



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

Prishtina, 21 September 2015
Ref. No.: RK 845/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KO107/15

Applicants

**Albulena Haxhiu and 23 other deputies of the Assembly of the Republic
of Kosovo**

**Constitutional review of Decision No. 05-V-139 of the Assembly of the
Republic of Kosovo on approval of Amendment XXIV to the Constitution
of the Republic of Kosovo, adopted on 3 August 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

The Applicants

1. The Applicants are Albulena Haxhiu, Glauk Konjufca, Puhie Demaku, Albin Kurti, Salih Salihu, Besa Baftiu, Besnik Bislimi, Faton Topalli, Shqipe Pantina, Ismajl Kurteshi, Fisnik Ismaili, Donika Kadaj-Bujupi, Time Kadrijaj, Teuta Haxhiu, Rrustem Berisha, Lahi Ibrahimaj, Daut Haradinaj, Pal Lekaj, Ramush Haradinaj, Valdete Bajrami, Shukrije Bytyqi, Haxhi Shala, Enver Hoti and Zafir Berisha (hereinafter: the “Applicants”), all of them elected Deputies of the Assembly of the Republic of Kosovo (hereinafter “the Assembly”). Before the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”), the Applicants have authorized Ms. Albulena Haxhiu to represent them.

Challenged decision

2. The Applicants challenge Decision No. 05-V-139 of the Assembly on approval of Amendment XXIV to the Constitution of the Republic of Kosovo, adopted on 3 August 2015.

Subject matter

3. The Applicants request the Court to review the constitutionality of the challenged decision both on substantive and on procedural grounds.
4. The Applicants allege that the challenged decision adopts Amendment XXIV to the Constitution which is in violation of constitutional provisions: Article 1, paragraphs (1) and (2) [Definition of State]; Article 3 [Equality Before the Law]; Article 22 [Direct Applicability of International Agreements and Instruments] in conjunction 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 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]; and Articles 132, 134 and 135, regarding the Ombudsperson.
5. In addition, the Applicants allege that the procedure followed leading up to the voting and adoption of the challenged Decision was not in compliance with Article 113.9 and Article 144.3 of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”)

Legal basis

6. The Referral is based on Article 113.5 of the Constitution and Articles 42 and 43 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the “Law”).

Proceedings before the Court

7. On 11 August 2015 the Applicants submitted the Referral to the Court.

8. On 12 August 2015 the Ms. Albulena Haxhiu submitted copies of the ID Cards of all the Applicants.
9. On 12 August 2015 the President of the Court, by Decision No. GJR. KO107/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President of the Court, by Decision No. KSH. KO107/15, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Bekim Sejdiu.
10. On 13 August 2015 the Court notified the Applicants of the registration of the Referral and requested from the representative of the Applicants to submit to the Court a copy of the challenged decision, including the annexes thereto, in order to complete the application.
11. On 14 August 2015 the representative of the Applicants submitted the requested documents to the Court, which contained Decision No. 05-V-139 on the adoption of Amendment XXIV, and the text of the adopted Amendment XXIV.
12. On 14 August 2015 the Court notified the Government of the Republic of Kosovo (hereinafter: the "Government") and the President of the Assembly of the submission of the Referral and asked them to submit their comments in respect to the Referral. The Court also asked the Government and the President of the Assembly to provide the Court with the complete files regarding the draft Amendment and any supporting documents as provided to the Assembly and the Deputies of the Assembly, respectively.
13. On the same day the President of the Republic of Kosovo (hereinafter: the "President of the Republic") was informed about the Referral submitted by the Applicants to the Court.
14. On 17 August 2015 the President of the Assembly submitted the requested files to the Court, which contained the following documents:
 - a. the file that was delivered to the Deputies of the Assembly on 31 July 2015 for preparing the plenary session of 3 August 2015, which included Decision 01/41 of the Government for the re-submission of Amendment XXIV to the Assembly, the text of the proposed Amendment XXIV, and the Judgment of the Constitutional Court AGJ788/15 of 14 April 2015 in Case KO26/15;
 - b. the Transcript of the plenary session of the Assembly of 3 August 2015;
 - c. the Minutes of the session of the Assembly of 3 August 2015;
 - d. Decision No. 05-V-139 on the approval of Amendment XXIV;
 - e. the text of the approved Amendment XXIV; and
 - f. the electronic registry of the voting of 3 August 2015 on the approval of Amendment XXIV.
15. On 18 August 2015 the Government submitted the requested documents to the Court. These documents consisted of the letter of the Prime Minister by which Amendment XXIV was re-submitted for voting, Decision 01/41 of the Government to re-submit Amendment XXIV, and the text of the proposed Amendment.

16. On 19 August 2015 the President of the Republic submitted a letter to the President of the Court requesting a clarification concerning the implications of the Referral to the President's obligations under Article 80 of the Constitution. This request related specifically to the signature and promulgation of two Laws which had been adopted by the Assembly on the basis of Amendment XXIV to the Constitution.
17. On 20 August 2015 the President of the Court replied to the letter of the President of the Republic, explaining that the Referral KO107/15 concerns a challenge to the Decision of the Assembly No. 05-V-139 on the approval of Amendment XXIV, of 3 August 2015. The President of the Court also informed the President of the Republic that the constitutionality of the two laws mentioned above was not being challenged before the Constitutional Court.
18. On 28 August 2015 the Prime Minister of the Republic of Kosovo (hereinafter: "the Prime Minister") submitted a letter to the Court containing the Government's comments.
19. On 8 September 2015 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

20. On 7 March 2015 the Government decided to propose to the Assembly an Amendment to the Constitution.
21. On the same date the Government, pursuant to Article 144.1, of the Constitution, proposed to the President of the Assembly the text of the Amendment to the Constitution.
22. On 9 March 2015 the President of the Assembly referred to the Court the text of the proposed Amendment to the Constitution, requesting from the Court to make a prior assessment as to whether the proposed Amendment diminishes any of the rights and freedoms set forth in Chapter II of the Constitution. The Court registered the Referral under number KO26/15.
23. On 14 April 2015 the Court deliberated on the Referral and rendered Judgment AGJ 788/15, which confirmed that the proposed Amendment XXIV does not diminish any of 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.
24. On 26 June 2015 the Assembly deliberated and voted on the proposed Amendment XXIV and with 75 votes in favour, 7 votes against and 2 abstentions, failed to adopt it.
25. On 31 July 2015 the Government decided to re-submit the proposed Amendment XXIV to the Assembly for another vote.

26. On the same date the President of the Assembly notified all Deputies of the Assembly of the re-submission of the proposed Amendment. This notification included a copy of the Decision of the Government, the text of the proposed Amendment XXIV and a copy of the Judgment of the Constitutional Court on Case KO26/15.
27. On the same date the President of the Assembly convoked a meeting of the presidency of the Assembly, during which it was decided that the proposed Amendment would be put to a vote on 3 August 2015.
28. On 3 August 2015 the Assembly deliberated and voted on the proposed Amendment and, by Decision No. 05-V-139, with 82 votes in favour, 5 votes against and 1 abstention, adopted it.
29. On 5 August 2015 Amendment XXIV was published in the Official Gazette of the Republic of Kosovo (hereinafter: the "Official Gazette").

Arguments presented by the Applicants

30. In their Referral the Applicants challenge Decision No. 05-V-139, both on substantive and on procedural grounds.

As to the substantial aspect of the Referral:

31. Despite the fact that the Applicants challenge Decision No. 05-V-139, the Court notes that the arguments presented by them do not concern the substance of that Decision, but they are related to the substance of the text of Amendment XXIV and may be summarized as follows:
32. The Applicants argue that *"With this provision is overthrown the entire constitutional system, taking into account that the provisions of this amendment are fully inconsistent with the character and subjectivity of the Republic of Kosovo. Thus, based on the general provisions of the Constitution of Kosovo, namely Article 1, paras. 1 and 2, and Article 3, as read in conjunction with Article 24, Articles 102, 103 and 104 on organization of the judicial system, by the content of this Article the state of Kosovo is stripped also in formal aspect, of its statehood and the republican character."*
33. Further on, the Applicants present their arguments related to each paragraph of the Amendment. In this regard, the Applicants argue that despite the fact that Paragraph 1 of this Amendment states that the Specialist Chambers and the Office of the Specialist Prosecutor will be established within the justice system of Kosovo *"...according of the Amendment, the elements of dependence of this body are nowhere specified in relation to the constitutional bodies, provided in the Constitution of the Republic of Kosovo. Thus, the appointment, selection and responsibility of the holders of this body have not been sanctioned at all, even the special competencies in the substantive aspect and of the execution of criminal sanctions, imposed by the trial panels of this parallel body, were recognized to it."*

34. According to the Applicants, paragraph 2 of Amendment XXIV provides the procedural safeguards for the potential indicted persons in compliance with Article 22 and 55 of the Constitution, but it is in contradiction with other provisions of this Amendment. The Applicants claim that *“The proclamation of fundamental rights, by referring to Chapter II, and in particular Article 22 and 55, of the Constitution and on the other hand, the provisions of these paragraphs to be excluded from the comparison and collision with other provisions of the Constitution, is a legal argument that these provisions have also substantive collision between them and with the rest of the constitutional provisions.”*
35. The Applicants also argue that Paragraph 3 of Amendment XXIV is unconstitutional. Namely, this provision provides that a Specialist Chamber composed of three (3) international judges will be established within the Constitutional Court, which shall exclusively decide on constitutional referrals relating to the Specialist Chambers and Specialist Prosecutor’s Office. According to the Applicant *“... The Specialist 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 amendment is the subject matter jurisdiction of this "specialist" chamber in relation to Article 112 and 113 of the Constitution.”*
36. Moreover, the Applicants allege that Paragraph 4 of Amendment XXIV, by granting to the Specialist Chambers and Specialist Prosecutor's Office full legal capacity, juridical personality, and all necessary powers and mandate to enter into international relations with third states, *“... gives this institution the attributes of external sovereignty that is a substantial component of the full understanding of the notion of state sovereignty. For this reason, this provision excludes even the main holder of the control of external sovereignty, and that is the Assembly.”*
37. Similarly, the Applicants argue that Paragraph 5 of Amendment XXIV *“violates 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 international agreements that will be concluded by the specialist chambers and the office of specialist prosecutor will be taken only from the Government, and not from the Assembly of Kosovo as provided by Article 18 of the Constitution.”*
38. Furthermore, the Applicants claim that the competency granted in Paragraph 6 of Amendment XXIV to the Specialist Chambers to determine their own Rules of Procedure *“... opens the possibility that the proceeding of cases before this judicial mechanism is exceptional for citizens of the Republic of Kosovo in terms of implementation of the positive law. This corresponds directly in contradiction to Article 24 of the Constitution of Kosovo and even to the content of the rights sanctioned by the international acts that are directly applied under Article 22 of the Constitution...”*
39. In addition, the Applicants argue that Paragraphs 7 and 8 of Amendment XXIV, which regulate the matter of the seats of the Specialist Chambers and Specialist

Prosecutor's Office, and the geographical location where the accused and the sentenced persons will be placed, are in violation of the Constitution. According to the Applicants *"... the restriction of inter-dependence between the citizen and the state of Kosovo makes Kosovo citizens discriminated against, against whom is held the trial, the punishment is imposed and is executed in separate proceedings and in another territory. This issue is related to the extradition of citizens of the Republic of Kosovo and, under Article 35, paragraph 4, the extradition of citizens of Kosovo, within their human fundamental right regarding free movement, shall not be extradited from Kosovo except for cases when otherwise required by international law and agreements."*

40. The Applicants also consider that Paragraph 10 of Amendment XXIV, which provides that a specific law shall be adopted in order to regulate matters related to the appointment, oversight and administration of judges and prosecutors of Specialist Chambers and Specialist Prosecutor's Office, is in violation of Article 102 of the Constitution, notwithstanding the fact that *"... in paragraph 1 of this amendment they are referred as under the judicial system of the Republic of Kosovo."*
41. Moreover, the Applicants allege that Paragraph 11 of Amendment XXIV, which provides that a separate Ombudsperson will be established with exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office, is in contradiction with the Constitution because he/she *"... 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, paras. 1 and 2, of the Constitution of Kosovo."*
42. Furthermore, the Applicants argue that Paragraph 12 of Amendment XXIV, which regulates by an international agreement matters of the oversight, financing, budgeting, auditing and other aspects of the organization and functioning of the Specialist Chambers and the Specialist Prosecutor's Office, creates a double standard and will *"... legalize internal constitutional contradiction regarding Article 3 and Article 102 of the Constitution, and in terms of human rights under Chapter II, it will result in violation of Article 24 and of Article 22 in conjunction with Article 7 of the UDHR concerning the right to equal treatment and equal protection before the law."*
43. The Applicants also claim that paragraphs 13 and 14 of Amendment XXIV, concerning the mandate of the Specialist Chambers and Specialist Prosecutor's Office, *"... creates legal and constitutional uncertainty and such a regulation violates the 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, the act in which these two paragraphs are referred, is approved by a single qualified majority and it is subject to the regulation of the Constitution of the Republic of Kosovo."*
44. Finally,

"The Applicants requesting the constitutional review of the constitutional Amendment no. XXIV to the Constitution of the Republic of Kosovo,

consider that the provisions of this Amendment in the substantive aspect are contrary to the constitutional order of the Republic of Kosovo, namely to the concrete constitutional provisions:

Article 1 paragraph (1) and (2) - Definition of State

Article 3 - Equality Before the Law

Article 22 - Direct Applicability of International Agreements and Instruments in conjunction 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 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

Articles 132, 134 and 135 - regarding the Ombudsperson”

As to the procedural aspect of the Referral:

45. In relation to the procedure followed in the adoption of the challenged decision, the Applicants argue that procedural violations also occurred.
46. In this respect, the Applicants claim that after the extra-ordinary meeting of the Presidency of the Assembly of 31 July 2015, in which it was decided that the plenary session for re-voting on Amendment XXIV shall take place on 3 August 2015, “... *the accompanying material was not sent to the deputies of the Assembly of Kosovo, which would be reviewed in the plenary session.*”
47. Moreover, the Applicants quote Article 113.9 and 144.3 of the Constitution, which stipulate that prior to putting to a vote in the Assembly of an amendment to the Constitution, the proposed amendment shall be referred by the President of the Assembly to the Constitutional Court in order to confirm that the proposed amendment does not diminish the rights guaranteed by Chapter II of the Constitution. The Applicants state that,

“Despite the Decision of the Assembly of Kosovo, rendered in the plenary session of 26 June 2015, the Government of Kosovo on 31 July 2015, re-proceeded to the Assembly of Kosovo the draft amendment with the same content, by not taking into account the decision rendered by the Assembly of

Kosovo on 26 June 2015. [...] The President of the Assembly should have submitted the draft amendment for assessment to the Constitutional Court.”

48. In addition the Applicants state that referring the proposed amendment to the Constitutional Court is obligatory and the formulation of Article 113.9 of the Constitution does not allow for any variation. *“Under this provision, here is not taken at all into account the discretionary right of the President of the Assembly, to alternate the proceedings of a draft constitutional amendment before the Constitutional Court.”*
49. According to the Applicants *“... the Constitutional Court is the only state authority which has the constitutional authorization to make a conclusion regarding any proposal for amendment to the Constitution in relation to human rights and fundamental freedoms.*

[...]

The procedural presumptions have the essential character to guarantee the right content of the matter for which is conducted the respective procedure referred the maxim “forma data esse rei” (the form determines the content). For this reason, the violation of the procedural presumption that have absolute character, and in the present case the imperative nature of the provision of Article 113.9 is indisputable, makes that the proceeded matter according to the procedural deformation challenges the legitimacy of the content of the matter itself, to which is given legal power precisely in this procedure.”

50. Similarly, the Applicants argue that Article 144.3 *“... gives the meaning of a requirement for any proceeding that is related to the constitutional amendments. Therefore, an amendment cannot enter into force although it had fulfilled the requirements for the approval by the qualified majority under Article 144.2 of the Constitution of Kosovo.”*
51. In addition the Applicants emphasise the importance of Article 144.3 by stating that, *“If we clarify this issue through the rules of systematic interpretation, it is sufficient to take into account paragraph 4 of Article 144, which defines the moment of entry into force of a constitutional amendment voted by the Assembly of Kosovo. Therefore, the order of paragraph 4, after paragraph 3, is an indicator that the process of the approval of a constitutional amendment and its entry into force is conditioned by paragraph 3 of Article 144 of the Constitution.”*
52. The Applicants conclude their arguments on the procedural aspect of the alleged violations by including also Rule 82 of the Rules of Procedure of the Assembly, which reflects the constitutional provisions on procedures of adoption of amendments to the constitution. The Applicants allege that these procedures were not followed.

Comments submitted by the Prime Minister

53. In the letter of 28 August 2015 of the Prime Minister it is stated, “... *that Amendment XXIV to the Constitution of the Republic of Kosovo, submitted by the Government to the Assembly of the Republic of Kosovo, on 31 July 2015, and adopted by the Assembly in the plenary session dated 03 August 2015, is IDENTICAL with the text that was submitted to the Constitutional Court and reviewed by this Court in Case KO26-15, namely by Judgment AGJ 788/15.*”
54. Furthermore, the letter argued “... *that all these allegations are ungrounded because, in relation to this matter, we already have a Judgment of the Constitutional Court, whereby it was ascertained that Amendment XXIV does not diminish the fundamental human rights and freedoms set forth under Chapters II and III of the Constitution of the Republic of Kosovo.*”
55. In conclusion, it is proposed to the Court, “... *to DECLARE INADMISSIBLE [Referral KO107/15], since we are dealing with a case that has already been adjudicated (res judicata).*”

Admissibility of the Referral

56. In accordance with Article 113.5 of the Constitution, the task of the Court is to review whether the substance of the contested decision and the procedure followed in its adoption are in violation of the Constitution, as alleged by the Applicants. In this respect, the Applicants consider that the contested decision in its substance violates Articles 1, 3, 22, 24, 35, 45, 102, 103, 104, 114, 132, 134 and 135 of the Constitution, while the procedure followed in the event of the adoption of Decision No. 05-V-139 was in violation of Articles 113.9 and 144.3 of the Constitution.
57. In order for the Court to adjudicate the Applicants’ Referral it is necessary to examine whether the Applicants have fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law. The Court must first determine whether the Referral has been submitted by an authorized party.
58. In this respect, the Court refers to Article 113.1 of the Constitution, which establishes that:

"The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties."
59. As to these requirements, the Court recalls that the Applicants filed their Referral pursuant to Article 113.5 of the Constitution, which provides:

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

60. The Court notes that the Referral was submitted by 24 deputies of the Assembly, within 8 days of the adoption of Decision No. 05-V-139. Therefore, the Court concludes that the Applicants are authorized parties to bring the Referral challenging this Decision before the Court.
61. However, the Court will further examine other admissibility criteria, which are applicable in the present case.

As to the challenged decision:

62. The Court notes that the Applicants challenge Decision No. 05-V-139 of the Assembly, of 3 August 2015. This Decision states that:

“The Assembly of the Republic of Kosovo, pursuant to Articles 65 (2) and 144 of the Constitution of the Republic of Kosovo as well as Article 6.2 of the Rules of Procedure of the Assembly, in the plenary session held on 3 August 2015, having reviewed the Proposal-Amendment no. 24 to the Constitution of the Republic of Kosovo, re-proceeded by the Government of the Republic of Kosovo, rendered the following:

DECISION

1. Amendment no. 24 to the Constitution of the Republic of Kosovo, re-proceeded by the Government of the Republic of Kosovo, is approved.
2. The amendments to the Constitution shall enter into force immediately upon the approval by the Assembly of the Republic of Kosovo.”

As to the substantial aspect of the Referral:

63. In this respect, the Court refers to Rule 36 (3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”), which provides that:

“A referral may also be deemed inadmissible in any of following cases:

- (a) *the Court does not have jurisdiction in the matter;*
- (b) *the Referral is made anonymously;*
- (c) *the Court considers that the Referral is an abuse of the right of petition;*
- (d) *the Court has already issued a Decision on matter concerned and the Referral does not provide sufficient grounds for a new decision;*
- (e) *the Referral is incompatible racione materiae with the Constitution;*
- (f) *the Referral is incompatible racione personae with the Constitution*
- (g) *the Referral is incompatible racione temporis with the Constitution”*

64. In this connection, the Court observes that the Applicants’ arguments are mainly related to the substantive content of Amendment XXIV, although they allege that they are challenging Decision No. 05-V-139.
65. This is also evident from the concluding part of the substantive aspect of the allegations, where the Applicants request from the Court “... *the constitutional*

review of the constitutional Amendment no. XXIV to the Constitution of the Republic of Kosovo, consider that the provisions of this Amendment in the substantive aspect are contrary to the constitutional order of the Republic of Kosovo”.

66. In this respect, the Court reiterates that Article 113.9 of the Constitution reads:

“The President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.”

67. The Court also refers to Article 144.3 of the Constitution, which stipulates that:

“Amendments to this Constitution may be adopted by the Assembly only after the President of the Assembly of Kosovo has referred the proposed amendment to the Constitutional Court for a prior assessment that the proposed amendment does not diminish any of rights and freedoms as set forth in Chapter II of the Constitution.”

68. In this direction, the Court recalls that the Constitution does not grant any competence to the Court for reviewing a constitutional amendment as to its substantive content following its adoption. The competence of the Court with regards to the substance of a constitutional amendment is to review whether a proposed amendment diminishes any of the rights and freedoms as set forth in Chapter II of the Constitution, prior to the amendment being put for approval to the Assembly.

69. Furthermore, the Court refers to its case-law (see, *mutatis mutandis*, Judgment No. AGJ469/13, of 9 September 2013 in case KO95/13, at paragraph 97 and following). Similarly to that case, the Court considers that Amendment XXIV to the Constitution and Decision No. 05-V-139 of the Assembly are two separate legal acts. Each of these Acts follows a different legal procedure, for the constitutional assessment of the draft Amendment and for the Decision to adopt the Amendment, respectively.

70. The Court recalls that for the adoption of an amendment to the Constitution, a special majority of votes is required in the Assembly, as provided in Article 144.2. This provision states that, *“Any amendment shall require for its adoption the approval of two thirds (2/3) of all deputies of the Assembly including two thirds (2/3) of all deputies of the Assembly holding reserved or guaranteed seats for representatives of communities that are not in the majority in the Republic of Kosovo.”*

71. As to the adoption of Amendment XXIV, the Court notes that the decision to adopt was taken by the required two-thirds majority of the Assembly as specified by the Constitution. As such, the Court considers that the Decision of the Assembly to adopt Amendment XXIV was in compliance with the procedural provisions of the Constitution.

72. The Decision on the adoption of any constitutional amendment, in this case Amendment XXIV, is, in its substance, the announcement that an amendment has been adopted by the required majority. The amendment as such cannot be changed between the time of its assessment by the Court and its adoption by the Assembly, because any change to a constitutional provision requires the prior approval of the Court as to its compliance with the provisions of Chapter II of the Constitution.
73. Therefore, the Applicants' arguments regarding the substance of Amendment XXIV cannot be taken into account at this point in time. Arguments of that nature were appropriately addressed to the Court at the time when the assessment of compliance of the amendment with Chapter II of the Constitution was under consideration by the Court. Indeed, the Court recalls that it distributed the Referral KO26/15 to all members of the Assembly, who were given the opportunity to present their comments on the constitutionality of Amendment XXIV at that time (see Judgment AGJ 788/15 in case KO26/15 of 15 April 2015, paragraph 7).
74. Furthermore, Article 144.4 of the Constitution states that,
- “Amendments to the Constitution enter into force immediately after their adoption in the Assembly of the Republic of Kosovo.”*
75. The Court notes that, with Articles 113.9 and 144.3, the Constitution places all considerations regarding the assessment and confirmation of the constitutionality of proposed constitutional amendments to the time period prior to the adoption of an amendment. For this reason, in Article 144.4 the Constitution authorizes the immediate entry into force of constitutional amendments following their adoption. The compliance of the amendment as such with the Constitution can no longer be subject to question because this has been assessed and approved prior to the decision to adopt it.
76. In particular, the Court notes that this procedure differs from that which applies to the adoption of Laws by the Assembly. Following the adoption of a Law, Article 113.5 of the Constitution allows for a period of eight (8) days following its adoption during which a minimum of ten (10) deputies may challenge the constitutionality of that Law.
77. In compliance with this provision, Article 43.1, of the Law provides that, *“A law or decision adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation after the expiry of the deadline prescribed by Article 113, Paragraph 5 of the Constitution.”*
78. In such cases, the constitutionality is assessed by the Court after the adoption of the law or decision, rather than before, and promulgation by the President of the Republic of Kosovo is connected to the referral of the law or decision to the Court for an assessment of constitutionality.
79. Furthermore, in such cases, the Constitution provides, in Article 116.2, that, *“While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a*

decision if the Court finds that application of the contested action or law would result in unrecoverable damages.”

80. Where it concerns the adoption of an amendment to the Constitution, the Court finds that the entry into force of the amendment is not contingent upon promulgation by the President of the Republic, but instead it enters into force immediately following its adoption by the Assembly, as stipulated in Article 144.4.
81. This is also evidenced by Decision No. 05-V-139 of the Assembly, under point 2, which states that, *“The amendments to the Constitution shall enter into force immediately upon the approval by the Assembly of the Republic of Kosovo.”*
82. Although the question has not been raised by the Applicants, the Court considers that in these circumstances the submission of a Referral under Article 113.5 of the Constitution against the Decision to adopt the amendment cannot suspend the entry into force of the amendment itself, because its immediate entry into force is directly regulated by a constitutional provision.
83. In this regard, the Court recalls Article 16 [Supremacy of the Constitution] which stipulates that, *“1. The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution.”*
84. In the present case, the Court also notes that the Applicants have not submitted any request to the Court to suspend the contested Decision No. 05-V-139. Consequently, in this Referral, the question of a suspension of any contested action or law does not arise.
85. The Court recalls that Amendment XXIV was subject to a prior assessment by the Court, and it was confirmed that this 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. (see *Judgment of the Constitutional Court AGJ 788/15 of 15 April 2015, in Case 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. 05-433jDO-318*).
86. On 3 August 2015 this same amendment was adopted by the Assembly with 82 votes in favour, 5 votes against and 1 abstention.
87. Furthermore, the Court notes that Amendment XXIV to the Constitution has entered into force pursuant to Article 144.4 of the Constitution.
88. Consequently, in the context of this Referral, the Court concludes that it does not have jurisdiction to review a constitutional amendment once it has been adopted.
89. The Court notes that, in their submissions, the Applicants have not addressed any arguments to the substance of the contested Decision 05-V-139 to adopt

Amendment XXIV. As such, the Court finds that the Applicants have not substantiated their complaints in relation to this Decision.

90. Therefore, in accordance with Rules 36 (3) (a) and 36 (3) (e), the Court finds the allegations related to the substance of the challenged decision, inadmissible.

As to the procedural aspect of the Referral:

91. The Court observes that, with regards to the procedural aspect of the Referral, the main argument of the Applicants supporting their allegation of procedural violations is built around the fact that the President of the Assembly re-submitted the proposed amendment without referring the proposed Amendment XXIV to the Court for review under Article 144.3 of the Constitution, prior to the voting on the re-submitted amendment.

92. In this connection the Court refers to Article 42 [Accuracy of the Referral] of the Law which foresees:

“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.”

93. In this respect the Court recalls that, prior to undertaking its assessment of this Referral, it requested information from all involved parties: the Government as the sponsor of Amendment XXIV, the President of the Assembly which sent the proposed amendment to the Deputies, as well as from the Applicants, to submit to the Court, *inter alia*, the text of the proposed amendment and the text of the adopted amendment.

94. In due time the Court received the re-submitted proposed Amendment XXIV from the Government, the text of the proposed Amendment XXIV and the text of the adopted Amendment XXIV by the President of the Assembly as re-submitted and voted, plus the text of the adopted Amendment XXIV submitted by the Applicants.

95. In order to check the content of this Amendment, the Court compared these texts with the content of the proposed Amendment which it had previously assessed in Case KO26/15.

96. The Court notes that the Applicants also state in their Referral that the re-submitted draft amendment had the same content as the draft amendment voted and rejected by the Assembly on 26 June 2015, which had been submitted to the Court and assessed in its Judgment of 14 April 2015.

97. The Government also confirmed, in its letters of 18 and 28 August 2015 in response to the Court's request for information, that the draft amendment re-submitted to the Assembly on 31 July 2015 was identical to the draft amendment as previously submitted to the Court for its assessment in case KO26/15.
98. Furthermore, the President of the Assembly stated, in his letter of 17 August 2015 in response to the Court's request for information, that,
- “The Government of the Republic of Kosovo, on 31 July 2015, re-proceeded to the Assembly Amendment no. 24 to the Constitution of the Republic of Kosovo, reviewed by the Judgment of the Constitutional Court of the Republic of Kosovo, in Case KO26/15, No. ref. AGJ 788/15, of 15 April 2015.”*
99. In this context, the Court concluded that the content of the proposed Amendment XXIV, as it was submitted to the Court for a prior assessment on 9 March 2015, is identical with the text of the proposed Amendment XXIV, which was resubmitted by the Government and forwarded by the President of the Assembly to all Deputies on 31 July 2015. Moreover, the text of the Amendment, which was adopted on 3 August 2015 and subsequently published in the Official Gazette two days after, remains identical with the initial text which was assessed by the Court previously.
100. In these circumstances, the Court considers that there was no need to refer for the second time the proposed Amendment, since it had already been reviewed once before, and its substantive content did not undergo any change or modification.
101. The Court notes that the Applicants also allege that the constitutional procedures were violated because, following the extra-ordinary meeting of the Presidency of the Assembly of 31 July 2015, the materials related to the draft Amendment were not submitted to the Deputies.
102. However, the Court notes that, together with its letter of 17 August 2015, the Presidency of the Assembly provided a copy of the complete file as it was submitted on 31 July 2015 to all deputies prior to the vote of 3 August 2015. As such, this file contained Decision 01/41 of the Government for the re-submission of Amendment XXIV to the Assembly, the text of the proposed Amendment XXIV, and the Judgment of the Constitutional Court AGJ788/15 of 14 April 2015 in Case KO26/15.
103. Therefore, the Court finds that the Applicants have failed provide evidence in support of this complaint.
104. The Court recalls that under Article 42, para. 1.3, of the Law, in a referral made pursuant to Article 113.5 of the Constitution, *“the following information shall, inter alia, be submitted: [...] 1.3 presentation of evidence that supports the contest.”*

105. Furthermore, Rule 36 (2) (d) of the Rules of Procedure foresees that “*the Court shall declare a Referral as being manifestly ill-founded when it is satisfied that (...) the Applicant does not sufficiently substantiate his claim.*”
106. The Court concludes that the Applicants failed to present evidence to substantiate their allegations in support of their contest of a violation of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.5 of the Constitution, Article 42, para. 1.3, of the Law and Rules 36 (2) (d), 36 (3) (a) and 36 (3) (e) of the Rules of Procedure, on 21 September 2015, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi