

28. On that same date, the Assembly decided (Decision No. 05-V-407) to review the draft Law in both readings under an expedited procedure in accordance with the Rules of Procedure. Sixty one (61) Deputies participated in voting: fifty two (52) Deputies voted in favor and nine (9) Deputies voted against.
29. Consequently, during the procedure of first reading of the draft Law, the Chairperson of the Assembly ordered a one-hour break, due to the lack of quorum necessary for adoption of the draft Law in the first reading.
30. After the break, the President of the Assembly proceeded with the first reading. Sixty three (63) Deputies were present in the extraordinary session. The Assembly approved the draft Law in principle by majority of votes.
31. Then, the President of the Assembly ordered the Assembly Committees to urgently review the draft Law and introduce eventual amendments before proceeding to the second reading. The assigned committees were: the Committee on Health, Labour and Social Welfare; the Committee on Budget and Finance; the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency; the Committee on European Integration and the Committee on the Rights, Interests of the Communities and Returns. The second reading was scheduled to begin at 18.15 of the same day.
32. On the same day, the Committee on Health, Labour and Social Welfare reviewed the draft Law and the reports submitted by the Committees on: Budget and Finance; Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency; and European Integration. Then, the Committee on Health, Labour and Social Welfare introduced to the Assembly a report with recommendation of eight (8) amendments to the draft Law. The Committee on the Rights, Interests of the Communities and Returns did not submit a report.
33. On the same day, the President of the Assembly proceeded with the second reading. Sixty three (63) Deputies were present. The Assembly approved the draft Law with four (4) amendments (out of eight (8)) proposed by the Committee on Health, Labour and Social Welfare. Forty four (44) Deputies voted in favor, eight (8) Deputies voted against and eleven (11) Deputies abstained.
34. Therefore, on 30 December 2016, the Assembly adopted (Decision 05-V-410) the draft Law as the Law on Amending and Supplementing the Law No. 04/L - 261 on the War Veterans of the Kosovo Liberation Army (the challenged Law).

Applicants' allegations

35. The Applicants claim that Articles 3, 4 and 5 of the challenged Law are not compatible with Articles 24 [Equality Before the Law], 31 [Right to a Fair and Impartial Trial], 46 [Protection of Property] and 51 [Health and Social Protection] of the Constitution; Articles 6 [Right to a Fair Trial], 14 [Prohibition of Discrimination] and Article 1 [Protection of Property] of

Protocol 1 to the ECHR (hereinafter, Article 1 of Protocol 1); and Articles 7 and 22 of the UDHR.

1. With regard to Article 3 of the challenged Law

36. Article 3 (2) of the challenged Law adds paragraphs 5 and 6 to Article 16 of the basic Law.
37. The Applicants claim that Article 3 of the challenged Law “constitutes a violation of Article 24 of the Constitution of the Republic of Kosovo – [Equality Before the Law], Article 51 of the Constitution of the Republic of Kosovo – [Health and Social Protection], Article 7 of the Universal Declaration of Human Rights, Article 22 of the Universal Declaration of Human Rights, and Article 14 of the European Convention on Human Rights – Prohibition of Discrimination”.
38. The Applicants allege that “[...] the persons who participated to the liberation war and who enjoy the status of War Veteran of KLA and who live in another country are deprived of the right to realize benefits that were foreseen by the basic law and [the challenged Law]. [...] The denial of realization of benefit entitlements preceded by the legislation in force based solely on their place of residence is discriminatory”.

2. With regard to Article 4 of the challenged Law

39. Article 4 of the challenged Law adds a new Article 16A to the basic Law.
40. Firstly, the Applicants claim that Article 4 of the challenged Law “constitutes a violation of Article 24 of the Constitution of the Republic of Kosovo – [Equality Before the Law], Article 7 of the Universal Declaration of Human Rights, and Article 14 of the European Convention on Human Rights – [Prohibition of Discrimination]”.
41. The Applicants allege that “[t]he definition of the category stipulated in the provision of Article 4 of the [challenged Law], based on which Article 16a is worded, constitutes a discriminatory regulation in relation to the legal definition sanctioned by Article 3 of the basic law [sub-paragraph 1.3]”.
42. Secondly, the Applicants also claim that the challenged Law, by foreseeing the new categorization of war veterans, contradicts provisions of the basic Law since those provisions have not explicitly been amended by the challenged Law. The Applicants allege that, by not amending, supplementing or repealing specific provisions of the basic Law, the challenged Law is in contradiction with the “Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, with Article 10, paragraph 2, thereof stipulating (we quote): “Amending, supplementing or repealing an Article or its sub-divisions must be done by a special paragraph for each article”.
43. Thirdly, the Applicants also challenge the constitutionality of Article 4 of an initially attached text of the challenged Law, which supposedly added new paragraphs 4 and 6 to Article 16A of the basic Law. However, Article 4 of the

final text of the challenged Law substantially differs from Article 4 of the initially attached text.

3. With regard to Article 5 of the challenged Law

44. Article 5 of the challenged Law deletes Article 18 of the basic Law.
45. The Applicants claim that the deletion of Article 18 of the basic Law “contradicts Articles 46 and 51 of the Constitution of the Republic of Kosovo, as read in conjunction with Article 1 of Protocol 1 to the ECHR”.
46. In fact, they allege that “such violation is a result of the fact that by Article 18 of the basic law [...], the KLA fighter veterans, as a separate social category, were guaranteed without exception the right to a pension not lower than the minimum salary in the Republic of Kosovo which, within the meaning of Article 57 of Law no. 03/L-212 on Labor, constitutes the minimum income aiming at protecting the vital income in terms of the maintenance of the social welfare of such social category”.
47. The Applicants further allege that “the pension guaranteed by Article 18 of the basic law [...] constitutes, within the meaning of Article 6 of the Convention as read in conjunction with Article 1 of Protocol 1 to the Convention, a legitimate expectation and a violation of the property right because this legitimate right is being denied to the social category that had such legitimate expectations on the basis of legal provisions, and by the challenged [Law], direct legal consequences will be given rise to thereby violating such expectations”.
48. In this regard, the Applicants recall the case-law of the European Court of Human Rights [hereinafter, the ECtHR] namely, “*Pressos Campania Naviera SA et al vs. Belgium*, ECtHR, Judgment of 20 November 1995, paragraph 31; *Gratzinger and Gratzingerova vs Republic of Greece*, no. 39794/98, Decision of 10 July 2002, paragraph 73, as well as the “judgments of [the Court] in the KEK cases [...]”.

Relief Sought

49. Finally, the Applicants request the Court to annul the following Articles of the challenged Law: Article 3 (adding paragraphs 5 and 6 to Article 16 of the Basic Law); Article 4 (adding paragraph 1, subparagraphs 1.1, 1.2 and 1.3 to Article 16A of the Basic Law); and Article 5 (deleting Article 18 of the basic Law).

Admissibility of the Referral

50. The Court first examines whether the Referral fulfills the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).
51. Initially, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes that “the

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

52. In addition, the Court also refers to Article 113 (5) of the Constitution, which establishes that *“ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.”*
53. In that respect, the Court notes that the Applicants challenge the constitutionality of the challenged Law only as regards its substance and not as to the procedure followed for its adoption. Thus, the task of the Court is only to review whether the substance of the contested law is in violation of the Constitution as alleged by the Applicants.
54. Moreover, the Court notes that the Referral was submitted by twenty four (24) Deputies of the Assembly, in accordance with Article 113 (5) of the Constitution. Therefore, the Applicants are an authorized party.
55. Furthermore, the Court takes into account Article 42 [Accuracy of the Referral] of the Law, which provides:

1. In a referral made pursuant to Article 113, Paragraph 5 of the Constitution the following information shall, inter alia, be submitted:

- 1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;*
- 1.2. provisions of the Constitution or other act or legislation relevant to this referral; and*
- 1.3. presentation of evidence that supports the contest.”*

56. The Court notes that the Applicants indicated the names with the signatures of the deputies, specified the challenged Law they contested, referred to the relevant constitutional provisions they allege the challenged law is not compatible with and presented evidence supporting their allegations. Thus, the Court considers that the requirements of Article 42 of the Law have been met.
57. The Court further notes that the challenged Law was adopted on 30 December 2016, while the Referral was submitted to the Court on 10 January 2017. Thus, the deadline of *“eight (8) days from the date of adoption”*, ended on 7 of January 2017.
58. However, the Court refers to Rule 27 [Calculation of Time Periods] of Rules of Procedure, which foresees:

A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows:

[...]

(6) When a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day.

59. The Court notes that 7, 8 and 9 of January 2017 were respectively Saturday, Sunday and official holiday. Thus, the deadline for submitting the Referral was extended until the end of the first following working day, which was 10 of January 2017. Therefore, the Referral has been submitted in a timely manner.
60. In conclusion, the Court finds that the Applicants are an authorized party, they have identified the contested Law, specified their constitutional allegations, presented supporting evidence and filed the Referral within the established deadline. Thus, the Court concludes that the Applicants have complied with the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules.

The Substance of the Referral

61. The Court recalls that the Applicants contest the constitutionality of Articles 3 (2), 4 and 5 of the challenged Law only as regards its substance.

1. Constitutionality of Article 3 (2) of the challenged Law

62. The Court observes that Article 3 (2) of the challenged Law adds paragraphs 5 and 6 to Article 16 of the basic Law, which read:

Article 16 of the basic Law after paragraph 4 there are added paragraphs 5 and 6 as follows:

5. KLA Fighter Veteran living abroad shall be entitled to other benefits according to this Law but shall not be entitled to pension.

6. Notwithstanding paragraph 5 of this Article, the KLA Fighter Veteran, who lives in neighboring countries, is entitled in all rights foreseen in this Law.

63. In that respect, the Applicants claim that “[...] *the persons who participated to the liberation war and who enjoy the status of War Veteran of KLA and who live in another country are deprived of the right to realize benefits that were foreseen by the basic law [...]*”.
64. The Applicants allege that “*the denial of realization of benefit entitlements [...] based solely on their place of residence is discriminatory*”.
65. The Court recalls that the Applicants conclude that “*such excluding set up, which separates the subjects of the right based on subjective circumstances, constitutes a violation of Article 24 of the Constitution of the Republic of Kosovo – [Equality Before the Law], Article 51 of the Constitution of the Republic of Kosovo – [Health and Social Protection], Article 7 of the Universal Declaration of Human Rights, Article 22 of the Universal Declaration of*

Human Rights, and Article 14 of the European Convention on Human Rights – Prohibition of Discrimination”.

66. The Court refers to Article 24 [Equality Before the Law] of the Constitution, which establishes:

- 1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
- 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*
- 3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*

67. The Court also refers to Article 51 [Health and Social Protection] of the Constitution, which establishes:

- 1. Healthcare and social insurance are regulated by law.*
- 2. Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law.”*

68. The Court further refers to Article 14 [Prohibition of discrimination] of the ECHR, which establishes:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

69. In connection with Article 14 [Prohibition of discrimination] of the ECHR, the Court also refers to Article 1 of Protocol No. 1 [Protection of Property] to the ECHR, which provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

70. In this regard, the Court further refers to Article 46 [Protection of Property] of the Constitution which establishes:

- 1. The right to own property is guaranteed.*

2. *Use of property is regulated by law in accordance with the public interest.*
3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
[...]

71. The Court also takes into account Articles 7 and 22 of the UDHR as it follows:

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

72. At the outset, the Court reiterates that, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, *“human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*.

1.1. General principles regarding the applicability of Article 24 and 46 of the Constitution

73. The Court reiterates that Article 24 of the Constitution establishes that all are equal before the Law and everyone enjoys the right to equal legal protection.
74. The Court recalls that only differences in treatment based on an identifiable characteristic or “status” are capable of amounting to unequal treatment within the meaning of Article 24 of the Constitution. Moreover, in order for an issue to arise under Article 24, there must be a difference in the treatment of persons in analogous or relevantly similar situations. See, *mutatis mutandis*, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*; Applications no. 5095/71, 5920/72, and 5926/72, 7 December 1976, § 56; *Carson and Others v. The United Kingdom*, Application no. 42184/05, 16 March 2010, § 61.
75. The Court considers that, for the purpose of interpreting Article 24, a different treatment is unequal if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship

of proportionality between the means employed and the aim sought to be realized. See, *mutatis mutandis*, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, Applications No. 9214/80, 9473/81 and 9474/81, 24 April 1985, § 72.

76. Moreover, the Court emphasizes that the Government and the Assembly enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject-matter and the background. A wide margin is usually allowed when it comes to general measures of economic or social strategy, unless they are manifestly without reasonable foundation. See, *mutatis mutandis*, *Burden v. The United Kingdom*, Application no. 13378/05, 29 April 2008, § 60; *Khamtokhu and Aksenchik v. Russia*, cited above, § 64.
77. The Court analogically refers to the jurisprudence of the ECtHR developed in relation to the payment of a welfare benefit which provides that if a legislation provides for the payment of a welfare benefit as of right, whether conditional or not on the prior payment of contributions, that legislation must be regarded as generating a proprietary interest falling within the ambit of right to property under Article 46 of the Constitution for those beneficiaries satisfying its requirements. See, *mutatis mutandis*, *Pickur v. Ukraine*, Application no. 10441/06, 7 November 2013, § 41.
78. The Court further considers that, although the right to property does not include the right to receive a social-security payment of any kind, if the legislator does decide to create a benefits scheme, it must do so in a manner that is equal to everyone in analogous or relevantly similar situations. See, *mutatis mutandis*, ECtHR case *Pichkur v Ukraine*, cited above, § 42.

1.2. Application of those principles to the present case

79. The Court examines whether Article 3 (2), adding para. 5 and 6 to Article 16 of the basic Law, is compatible with the rights to equality before the law under Article 24 of the Constitution and with the right to property under Article 46 of the Constitution.

a. Unequal treatment

80. The Court first determines whether there is a difference of treatment of KLA Veterans in analogous or relevantly similar situations.
81. The Court observes that, according to paragraph 5 of Article 16 of the basic Law (added by Article 3 (2) of the challenged Law), KLA Veterans “*living abroad shall be entitled to other benefits according to this Law*”. However, KLA Veterans living abroad “*shall not be entitled to pension*”. The Court also observes that, according to paragraph 6 of Article 16 of the basic Law (added by Article 3 (2) of the challenged Law), the KLA Veteran “*who lives in neighboring countries is entitled in all rights foreseen in this Law*”.

82. The Court notes that it stems out from paragraphs 5 and 6 of Article 16 of the basic Law (added by Article 3 (2) of the challenged Law) that the KLA Veterans who live abroad but not in the neighboring countries, are not entitled to pension; while the KLA Veterans who live in neighboring countries are entitled to pension. Thus the difference of KLA Veterans entitlement to pension is made in relation to the place of residence: living abroad in neighboring countries, they are entitled; living abroad but not in the neighboring countries, they are not entitled.
83. The Court considers that both the KLA Veterans living in neighboring countries and the KLA Veterans living abroad but not in the neighboring countries are in analogous or relevantly similar situation: they do not live in Kosovo. However, due to the place of residence, they are in an essential and substantive different condition in relation to the entitlement to right to pension; even though they are in analogous or relevantly similar situation.
84. The Court further notes that the place of residence is the criterion for the differential treatment in the KLA Veterans entitlement to pension. In this regard, the Court recalls that the place of residence constitutes an aspect of personal status for the purposes of Article 24 of the Constitution.
85. Thus, the Court considers that the different entitlement to pension has been made dependent on the KLA Veterans' place of residence, resulting in a situation in which the KLA Veterans residing abroad, but not in the neighboring countries, will be deprived of pension on the sole ground of place of residence. However, all KLA Veterans who do not reside in Kosovo or neighboring countries are in a relatively similar situation to those who do reside in Kosovo or in the neighboring countries.
86. Therefore, the Court concludes that there is a difference in the treatment of KLA Veterans in an analogous or relevantly similar situation, which constitutes a limitation to their right to pension.

b. Legitimate and proportional

87. The Court recalls that an unequal treatment is not compatible with Article 24 of the Constitution if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized.
88. In that respect, the Court refers to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, which establishes:
1. *Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*
 2. *Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.*
 3. *Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*

4. *In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.*
5. *The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.*

89. In that connection, the Court will analyze, namely whether:

- (1) the limitation has been foreseen by law;
- (2) there is a legitimate aim to be achieved with the limitation; and
- (3) there is a relationship of proportionality between the limitation of the right and the purpose to be achieved.

90. With regard to the requirement (1), the Court observes that the alleged limitation of the KLA Veteran's right to a pension is foreseen by Article 3 (2) of the challenged Law adopted by the Assembly, which is the state institution vested by the Constitution with the exercise of the legislative power. Thus, the Court considers that such limitation complies with the requirements contained in Article 55 (1) of the Constitution. Therefore, the Court concludes that the limitation of the KLA Veteran's right to pension has been foreseen by law.
91. With regard to the requirement (2), the Court observes that Article 1 of the challenged Law states that the purpose of the Law is to define the benefits entitlements for the KLA Veterans, who with *"their precious sacrifice, commitment and contribution at Kosovo Liberation Army were a crucial factor in bringing freedom and independence to the people of Kosovo"*.
92. The Court also observes that the Explanatory Memorandum states that *"the key question addressed in this draft law is the categorization of the KLA fighting Veteran, as a beneficiary of the pension and other benefits, which shall be determined in accordance with the time of mobilization and service in the KLA"*.
93. The Court further observes that the Explanatory Memorandum also states that *"the main purpose of the adoption [of the challenged Law] is oriented to create stability and financial sustainability for the Budget of Kosovo and fulfillment of realization of the rights and benefits of these categories emerged from war"*.
94. However, the Court notes that neither the Government nor the Assembly have provided any justification as to why the KLA Veterans residing in Kosovo and in the neighboring countries are entitled to a pension and the KLA Veterans residing abroad but not in the neighboring countries are not entitled to such pension.
95. Moreover, the Court notes that no evidence was provided, including in the challenged Law and in the Explanatory Memorandum, showing objective

reasons for that limitation of KLA Veterans residing in Kosovo or in the neighboring countries and those residing abroad but not in the neighboring countries; nor can one draw any specific aim to be achieved with such limitation.

96. On the contrary, the Court observes that the KLA Veterans enjoy the right to pension because of "*their precious sacrifice, commitment and contribution at Kosovo Liberation Army*". Furthermore, the length and period of service of their contribution is a common criterion to all KLA Veterans. Even though, they are categorized based on the length and period of service of their contribution, as foreseen in Article 4 of the challenged Law.
97. Thus, the Court considers that the limitation of the right to pension of KLA Veterans who live abroad but not in the neighboring countries is neither justified nor it is grounded on objective reasons.
98. Therefore, the Court concludes that there is no legitimate aim to be achieved with the difference in treatment of KLA Veterans and consequent limitation to their right to pension.
99. With regard to the requirement (3), the Court has just concluded that there is no legitimate aim to be achieved with the difference in treatment of KLA Veteran's right to pension. Thus the Court considers that the inexistence of legitimate aim turns unnecessary the analysis of any relationship of proportionality between the limitation of the right to pension and an inexistent purpose to be achieved. Therefore, the Court also concludes that the inexistence of any purpose to be achieved entails the inexistence of any relationship of proportionality.
100. Thus, the Court finds that Article 3 (2) of the challenged Law, adding paragraphs 5 and 6 to Article 16 of the basic Law, is not compatible with the right to equality under Article 24 of the Constitution.
101. Furthermore, the Court, by considering that the entitlement to pension benefits must be regarded as generating a proprietary interest, finds that Article 3 (2) the challenged law is also not compatible with the right to property under Article 46 of the Constitution.
102. In sum, the Court finds that Article 3 (2) of the challenged Law, adding paragraphs 5 and 6 to Article 16 of the basic Law, is not compatible with Articles 24 and 46 of the Constitution.
103. Having reached that finding, the Court considers it is unnecessary to examine the alleged violations of Article 51 of the Constitution, Articles 7 and 22 of the UDHR and Article 14 of the ECHR.

2. Constitutionality of Article 4 of the Challenged Law

104. The Court recalls that Article 4 of the challenged Law adds to the basic Law a new Article 16 A (namely paragraph 1, subparagraphs 1.1, 1.2 and 1.3), which reads:

After Article 16 of the basic Law, there shall be added a new Article 16 A with the following text:

Article 16A

1. Categorization of the KLA Fighter Veteran, as a beneficiary of the pension and other benefits, shall be determined in accordance with the time of mobilization and serving in KLA, as following:

- 1.1 Category One: KLA Fighter Veteran engaged from 1991 until the 5th of March 1998 and has been active until the day the war ended;*
- 1.2 Category Two: KLA Fighter Veteran, engaged in the war after the 5th of March 1998 and has been active until the day the war ended.*
- 1.3 Category Three: KLA Fighter Veteran, mobilized in the war after the 31st of March 1999 and has been active until the day the war ended, as well as KLA Fighter Veteran, engaged in the war from 1991, respectively after the 5th of March 1998, but who has not been active until the day the war ended.*

[...]

105. The Court also recalls Article 3 [Definitions] of the basic Law, which provides:

*1.3. KLA veteran – participant in the war for liberation in Kosovo such as:
[...]*

*1.3.2. KLA fighter veteran – is the citizen of Kosovo and foreign citizen who has become a member of KLA, and has been registered as an armed and uniformed soldier by the commands, headquarters of operational zones of KLA, respectively General Headquarters of KLA, and who has been active till the end of the war;
[...]*

1.3.3. KLA member – every person who, by a decision or any other act, has been designated to perform concrete duties in political, logistics, financial support or other duties received from the commanders of units, headquarters and zones of KLA, respectively general headquarters of KLA, during the period 1997- 1999.

106. Firstly, the Applicants allege that “the definition of the category stipulated in the provision of Article 4 [of the challenged Law], based on which Article 16a is worded, constitutes a discriminatory regulation in relation to the legal definition sanctioned by Article 3 of the basic law [sub-paragraph 1.3]”.

107. The Applicants conclude that “such set up, which segregates the subjects of law based on subjective circumstances constitutes a violation of Article 24 of the Constitution of the Republic of Kosovo – [Equality Before the Law], Article 7 of the Universal Declaration of Human Rights, and Article 14 of the European Convention on Human Rights – [Prohibition of Discrimination]”.

108. The Court notes that, in sum, the Applicants allege that Article 4 of the challenged Law, by adding new Article 16A (1) in the basic Law, categorizes the KLA Veterans, creating discrimination in relation to Article 3 (1.3) of the basic Law, which does not foresee a categorization of the KLA Veterans, and thus is not compatible with Article 24 of the Constitution, Article 14 of the ECHR and Article 7 of the UDHR.
109. The Court recalls that the right to equality under Article 24 of the Constitution applies to all rights, falling within the general scope of any rights granted by legislation including the right to property, for which the legislator has voluntarily decided to provide.
110. The Court also recalls that the right to property under Article 46 of the Constitution does not include the right to receive a social-security payment of any kind; however, if a legislator does decide to create a benefits scheme, it must do so in a manner that is equal to everyone in analogous or relevantly similar situations.
111. The Court observes that Article 4 of the challenged Law (adding Article 16A (1) to the basic Law) provides for three different levels of pensions for KLA Veterans in accordance with three categories. KLA Veterans belonging to Category Two will receive a lower pension than KLA Veterans who belong to Category One and KLA Veterans belonging to Category Three will receive a lower pension than KLA Veterans who belong to Category Two. Thus, the Court considers the different levels of pensions for KLA Veterans raised by the Applicants falls within the scope of the right to property and is sufficient to assess the allegation as to a violation of the right to equality before the law.
112. The Applicants argue that the definition of the KLA Veterans, as provided in Article 3 (1.3) of the basic Law, does not make any distinction between the KLA Veterans. Thus, everyone that belongs to the category of KLA Veterans should be treated equally and not be divided into different categories.
113. The Court recalls that the KLA Veterans must fulfill all legal criteria to benefit from the status of KLA Veterans, in accordance with Article 3 of the basic Law, such as: being a *“citizen of Kosovo or a foreign citizen who has become a member of KLA”*; having been *“registered as an armed and uniformed soldier by the commands, headquarters of operational zones of KLA, respectively General Headquarters of KLA”*; and having been *“active till the end of war”*.
114. In these circumstances, the Court considers that all KLA Veterans subject to the Law are also in a relatively similar situation, considering their contribution as a KLA Veteran regardless of their time of mobilization and serving in KLA.
115. Thus, the next question to be considered is again whether or not the differential treatment can be justified on objective and reasonable grounds as required by the case law of the ECtHR and Article 55 of the Constitution, namely whether:
- (i). the limitation has been foreseen by law;
 - (ii). there is a legitimate aim to be achieved with the limitation; and,

(iii). there is a relationship of proportionality between the limitation and the purpose to be achieved.

116. With regard to the requirement (i), the Court observes that the alleged limitation of the right to pension is foreseen by Article 4 of the challenged Law (adding new Article 16A (1) to the basic Law). Thus, the Court considers that the limitation complies with the requirements contained in case of the ECtHR and Article 55 (1) of the Constitution. Therefore, the limitation has been foreseen by law.
117. With regard to the requirement (ii), the Court recalls that the Explanatory Memorandum states that *“the key question addressed in this draft law is the categorization of the KLA fighting Veteran, [...] which shall be determined in accordance with the time of mobilization and service in the KLA”*.
118. In addition, the Court also recalls that the Explanatory Memorandum states that *“the main purpose of the adoption [of the challenged Law] is oriented to create stability and financial sustainability for the Budget of Kosovo and fulfillment of realization of the rights and benefits of these categories emerged from war”*.
119. Moreover, the Court notes that the purpose of the categorization foreseen in Article 4 of the challenged Law (adding new Article 16A (1) in the basic Law) aims at ensuring that the KLA Veterans receive an amount of pension proportional to their time of mobilization and service in the KLA. An additional purpose is to ensure financial sustainability of the Kosovo budget. Thus, the Court considers that the time of mobilization and service in the KLA, and financial sustainability of the budget are legitimate aims for establishing that limitation, serve the public interest and are manifestly with reasonable foundation. Therefore, the Court concludes that there is a legitimate aim to be achieved with that limitation.
120. With regard to the requirement (iii), the Court notes that the criteria to be met by each category have been set out in the challenged Law, namely taking into account the time of mobilization and service of the contribution as a KLA fighter. Thus, specific dates of mobilization and service were taken as decisive moments in the contribution for the activities of the KLA.
121. In fact, the Court observes that the different categories of KLA Veterans were determined according to the time of mobilization and serving in KLA: from 1991 until the 5th of March 1998 active until the day the war ended (Category One); after the 5th of March 1998 and active until the day the war ended (Category Two); and after the 31st of March 1999 and active until the day the war ended; and after the 31st of March 1999 active until the day the war ended, as well as engaged in the war from 1991, respectively after the 5th of March 1998, but not active until the day the war ended (Category Three).
122. In that connection, the Court observes that Article 4 of the challenged Law (adding new Article 16A (4) to the basic Law) has foreseen an amount of pension for each category which is proportional to the time of mobilization and service in the KLA activities.

123. Moreover, the Court recalls that the legislator enjoys a certain discretion to decide on the measures to achieve the specific objectives and it is certainly not for the Court to substitute its own assessment for the assessment of the relevant authorities as to what might be the best policy in this field.
124. In these circumstances, the Court considers that the relationship between the limitation of the right to a pension and its purpose to be achieved is proportional and reasonable. Therefore, the Court concludes that there is a relationship of proportionality between the limitation and the purpose to be achieved.
125. In sum, the Court finds that the differential treatment is justified on objective and reasonable grounds and thus Article 4 of the challenged Law (adding Article 16A (1) and (4) to the basic Law) is compatible with the right to equality under Article 24 of the Constitution and Article 14 of the ECHR, taken in conjunction with the right to property under Article 46 of the Constitution and Article 1 of Protocol No 1 to the ECHR.
126. Secondly, the Court recalls that, with regard to Article 4 of the challenged Law (adding Article 16A (1) and (4) to the basic Law), the Applicants also allege that, by foreseeing the new categorization of War Veterans without explicitly amending, supplementing or repealing the provisions of the basic Law, the challenged Law is in contradiction with Article 10 (2) of the Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, which stipulates that *“amending, supplementing or repealing an Article or its sub-divisions must be done by a special paragraph for each article”*.
127. In this regard, the Court observes that the Constitution does not regulate the standards for drafting normative acts. According to Article 4 of the Law on Legal Initiatives adopted by the Assembly of Kosovo, *“all legislative initiatives must adhere to the draft standards for drafting the Law set by the Government unless otherwise provided by this law.”*
128. Thus, the Court considers that the implementation of the Administrative Instruction on Standards for Drafting of Normative Acts issued by the Government does not come within the scope of jurisdiction of the Court within the meaning of Article 113 (5) of the Constitution.
129. Therefore, this allegation is rejected as incompatible *ratione materiae* with the Constitution.
130. Thirdly, the Court recalls that the Applicants also challenged the constitutionality of Article 4 of an initially attached text of challenged Law, which supposedly added new paragraph 6 to Article 16A of the basic Law.
131. In fact, the Applicants attached to their Referral a version of the challenged Law, where paragraph 6 to Article 16A of the basic Law reads:

In case the budget of 0.7% of the Annual Gross Domestic Product is not sufficient to cover the total annual cost of the fighting Veteran pension,

only the amount of 110 Euro envisaged for Category Three will be subject to review in accordance with paragraph 2, of this article”.

132. In relation to that initial version, the Applicants claimed that *“it is only the third category of the KLA war veterans that will suffer insufficient covering by the budgetary expenses for realizing the right to pension. Such regulation does not treat equally and under the same conditions the three categories of beneficiaries of the rights guaranteed by the basic law and the challenged Law”.*

133. However, Article 4 of the final version of the challenged Law introduced new paragraph 6 to Article 16A in the basic Law, which now is reading:

In case of excess of 0,7 % of the Annual Gross Domestic Product, then the reduction of pension occurs proportionally to all beneficiaries from this Law.

134. The Court notes that the Applicants based their allegation on a text that has been changed during the process of attaining its final version. That final version foresees that a reduction of pension occurs proportionally to all KLA veterans in case the total budget allocated for the beneficiaries exceeds 0.7% of GDP.

135. The Court informed the Applicants about the final version of the challenged Law as received from the Secretariat and invited them to submit comments on it. The Court has not received any submission from the Applicants within the assigned deadline.

136. In view of above considerations, the Court observes that this allegation raised by the Applicants is based on the text, which subsequently changed in the challenged Law as finally adopted. Thus, the Court considers that the allegation lost its ground and otherwise does not present any controversy. Therefore, the Court rejects the allegation as ungrounded.

137. In conclusion, taking into account the entire allegation, the Court finds that Article 4 of the challenged Law is compatible with the right to equality under Article 24 of the Constitution and Article 14 of the ECHR, taken in conjunction with the right to property under Article 46 of the Constitution and Article 1 of Protocol No 1 to the ECHR.

3. Constitutionality of contested Article 5 of the Challenged Law

138. The Court recalls that Article 5 of the challenged Law deletes Article 18 of the basic Law, which reads:

Article 18 of the basic Law shall be deleted.

139. In that respect, the Court also recalls that the Applicants claim that deletion of Article 18 of the basic Law *“contradicts Articles 46 and 51 of the Constitution of the Republic of Kosovo, as read in conjunction with Article 1 of Protocol No. 1 to the ECHR”.*

140. In fact, the Applicants allege that *“such violation is a result of the fact that, by Article 18 of the basic law [...], the KLA fighter veterans, as a separate social category, were guaranteed without exception the right to a pension not lower than the minimum salary in the Republic of Kosovo”*.
141. The Applicants also allege that Article 18 of the basic Law *“is, as such, in complete accordance with the requirements of Article 24 of the Constitution as read in conjunction with Article 14 [Prohibition of Discrimination] of the Convention because the financial situation would change both in terms of use and limitation for all the veterans without exception and without being segregated at group and individual level”*.
142. Moreover, the Applicants further allege that *“the pension guaranteed by Article 18 of the basic law [...] constitutes, within the meaning of Article 6 of the Convention as read in conjunction with Article 1 of Protocol 1 to the Convention, a legitimate expectation and a violation of the property right”*.
143. In fact, the Applicants allege that the pension guaranteed by Article 18 of the Basic Law *“constitutes, within the meaning of Article 6 of the Convention as read in conjunction with Article 1 of Protocol 1 to the Convention, a legitimate expectation and a violation of the right to property because this legitimate right is being denied to the social category that had such legitimate expectations on the basis of legal provisions, and by the challenged amendments, direct legal consequences will be given rise to thereby violating such expectations”*.
144. The Applicants conclude that *“this legitimate right is being denied to the social category that had such legitimate expectations on the basis of legal provisions, and by the challenged [Law], direct legal consequences will be given rise to thereby violating such expectations”*.
145. The Court is mindful of Article 46 [Protection of Property], 51 [Health and Social Protection] of the Constitution; Article 14 [Prohibition of discrimination] of the ECHR and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR which are quoted above.

3. 1. Applicability of Article 1 of Protocol No. 1

(a) General principles regarding the scope of the provision

146. The Court reiterates that Article 1 of Protocol 1 comprises three distinct and connected rules: the first rule enunciates the principle of peaceful enjoyment of property; the second rule covers deprivation of possessions and subjects it to certain conditions; and the third rule recognizes that the States is entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. See ECtHR Cases, namely, *James, Wells and Lee v. The United Kingdom*, Applications nos. 25119/09, 57715/09 and 57877/09, 18 September 2012; *Sargsyan v. Azerbaijan*, Application no. 40167/06, 16 June 2015; and *Belane Nagy v. Hungary*, Application no. 53080/13, 13 December 2016, § 72.

(b) The scope of Article 1 of Protocol No. 1 in regard to pension benefits

147. The State may recognize to individuals the right to social-security and welfare benefits and provide for benefits to be paid, subject to the fulfilment of the conditions of eligibility. The principles which apply generally in cases under Article 1 of Protocol No. 1 are equally relevant when it comes to social and welfare benefits. See ECtHR Case *Belane Nagy v. Hungary*, cited above, § 80.
148. However, the relevant legal conditions are subject to evolution. In this connection, it may be reiterated that the ECtHR found that the right to a social benefit is, in so far as provided for in the applicable legislation, a pecuniary right for the purposes of Article 1 of Protocol No. 1. A pension, in certain circumstances and according to the domestic law, creates a property right. See *Gaygusuz v. Austria*, Application No. 17371/90, 16 September 1996, § 41.
149. The Court recalls again that ECtHR also held that the legislation in force providing for the payment as of right of a welfare benefit must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements. See *Belane Nagy v. Hungary*, cited above, § 82.
150. An interference with the rights under Article 1 of Protocol 1 may result, if the suspension or diminution of a pension is not due to any changes in the applicants' own circumstances, but is due to changes in the law or its implementation. See ECtHR cases *Grudić v. Serbia*, cited above, § 77; *Belane Nagy v. Hungary*, cited above, § 85.
151. The fact that a person has entered into and forms part of a State social-security system does not necessarily mean that that system cannot be changed, either as to the conditions of eligibility of payment or as to the *quantum* of the benefit or pension. See, *mutatis mutandis*, ECtHR Cases *Carson and Others v. the United Kingdom*, cited above, §§ 85-89; *Belane Nagy v. Hungary*, cited above, § 88.
152. In fact, the ECtHR has accepted the possibility of amendments to social-security legislation which may be adopted in response to societal changes and evolving views on the categories of persons who need social assistance, and also to the evolution of individual situations. See *Wieczorek v. Poland*, Application no. 18176/05, 8 December 2009, § 67.

3.2. Application of those principles to the present case

153. The Court recall that the scope of Article 1 of Protocol 1 comprises three distinct and connected rules.

a. Peaceful enjoyment of property

154. The Court observes that the question to be examined is whether a pension for KLA Veterans constitutes a possession within the meaning that they are

entitled to peaceful enjoyment of property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1.

155. Moreover, the Court observes that Article 18 of the basic Law guaranteed a pension not lower than the minimum salary. However, Article 5 of the challenged Law deleted Article 18 of the basic Law. The Applicants claim that this deletion is in contradiction with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1. Therefore, the Court will also examine whether the deletion is in contradiction with the Constitution and the ECHR as interpreted by the ECtHR.
156. In that respect, the Court refers to the deleted Article 18 [Pension Level] of the basic Law, which provided:

Depending on budget affordability, living costs and possible inflation, at the end of each year, the Government of Kosovo, upon the proposal of the Ministry of Finance, with a special decision may decide on the level of pension for KLA Fighter Veterans for the coming year, which may not be lower than the minimum salary in Kosovo”.

157. The Court recalls that Article 5 of the challenged Law provides:

Article 18 of the basic Law shall be deleted.

158. The Court observes that Article 4 of the challenged Law added Article 16 A to the basic Law, which provides:

4. *Monthly pension of fighting Veteran, as per category shall be:*
- 4.1. *Category One, two hundred and fifty (250) Euro;*
 - 4.2. *Category Two, one hundred and seventy (170) Euro;*
 - 4.3. *Category Three, one hundred and twenty (120) Euro.*

159. The Court also refer to Article 57 [Minimum Salary] of Law No.03/L-212 on Labour, which provides:

1. The Government of Kosovo shall define a minimum wage at the end of every calendar based on the proposals from the Social Economic Council.

160. The Court observes that, on 17 August 2011, the Government (Decision No. 04/33) defined the minimum wage in Kosovo, as follows:

- 130.00 euros for employees under 35 years of age, and
- 170.00 euros for employees between 35 and 65 years of age.

161. The Court observes that the monthly pension of KLA Veteran under Category Two and Three, as defined by force of Article 4 of the challenged Law, may be lower than the defined minimum salary. Thus the question is whether a monthly pension lower than the minimum salary should entitle the beneficiaries to the possession of the minimum salary, as provided by the deleted Article 18 of the basic Law.

162. In that respect, the Court concludes that the KLA Veterans entitlement to a pension as guaranteed by the basic Law and the challenged Law constitutes a possession within the meaning of Article 46 of the Constitution and Article 1 of Protocol 1.

b. Conditions of deprivation of possessions

163. As abovementioned, the second rule of Article 1 of Protocol 1 covers deprivation of possessions and subjects that deprivation to certain conditions.
164. In that connection, the Court will examine whether there is an interference with the peaceful enjoyment of property of the right to pension of the KLA Veterans. If yes, whether the interference serves a public interest and, further, it is proportionate to achieving that aim.
165. The Court recalls that it concluded that the KLA Veteran right to pension is a property right. Yet, another consideration in the assessment under Article 1 of Protocol 1 is whether the beneficiaries of the KLA Veterans' pension are entitled to a pension of a minimum amount.
166. The Court recalls that Article 1 of Protocol 1 does not guarantee, as such, any right to a pension of a particular amount, although where the amount of a benefit is reduced or discontinued, this may constitute interference with possessions which requires to be justified.
167. The Court also recalls that the ECtHR, in its relevant decisions, has looked at three fundamental considerations when assessing the claims related to social or pension benefits, namely whether the action has been lawful, non-discriminatory, and proportionate to the general or public interests pursued.
168. The Court observes that Article 18 [Pension Level] of the basic Law (deleted by Article 5 of the challenged Law) determined the level of pension for KLA Fighter Veterans "*depending on budget affordability, living costs and possible inflation [...], which may not be lower than the minimum salary in Kosovo*".
169. The Court reiterates that the Explanatory Memorandum states that "*the main purpose of the adoption [of the challenged Law] is oriented to create stability and financial sustainability for the Budget of Kosovo*".
170. The Court further observes that Article 16A (2) of the basic Law (added by Article 4 of the challenged Law) reads:

The general budget for realization of the payment of KLA Fighter Veteran pension, will be completely used during the year for this destination and cannot exceed 0.7% of the Annual Gross Domestic Product.

171. In addition, the Court observes that Article 16A (3) of the basic Law (added by Article 4 of the challenged Law) foresees:

The scheme determined in paragraph 2 of this Article shall be implemented after the final categorization. Until the final categorization

of the KLA Fighter Veteran list, the pension scheme shall be implemented as foreseen in the basic Law.

172. Moreover, the Court observes that Article 16A (4) of the basic Law (added by Article 4 of the challenged Law) determined the monthly pension amount in accordance with the defined three categories, as seen above.
173. The Court notes that Article 16A of the basic Law (added by Article 4 of the challenged Law) and Article 16 [Fighter Veteran's Personal Pension] of the basic Law foresee the situation of cumulative pensions.
174. The Court refers to Article 16A (6) of the basic Law (added by Article 4 of the challenged Law), which foresees:

In case of excess of 0,7 % of the Annual Gross Domestic Product, then the reduction of pension occurs proportionally to all beneficiaries from this Law.

175. The Court also refers to Article 16 of the basic Law, which foresees:

[...]

2. *KLA Fighter Veteran may not benefit any pension from other pension schemes funded by the state. If the Fighter Veteran benefits from any other pension scheme funded by the state in the Republic of Kosovo, he/she shall decide on one of the pensions he/she will receive.*

3. *KLA Fighter Veteran, receiving the pension of the Kosovo Protection Corps, pursuant to the Law No. 03/L-100 on Pensions for Members of the Kosovo Protection Corps (Official Gazette, No. 41 / 1 November 2008), shall decide on one of the pensions he/she will receive.*

[...]

176. The Court notes that the pension scheme will continue to be implemented as foreseen in the basic Law until the final categorization of the KLA Veteran list and those who are employed in the public or private sector shall not have the right to the pension.
177. The Court recalls that the deleted Article 18 of the basic Law determined the level of pension for KLA Veterans *"which may not be lower than the minimum salary in Kosovo"*.
178. The Court notes that, in addition to the above considerations, the challenged Law also provides through its Article 16 A (4) to the basic Law (added by Article 4 of the challenged Law) for a more precise categorization of the KLA Veterans, presumably allowing for a larger group of people to benefit from the law, in accordance with their respective time of mobilization and service in KLA contributions. Furthermore, the challenged Law sets forth a fixed total amount as constituting the general budget for the realization of the payment of KLA Veteran pension, which *"will not exceed the budget from 0,7 % of the Annual Gross Domestic Product"*.

179. The Court considers that, in this way, the challenged law determined a fixed total amount in terms of the annual GDP allocated for the exclusive purpose of the payment for the KLA Veteran pensions and a different amount of pension is paid in accordance with the established Categories. In fact, the challenged Law takes into account not only the broader public interest but also the different time of mobilization and service of KLA Veterans.
180. Therefore, the Court concludes that this measure constitutes a justified interference with possessions, a permitted means of the State to control the use of property.

c. Control of the use of property in accordance with the general interest

181. The Court recalls that the legislator enjoys a more specific margin of appreciation when it comes to general measures of economic or social strategy.
182. The Court, noting the facts described above, considers that the State institutions in the process of proposing and adopting Article 5 of the challenged Law acted within their margin of appreciation.
183. In fact, the Court has already concluded that the pension for KLA Veterans constitutes a possession within the meaning of Article 46 of the Constitution and Article 1 of Protocol 1 and that there is a justified interference with the free enjoyment of the right to property on the grounds of serving public interest and having due regard to the proportionality principle. In fact, the reduction in the amount is within a reasonable framework and it is applied equally to all categories of KLA Veterans.
184. Before the foregoing, the Court concludes that, in the face of prevailing circumstances of the case and considerations as set out above, the legislator's action through the adoption of the challenged Article 5 has been lawful, non-arbitrary and non-discriminatory on any particular ground or purposefully directed against a particular group; it was proportionate to the public interest pursued.
185. In addition, the Court recalls that the Applicants also allege that the KLA Veterans' pension guaranteed by the deleted Article 18 of the basic law *"constitutes, within the meaning of Article 6 of the Convention as read in conjunction with Article 1 of Protocol 1 to the Convention, a legitimate expectation and a violation of the right to property (...)".*
186. In that respect, the Court notes that the Applicants allege a violation of Article 31 of the Constitution and Article 6 (1) of the ECHR in conjunction with Article 1 of Protocol 1. However, the Court also notes that the allegation overlaps with those allegations they have raised under Article 1 of Protocol 1. In this respect, the Court has found no breach of Article 1 of Protocol 1.
187. Therefore, the Court considers that it is not necessary to examine that claim separately under Article 31 of the Constitution and Article 6 (1) of the ECHR, as it does not contain any allegations capable of giving rise to a different finding.

188. In sum, the Court finds that Article 5 of the challenged Law, which deleted Article 18 of the basic Law, is compatible with Article 46 of the Constitution and Article 1 of Protocol 1.

Conclusion

189. Having noted, considered and concluded the abovementioned, the Court finds that:

1. Article 3 (2) of the challenged Law is not compatible with Articles 24 and 46 of the Constitution;
2. Article 4 of the challenged Law is compatible with Article 24 of the Constitution and Article 14 of the ECHR, taken in conjunction with Article 46 of the Constitution and Article 1 of Protocol No 1 to the ECHR; and
3. Article 5 of the challenged Law is compatible with Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (5) of the Constitution, Articles 20 and 42 of the Law and Rule 56 (1) of the Rules of Procedure, on 28 March 2017, unanimously,

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO DECLARE that paragraph two (2) of Article 3 of the Law on Amending and Supplementing the Law No 04/L-241 on the War Veterans of the Kosovo Liberation Army, which added paragraphs 5 and 6 to Article 16 of the Law No 04/L-241 on the War Veterans of the Kosovo Liberation Army, is not compatible with the Constitution;
- III. TO DECLARE that Article 4 of the Law on Amending and Supplementing the Law No 04/L-241 on the War Veterans of the Kosovo Liberation Army, which added Article 16A, paragraphs 1, subparagraphs 1.1, 1.2 and 1.3 to the Law No 04/L-241 on the War Veterans of the Kosovo Liberation Army, is compatible with the Constitution;
- IV. TO DECLARE that Article 5 of the Law on Amending and Supplementing the Law No 04/L-241 on the War Veterans of the Kosovo Liberation Army, which deleted Article 18 of the Law No 04/L-241 on the War Veterans of the Kosovo Liberation Army, is compatible with the Constitution;

- V. TO DECLARE that, pursuant to Article 43 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, the adopted Law on Amending and Supplementing the Law No 04/L-241 on the War Veterans of the Kosovo Liberation Army shall be sent to the President of the Republic of Kosovo to be promulgated, with the exception of its paragraph two (2) of Article 3;
- VI. TO NOTIFY this Judgment to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;
- VII. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20(4) of the Law; and
- VIII. TO DECLARE this Judgment effective immediately.


Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi