



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 26 August 2014

Ref. No.: AGJ700/14

JUDGMENT

in

Case No. KO119/14

Applicants

Xhavit Haliti and 29 other Deputies of the Assembly of the Republic of Kosovo

Constitutional review of Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, dated 17 July 2014.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President

Ivan Čukalović, Deputy-President

Robert Carolan, Judge

Altay Suroy, Judge

Almiro Rodrigues, Judge

Snezhana Botusharova, Judge, and

Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was filed by the following 30 Deputies of the Assembly of the Republic of Kosovo: Hashim Thaçi, Xhavit Haliti, Hajredin Kuçi, Enver Hoxhaj, Arsim Bajrami, Memli Krasniqi, Margarita Kadriu-Ukelli, Zenun Pajaziti, Elmi Reçica, Rafet Rama, Ganimete Musliu, Selvije Halimi, Safete Hadërgjonaj, Bekim Haxhiu, Flora Brovina, Fadil Beka, Xhevahire Izmak, Agim Aliu, Sala

Berisha-Shala, Agim Çeku, Besim Beqaj, Raif Qela, Naim Fetahu, Blerta Deliu-Kodra, Mexhide Mjaku-Topalli, Adem Grabovci, Azem Sylaj, Nuredin Lushtaku, Nezir Çoçaj and Kadri Veseli (hereinafter, the Applicants). The Applicants have authorized Mr. Xhavit Haliti to represent them before the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

Challenged decision

2. The Applicants challenge the Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") as regards its substance and as well the procedure followed during the Constitutive Session of the Assembly on 17 July 2014.

Subject matter

3. The subject matter of the Referral is the assessment of the constitutionality of Decision No. 05-V-001 voted by 83 Deputies of the Assembly on 17 July 2014, by which Mr. Isa Mustafa was elected President of the Assembly.
4. The Applicants contest the constitutionality of the procedure for the election of the President of the Assembly as applied during the Constitutive Session of the Assembly held on 17 July 2014, alleging a violation of Article 67 [Election of the President and Deputy Presidents] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and the Rules of Procedure of the Assembly.
5. Furthermore, the Applicants request the Court to impose interim measures suspending the Constitutive Session of the Assembly pending the final decision of the Court. The Applicants allege that *"The Interim Measure is in the public interest, because unrecoverable damage could be caused to the functioning of the institutions of the Republic of Kosovo as well as to the democracy in the Republic of Kosovo."*

Legal basis

6. The Referral is based on Article 113.5 of the Constitution, Articles 42 and 43 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rule 56.1 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Court

7. On 18 July 2014, the Applicants submitted the Referral to the Court.
8. On 21 July 2014, pursuant to Rule 33 of the Rules of Procedure, the President of the Constitutional Court, by Decision No. GJR. KO119/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KO119/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović.

9. On 21 July 2014, the Court notified the Applicants of the registration of the Referral and sent a copy of the Referral to the President of the Republic of Kosovo, the Caretaker Government of the Republic of Kosovo (hereinafter, the Caretaker Government) and the Secretary General of the Assembly. The latter was requested to submit to the Court a copy of the transcript of the Constitutive Session held on 17 July 2014 and to provide a copy of Referral KO 119/14 to each Deputy in order to enable them to submit their comments regarding this Referral to the Court.
10. On 23 July 2014, the Court granted the Applicants request for an interim measure “[...] until the final decision is published and no later than 18 September 2014 from adoption of [...]” the decision on interim measure.
11. On 29 July 2014, 67 Deputies of the Assembly submitted their comments in respect to Referral KO119/14.
12. On 30 July 2014, the Court sent a copy of the comments of the 67 Deputies of the Assembly to the Applicants, which did not submit any comments.
13. On 30 July 2014, Deputy Mr. Arsim Bajrami submitted his comments in respect to Referral KO119/14.
14. On 31 July 2014, the Secretary General of the Assembly submitted to the Court the requested documents.
15. On 4 August 2014, five Deputies of the Assembly informed the Court that they support the comments of the 67 Deputies of the Assembly.
16. On the same date, the Secretary General of the Assembly submitted to the Court the comments of the Deputies of the Assembly in respect to Case KO119/14.
17. On 19 August 2014, the Court deliberated and voted in the case of Judge Kadri Kryeziu whereby the Court ruled:

TO REPRIMAND Judge Kadri Kryeziu for violating Articles 1 and 4 of the Code of Conduct for Judges of the Constitutional Court;

TO EXCLUDE Judge Kadri Kryeziu from participating in the deliberations in all future referrals to the Constitutional Court involving political parties or individuals in political parties or on any other case having a political context, where a party, inter alia, may appear in the proceedings before the Court such as the President of the Republic of Kosovo, the Assembly, the Government, the Ombudsperson and Municipalities;

18. Therefore, Judge Kadri Kryeziu did not participate in the Court’s proceedings and ruling on Case KO 119/14.
19. On 21 August 2014, the Court held a public hearing.

20. On the same day, the Court deliberated and voted on the Case, whereas the Judge Rapporteur, Judge Robert Carolan, requested to be replaced because he was minority. The President of the Constitutional Court pursuant to Rules 60 (1) and 44 (4) of the Rules of Procedure replaced Judge Robert Carolan with Judge Almiro Rodrigues as Judge Rapporteur (Decision No. GJR. KO119/14). Consequently, Judge Snezhana Botusharova was appointed member of the Review Panel (Decision No. KSH. KO119/14).

Summary of facts

21. On 7 May 2014, the Assembly in its extraordinary plenary session decided to dissolve the Assembly.
22. On 8 May 2014, the President of the Republic of Kosovo decreed early elections to take place on 8 June 2014.
23. On 8 June 2014, the elections took place in the Republic of Kosovo.
24. On 27 June 2014, the Central Election Commission (hereinafter, the CEC) published the election results.
25. On 4 July 2014, CEC certified the election results.
26. On 7 July 2014, the President of the Republic of Kosovo decided that the Constitutive Session of the Assembly be held on 17 July 2014.
27. On 8 July 2014, the former President of the Assembly from the IV legislature called for a joint meeting with the Presidency of the Assembly of the IV legislature and the heads of the parliamentary parties to prepare the Constitutive Session of the V legislature. Attached to the invitation for the meeting were the materials from CEC, namely the notification of the certified election results, CEC decision No. 1579-2014 of 4 July 2014 on the certification of election results and the list of candidates elected for the Assembly.
28. On 11 July 2014, Democratic League of Kosovo (LDK), Alliance for the future of Kosovo (AAK) and NISMA informed the former President of the Assembly of the IV legislature that the Deputies of the political subject LDK-AAK-NISMA have decided to form the parliamentary group LDK-AAK-NISMA.
29. On 12 July 2014, the former President and Presidency of the IV legislature held a meeting with the aim to prepare the draft agenda for the Constitutive Session.
30. The draft agenda for the Constitutive Session of the Assembly contained the following issues:
 - a. Establishment of the *ad hoc* Committee for the verification of quorum and mandates of the Deputies;
 - b. Taking of the oath by the Deputies of the Assembly;
 - c. Notification on the formation of parliamentary groups; and
 - d. The election of the President and Deputy Presidents of the Assembly.

31. On 17 July 2014, the Assembly held its Constitutive Session chaired by the oldest member of the Assembly, Ms. Flora Brovina, (hereinafter, the Chairperson) and assisted by the youngest member of the Assembly, Ms. Teuta Rugova.
32. The Chairperson opened the Constitutive Session of the Assembly and then requested from the political parties to nominate one member each for the *ad hoc* Committee for verification of quorum and mandates. The Democratic Party of Kosovo (PDK) nominated Deputy Mr. Memli Krasniqi; LDK, AAK and NISMA nominated Deputy Mr. Armend Zemaj; Vetëvendosja (VV) nominated Deputy Ms. Albulena Haxhiu; Lista Srpska nominated Deputy Ms. Jelena Bontić; Kosovo Demokratik Tyrk Partisi nominated Deputy Ms. Müfera Şinik; Koalicija VAKAT nominated Deputy Mr. Duda Balje; Progresivna Demokratska Stranska nominated Deputy Mr. Emilija Redžepi; Egyptian Liberal Party nominated Deputy Mr. Veton Berisha; Egyptian Liberal Party nominated Deputy Mr. Etem Arifi; Kosovaki Nevi Romani Partia nominated Deputy Mr. Kujtim Paqaku. This composition of the *ad hoc* Committee for verification of quorum and mandates was voted and approved by all 120 Deputies.
33. The *ad hoc* Committee presented a report on the validity of mandates of Deputies and verified the quorum of the Constitutive Session of the Assembly, based on the list of the certified election results in the following order:
 - a. PDK; 37 Deputies
 - b. LDK; 30 Deputies
 - c. VV; 16 Deputies
 - d. AAK; 11 Deputies
 - e. Srpska Lista; 9 Deputies
 - f. NISMA; 6 Deputies
 - g. Kosovo Demokratik Tyrk Partisi; 2 Deputies
 - h. Koalicija Vakati; 2 Deputies
 - i. Progresivna Demokratska Stranska; 1 Deputy
 - j. Kosovo Democratic Party of Ashkali; 1 Deputy
 - k. Nova Demokratska Stranka; 1 Deputy
 - l. Egyptian Liberal Party; 1 Deputy
 - m. Ashkali Party for Integration; 1 Deputy
 - n. Koalicija za Gora; 1 Deputy
 - o. Kosovaki Nevi Romani Partia; 1 Deputy
34. Thereupon, the Chairperson stated that all 120 Deputies were present and put the report of the *ad hoc* Committee for verification of quorum and mandates to the vote. 44 Deputies voted in favour, while the rest of the Deputies neither voted against nor abstained. Thereafter, the Chairperson held a break.
35. After the break, the Chairperson held a second voting round. The Chairperson stated that all 120 Deputies were present and that, out of the Deputies present, 117 Deputies voted in favour of the report of the *ad hoc* Committee.
36. The Chairperson requested the Deputies present to take the oath which they did.

37. As to point three of the agenda, the formation of Parliamentary Groups, the Chairperson stated that she and the youngest member of the Assembly did not have a formal competence in that regard and that they are only there because of their age. Therefore, the formation of the Parliamentary Groups has to be done after point 4, election of President and Deputy Presidents of Assembly.
38. The Chairperson continued with the agenda for the Constitutive Session of the Assembly requesting from PDK to propose a candidate for President of the Assembly and the three largest political parties to propose their candidates for Deputy Presidents of the Assembly. PDK proposed Deputy Mr. Agim Aliu as a candidate for President of the Assembly, while LDK proposed Deputy Mr. Isa Mustafa as a candidate for President of the Assembly. The other political parties did not propose their candidates for Deputy Presidents for the Assembly. When the Chairperson put the candidacy of Mr. Agim Aliu of PDK to vote, the following political parties LDK, VV, AAK, NISMA and Lista Srpska left the Assembly Hall. Upon her request, the remaining Deputies were counted and 47 Deputies were present. Thus, the Chairperson declared the session closed until further notice in writing because there was no longer a quorum.
39. Thereafter, although the Constitutive Session of the Assembly was officially adjourned by the Chairperson until further notice in writing, LDK, AAK, NISMA, VV and Lista Srpska returned to the Assembly Hall and started a meeting. The youngest member of the Assembly Deputy Ms. Teuta Rugova presided the meeting and requested the 83 Deputies present to vote the motion submitted by LDK, AAK, NISMA and VV to replace the Chairperson, Deputy Flora Brovina. The motion was approved by 82 votes in favour. Consequently, the second oldest member of the Assembly, Deputy Ms. Milka Vulić, took the chair of the meeting.
40. Ms. Milka Vulić asked LDK, AAK and NISMA to propose a candidate for President of the Assembly and the three largest political parties to propose one candidate each for the Deputy Presidents of the Assembly. LDK, AAK and NISMA proposed Deputy Mr. Isa Mustafa as a candidate for President of the Assembly, while VV proposed Deputy Mr. Glauk Konjufca as a candidate for Deputy President of the Assembly and Group 6+ proposed as a candidate for Deputy President of the Assembly, on a rotation basis, Deputies Ms. Duda Balje, Ms. Müfera Şinik, Mr. Danush Ademi and Mr. Kujtim Paqaku. The other political parties declared that they would propose their candidates for Deputy Presidents for the Assembly at a later stage.
41. Ms. Milka Vulić put the candidates to the vote, whereby Mr. Isa Mustafa was elected President of the Assembly with 65 votes in favour out of 83 Deputies present. Mr. Glauk Konjufca from VV was elected Deputy President with 82 votes in favour, while Ms. Duda Balje, Ms. Müfera Şinik, Mr. Danush Ademi and Mr. Kujtim Paqaku from Group 6+ were elected Deputy President on a rotation basis with 82 votes in favour.

Arguments presented by the Applicants

42. The Applicants claim that *“During the preparation for the constitutive session of the Assembly there was a violation of the Constitution and the Rules of*

Procedure of the Assembly. During the meeting, dated 12.07.2014, the chairperson of the meeting, the President of the previous legislature Mr. Krasniqi, exceeded his powers set out in the Constitution, namely his interpretation of the largest parliamentary group, which is, according to the former President, the "Parliamentary group" established with 47 deputies during the registration process of the fifth legislature has to sit in the center and consequently this Parliamentary Group has to propose the President of the Assembly. However, taking into consideration that the "Parliamentary Group LDK-AAK-NISMA" are not certified as the largest parliamentary group by the Central Election Commission, as determined by Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III/no. 31/ 15 June 2008), the action of the President of the Assembly of the fourth legislature authorizing the merger of one Parliamentary Group consisted of the deputies of LDK, AAK and NISMA, without being certified as the largest parliamentary group, before the constituency of the fifth legislature of the Assembly of the Republic of Kosovo, constitutes a violation of the Constitution of the Republic of Kosovo, respectively Article 64 (1) and Article 67, and Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III / no. 31/15 June 2008). Also, the action of the President of the Assembly of the fourth legislature is also in conflict with the practices that have been confirmed so far by the Transcript of Meetings of the Presidency with representatives of parliamentary parties, held on 10.02.2011."

43. *Furthermore, the Applicants allege that the "Decision of the Assembly of the Republic of Kosovo, dated 17 July 2014 (No. 05-V-001), on the election of the President of the Assembly of the Republic of Kosovo, including the preparatory procedure followed in connection with the constitutive process of the Assembly are not in accordance with the provisions of Article 67 of the Constitution of the Republic of Kosovo. Based on Article 67.2 of the Constitution and the Constitutional Court Judgment in Case no. KO103/14 filed by the President of the Republic of Kosovo, regarding the assessment of compatibility of Article 84 (14) (Competencies of the President) with Article 95 (Election of the Government) of the Constitution of the Republic of Kosovo (Ref No.: AG 671114, 1 July 2014), the President of the Assembly is proposed by the largest parliamentary group which won the majority of seats in the Assembly and is elected by a majority vote of all deputies of the Assembly."*
44. *Thus, the Applicants request the Constitutional Court to answer the following questions:*
 - a. *To assess the constitutionality of the Decision of the Assembly of the Republic of Kosovo, dated 17.07.2014 (no. 05-V-001) if the President of the Assembly has been proposed by the largest parliamentary group according to Article 67.2 of the Constitution of the Republic of Kosovo.*
 - b. *To clarify who is the largest parliamentary group, as defined in Article 67 (paragraph 2) of the Constitution of the Republic of Kosovo and Article 12 of the Rules of Procedure of the Assembly of the Republic of Kosovo (29 April 2010), respectively is it the*

Parliamentary group that has won in the election for the Assembly of 8 June 2014 or the grouping that has been formed during the registration of the deputies and, therefore,: Who has the right to propose the candidate for President of the Assembly during the constitutive session of the Assembly?

- c. *To clarify whether there was a violation of the Constitution by the President of the Assembly from the previous legislature according to Article 67.7. What are the competences of the President of the Assembly from the previous legislature during the preparatory meeting dated 07.12.2014?*
- d. *After the official closing of the constitutive session, was there a right to discharge the Chairperson and to continue with the constitutive session without inviting the members and taking into account this and the steps that have followed with the election of President and Deputy Presidents of the Assembly, has there during the constitutive session of the Assembly of the Republic of Kosovo been a violation of the Constitution and the Rules of Procedure of the Assembly?*

Comments presented by the 67 Deputies of the Assembly

- 45. On 29 July 2014, 67 Deputies, represented by Mr. Bajram Gecaj, submitted their comments in respect of Referral KO119/14.
- 46. As to the admissibility of the Referral, the 67 Deputies claim that the Applicants are not an authorized party to file a Referral pursuant to Article 113.5 of the Constitution because the *"[...] violations alleged by Applicants are matters provided for in the Rules of the Assembly or determined by Decisions of the Presidency of Assembly, and not matters provided for in the Constitution."* The 67 Deputies argue that the Court has taken a stance in Case No. KO29/11 and Case No. KO108/13 *"[...] whereby the Court refused to interpret matters provided for in the Rules of the Assembly, but only those provided for in the Constitution."*
- 47. In this respect, the 67 Deputies allege that:
 - a. the notion "largest parliamentary group" *"[...] is defined by the Rules of the Assembly in its Annex no. 1. Consequently, in accordance with the clear position of this Court that it does not enter into interpretation of matters regulated by laws or regulations, in the present case too, the Applicants cannot request the Constitutional Court to interpret matters that are regulated by the Rules of the Assembly and not by the Constitution, namely, an interpretation of the definition given in Annex 1 of the Rules of the Assembly. [...]"* and *"The definition of the term "parliamentary group" is a political question, as it is closely linked with the political will of the deputies of the Assembly of Kosovo to regulate, through the Rules of the Assembly, the procedures of the functioning of this institution and their activity as deputies."*

- b. the Decision of the Presidency of the Assembly is not a constitutional matter and from Case No. KO115/13 *"It is a clear position of this Court that it does not deal with interpretation of the decisions of the Presidency of the Assembly or other bodies of the Assembly, but only with Decisions voted by deputies in the Session."*
48. In the present case, LDK-AAK-NISMA have formed a joint parliamentary group based on their program similarities and executed their rights as parliamentary groups, by proposing the candidate for the President of the Assembly in accordance with Article 67 (2) of the Constitution.
49. In the view of the 67 Deputies, the Applicants do not in any way specify how their allegation may present constitutional violations. Moreover, the Applicants have requested clarification, which are incompatible *ratione materiae* with the Constitution.
50. As to the merits of the Referral, the 67 Deputies claim that the Referral is ungrounded because allegedly *"Both essential requirements of the Constitution [i.e. Article 67.2 of the Constitution], that is, the proposal from the largest parliamentary group and the vote by majority of the deputies of the Assembly, have been met in the concrete case. All other questions are questions that are regulated by the Rules of the Assembly."*
51. As to the notion of "parliamentary group", the 67 Deputies hold that the notion is not defined in the Constitution, but in the Rules of Procedure of the Assembly, where it reads in Annex 1 [Definition of Terms used in the Rules of Procedure]: *"a group of not less than 5 %, respectively 6 Members of the Assembly, who have informed the President and the Presidency of the Assembly about their intention to act as a parliamentary group."* They also refer to Article 20 (1) of the Rules, providing that *"Members of Assembly may establish a parliamentary group on account of their political affiliation or programme determination."*, while paragraph 2 stipulates *"The Member of Assembly shall have the right to take part equally in a parliamentary group, leave the group, form a new parliamentary group, join another group or act as an independent Member of Assembly. In each case, the Member of Assembly shall be obliged to notify the President of the Assembly on his decision in writing."*
52. In this respect, the 67 Deputies claim that *"On 8 July 2014, a group of 47 deputies formed the parliamentary group LDK, AAK, NISMA based on program determination and, in accordance with Article 20 of the Rules, informed thereof the President and the Presidency of the Assembly, that was caretaking in accordance with Article 8 of the Rules of the Assembly. The formation of parliamentary groups before the holding of the constitutive session can by no means be contested for the reason that if we refer to Article 8 (3) of the Rules it can be clearly seen that parliamentary groups may be formed also before the constitutive session. This position is also in accordance with Article 70 (2) of the Constitution [...]"* and *"The results of parliamentary elections were certified on 4 July 2014 by the Central Election Commission, whereas the constitutive session was held on 17 July 2014. Based on that, the deputies whose mandate had already begun 13 days before the constitutive*

session had the right and were free to join in parliamentary groups even before the constitutive session. Formation of parliamentary groups even before the constitutive session is proved also by previous precedents of parliamentary practice. In the IV legislature of the Assembly of Kosovo, the certification of results was done on 7 February 2011, and Parliamentary group 6+ had submitted the list of deputies of their parliamentary group (joining different parties that had run separately in the elections), on 9 February 2011, whereas the constitutive session was held on 21 February 2011.”

53. On the other hand, the 67 Deputies state that the Applicants also erroneously conclude that Parliamentary Group is synonym to the notion of “Party or Coalition”. In their view, the largest “parliamentary group” is not determined by the political party or coalition, but by the free will of the Deputies to join either based on political affiliation or based on program as stipulated in the Rules of Procedure of the Assembly.
54. As to the Applicants’ request from the Court to clarify whether there was a violation of the Constitution by the President of the previous legislature during the preparatory meeting of 12 July 2014, the 67 Deputies submit that the Court does not have competence to review decisions of the Presidency of the Assembly, but only decisions taken in the session by a majority of Deputies. In their opinion, “[...] this was a Decision of the Presidency, with no vote against that is, taken with consensus and with sufficient quorum to take decisions. In taking this decision, the Presidency has acted in full accordance with the Constitution and the Rules of the Assembly, because, as it is explained above, the Presidency of the previous legislature continues the mandate until the election of the President of the new legislature, including the taking of decisions about the constitutive session.”
55. Moreover, as to the Applicants’ claim that there was a violation when the Chairperson was replaced, the 67 Deputies argue that this “[...] is not an issue to be dealt by the Court, because this is provided by the Rules of Procedure of the Assembly and not by the Constitution. It is clear that all the Rules [Rules of Procedure of the Assembly] included in it, which amongst others provide the rights and obligations of the deputies, apply to every session. Thus, from the moment of taking the oath, the deputies were entitled to their right, including the right to request the floor, to vote in favor and against, to request the continuation of the Session, to request pause, to propose a motion and to replace the Chairperson, pursuant to the provisions of the Rules of Procedure.”
56. The 67 Deputies allege that they had requested the replacement of the Chairperson, pursuant to the Rules of Procedure of the Assembly in light of what follows.
 - a. “[...] despite the decision of the Presidency that the seats in the middle will belong to the parliamentary group of LDK, AAK and NISMA, the deputies of PDK had usurped those seats. On behalf of the parliamentary group of LDK-AAK-NISMA, the MP Vjosa Osmani asked for the floor from the Chairperson of the session to object this violation, but the Chairperson did not pass the floor to her. [...] The

same objection on the violation of the Decision of Presidency, regarding the seat order in the Assembly, expressed as well by the MP Visar Ymeri on behalf of the parliamentary group of Vetëvendosje. Despite this objection, the Chair of the session did not react to correct the violation of the Decision of the Presidency of 12 July 2014.”

- b. “[...] the Chairperson of the session attempted to suspend the session, despite the will of the deputies (over 2/3) of them), to continue it. She and other PDK deputies left the hall. Meanwhile 2/3 of deputies remained in the hall requesting to proceed with the session. At the moment when the Assistant of the Chairperson, Teuta Rugova, asked the quorum to be verified and then to proceed with the session by calling the other oldest deputy, since Mr. Flora Brovina refused to chair the session, Flora Brovina returned to the hall and usurped the seat of the Chairperson thus not allowing to continue the session, neither discussions nor vote nor any other action. In this way she kept hostages over 2/3 of the deputies of Assembly, by responding only to the PDK’s request to not continue the session.”
 - c. “The third item on the agenda, which defined the notification of the formation of the parliamentary groups, was skipped arbitrarily by the Chair of the session. [...]” because “[...] if there is no objection on the agenda at the beginning of the session, that agenda is considered adopted and cannot be amended (Article 42.2 of the Rules of Procedure of the Assembly). For any deviation from this Rule and from the Rules of Procedure of the Assembly is required 2/3 of the votes of deputies present (Article 84 of the Rules of Procedure of the Assembly), but such a voting did not happen at all.”
 - d. “When the Chairperson reached the fourth item on the agenda she was obliged in accordance with the Scenario prepared by the Secretariat, regarding the progress of the session, to pass the floor to the largest parliamentary group, i.e. the group of LDK-AAK-NISMA, to propose the President to the Assembly, pursuant to the Constitution (Article 67.2), Rules of Procedures of the Assembly (Article 8 and 12), Conclusion of the Presidency, and the Scenario prepared by the Secretariat of the Assembly. However, she violated all these documents and first passed the floor to the parliamentary group of PDK with only 37 MPs, unlike the parliamentary group of LDK-AAK-NISMA with 47 MPs.”
57. Finally, the 67 Deputies “Pursuant to the Rule 39 of the Rules of Procedure of the Constitutional Court [...] request from the Constitutional Court to hold a hearing session, since this is more than necessary to clarify the evidence of this subject, in particular the transcript of the constitutive session of the Assembly. A hearing session is essential since the transcript is made based on the statements given over the open microphone with permission of the Chairperson of the Session, while the Chairperson has given the microphone (the floor) only to the deputies of her party (PDK) and did not give the microphone (the floor) to the other deputies, submitters of these Comments, but, they have expressed their views in the Assembly without microphone and

have repeatedly requested for mechanical minutes to be taken, due to these blocking circumstances created by the Chairperson of the Session, Flora Brovina. Moreover, there is a necessity that the parties (representatives of parliamentary groups in the Assembly and the Secretariat of the Administration of the Assembly) express their stands not only regarding the transcript, but on other documents and issues related to the smooth conduct of the Session.”

Comments presented by the Deputy of the Assembly, Mr. Arsim Bajrami

58. On 30 July 2014, Deputy Mr. Arsim Bajrami submitted his comments to the Court in respect to Referral KO119/14, which are summarized as follows.

- a. *“The conclusion of the Presidency of the previous legislature (dated 12.07.2014) on distribution of the seats in the Assembly, signed by the President of the previous legislature Mr. Jakup Krasniqi, is in direct contradiction with Article 64.1 of the Constitution of the Republic of Kosovo, because according to this decision on the distribution of seats in the Assembly was not made based on the votes won in the elections for the Assembly, but on the post-election numbers and coalitions, which were not registered in the CEC in accordance with the Law on General Elections No. 03/L-073, Article 15 and 18. Inevitably, by this method of distribution of seats, it was violated the previous parliamentary practice, as well as the will of the sovereign, transmitted through the elections [...]”.*
- b. *“In the meeting held on 12 July 2014, the Presidency of the previous legislature, on purpose ignored the fact that none of the Deputies of the fifth legislature, including those from the post-election group of LDK-AAK-NISMA did not take the solemn oath and therefore they do not enjoy the legal and constitutional right to exercise their function as Deputy. Even though the mandate of the Deputy commences on the date of certification of the elections result (Article 70.2), the elected Deputy cannot exercise the duty of Deputy before the inauguration of the Assembly, respectively before taking the oath. This is the reason why in the Rules of Procedure, the sequence of events starts with the preparations for the session (Article 8), verification of mandate (Article 9), take of the oath (Article 10) and election of the Assembly’s bodies (Article 12). Also, this is the reason why Article 70.3 specifies that the mandate of Deputy is declared invalid if the Deputy does not take the oath.”*
- c. *“[...] on the day of inauguration, the term “parliamentary group” reflects only the will expressed in elections and all certified parties or coalitions must sit according to the political power, based on their result from the elections.”*
- d. *“Only after taking oath by the deputies and fulfilling the foreseen procedures on election of the new President and Presidency of the Assembly (Article 12 with reference to Article 8 of the Rules of Procedure), deputies are free to move and on these movements shall in*

written notify the new Presidency of the Assembly (Article 20.2) [...]. The post-election Group LDK-AAK-NISMA has the right to join into one common group only after the constitutive session. As such, they were not the largest parliamentary group in the inaugural session dated 17 July 2014, therefore, pursuant to Article 67.2 of the Constitution, they did not have and do not have the right to propose the candidate for the President of the Assembly.”

- e. In addition, the Deputy Mr. Arsim Bajrami refers to the Rules of Procedure of the Assembly of Slovenia, Serbia, Austria, Czech Republic, Macedonia, Albania, Croatia, Portugal, Bulgaria and Montenegro arguing that “[...] fluctuation of deputies and new parliamentary groups are established only after the constitutive session [...].”

Comments presented by the Deputy of the Assembly, Ms. Luljeta Veselaj-Gutaj

- 59. On 4 August 2014, Deputy Ms. Luljeta Veselaj-Gutaj submitted her comments to the Court in respect of Referral KO119/14 *“Contesting the procedure for the election of the President of the Assembly of Kosovo Mr. Isa Mustafa during the constitutive session of the Assembly held on 17 July 2014 where there has been a violation of Article 67. The constitution of the Assembly has not been developed in accordance with Article 67 (Election of President and Deputy Presidents), paragraphs 2 and 3 of the Constitution in connection with Chapter III (Inauguration of the Assembly) of the Rules of Procedure of the Assembly.”*

Comments presented by the Deputies of the Assembly of Group 6+

- 60. On 4 August 2014, Deputies of Group 6 + submitted their comments to the Court in respect to Referral KO119/14 alleging that they participated in the constitution of the Assembly and that the decisions adopted during the constitutive session of the Assembly were taken in accordance with the Constitution.

Comments presented by the Deputy of the Assembly, Mr. Etem Arifi

- 61. On 4 August 2014, Deputy Mr. Etem Arifi submitted his comments to the Court in respect of Referral KO119/14 stating that he participated in the constitution of the Assembly and that his opinion during the constitutive session was based on his free will without any pressure.

Comments presented by the Deputy of the Assembly, Mr. Veton Berisha

- 62. On 4 August 2014, Deputy Mr. Veton Berisha submitted his comments to the Court in respect of Referral KO119/14 stating that he participated in the constitution of the Assembly and that his opinion during the constitutive session was based on his free will without any pressure and based on his knowledge of the establishment of institutions based on applicable legislation.

Public hearing

63. On 21 August 2014, the Court held a public hearing where the following parties were present and duly represented as follows:

- a. For the Applicants, Deputy Mr. Arsim Bajrami;
- b. For the Respondents,
 - i. LDK, Deputy Ms. Vjosa Osmani;
 - ii. VV, Deputy Ms. Albulena Haxhiu;
 - iii. AAK, Mr. Ardian Gjini;
 - iv. Lista Srpska, Deputy Ms. Milka Vulić ;
 - v. NISMA, Deputy Ms. Valdete Bajrami;
 - vi. Kosovo Demokratik Tyrk Partisi, Deputy Mr. Mahir Yagcilar;
 - vii. Progresivna Demokratska Stranska, Deputy Mr. Nenad Rasic;
 - viii. Nova Demokratska Stranka, Deputy Ms. Emilija Rexhepi;
 - ix. Egyptian Liberal Party, Deputy Mr. Veton Berisha;
 - x. Ashkali Party for Integration, Deputy Mr. Etem Arifi; and
 - xi. Kosovaki Nevi Romani Partia, Deputy Mr. Kujtim Paqaku.

64. During the hearing, the following parties took the floor:

- a. For the Applicants, Deputy Mr. Arsim Bajrami;
- b. For the Respondents,
 - i. LDK, AAK and NISMA, Deputy Ms. Vjosa Osmani and Mr. Ardian Gjini; and
 - ii. VV, Deputy Ms. Albulena Haxhiu;

65. LDK and VV provided the Court with additional documents.

66. The Court heard the oral pleadings of the parties on the Referral.

Admissibility of the Referral

67. The Court first examines whether the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure, have been fulfilled.

68. 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.”*

69. 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.” **[the Serbian version differs from the English and Albanian versions]**

70. In addition, 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: [the Albanian and Serbian versions differ from the English version]

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.

71. Apart from the names and signatures of the Deputies who submitted the Referral, the contested decision and the relevant provisions of the Constitution as well as the evidence in support of the Referral have been mentioned by the Applicants.

72. As to the challenged decision, the Court notes that the Applicants contest Decision No. 05-V-001 on the election of a President of the Assembly voted by 83 Deputies of the Assembly.

73. As to the time limit, the Court notes that the Decision No. 05-V-001 on the election of the President of the Assembly voted by 83 Deputies of the Assembly was adopted by the Assembly on 17 July 2014 and the Referral was made to the Court on 18 July 2014. It follows that the Referral has been submitted within the constitutionally prescribed period of eight days.

74. The Court concludes that the admissibility requirements laid down in Article 113.5 of the Constitution and Article 42 of the Law have been fulfilled.

75. In these circumstances, the Court considers that the Referral raises important constitutional questions in relation to the Constitutive Session of the Assembly and, thus, there is no ground to declare it inadmissible or even more to go into the analysis of the additional admissibility grounds submitted by the Applicants.

Comparative study

76. Before entering into the analysis of the case, the Court will conduct a comparative study of relevant constitutional provisions of the Constitutional Framework for Provisional Self-Government in Kosovo (hereinafter, the Constitutional Framework) and of a number of neighboring and other countries.

Constitutional Framework for Provisional Self-Government in Kosovo 2001

77. Articles 9.1.7, 9.1.8 and 9.1.9 of the Constitutional Framework provide:

Presidency of the Assembly

9.1.7 The Assembly shall have a Presidency consisting of eight Assembly members who shall be selected as follows:

(a) Two members shall be appointed by the party or coalition having obtained the highest number of votes in the Assembly elections;

(b) Two members shall be appointed by the party or coalition having obtained the second highest number of votes in the Assembly elections;

(c) One member shall be appointed by the party or coalition having obtained the third highest number of votes in the Assembly elections;

(d) One member shall be appointed by the party or coalition having obtained the fourth highest number of votes in the Assembly elections;

(e) One member shall be appointed from among the members of the Assembly belonging to those parties having declared themselves representative of the Kosovo Serb Community; and

(f) One member shall be appointed from among the members of the Assembly belonging to parties having declared themselves representative of a non-Kosovo Albanian and non-Kosovo Serb Community. The method for appointing this latter member shall be determined by members of the Assembly belonging to these same Communities.

9.1.8 The Assembly shall endorse these appointments by a formal vote.

President of the Assembly

9.1.9 A member of the Presidency from the party or coalition having obtained the highest number of votes in the elections for the Assembly shall be the President of the Assembly.

Albania

78. Articles 67 and 75 of the Constitution of Albania provide:

Article 67

1. The President of the Republic convenes the newly elected Assembly not earlier than the date of the termination of the mandate of the preceding Assembly, but no later than 10 days after such mandate has expired. If the preceding Assembly has been dissolved before the termination of its

mandate, the President of the Republic convenes the new Assembly not later than 10 days from the announcement of the election results.

2. If the President of the Republic does not exercise such a competence, the Assembly convenes itself on the tenth day of the period of time provided in point 1 of this Article.

Article 75

1. The Assembly elects and discharges its Speaker.

2. The Assembly is organized and operates according to regulations approved by a majority of all its members.

79. Articles 6 and 15 of the Rules of Procedure of the Assembly of the Republic of Albania provide:

Article 6 – Election of the President of the Assembly

1. The candidate for President of the Assembly is proposed by at least 15 deputies. An MP cannot support more than one candidate. The proposal shall be in writing, containing the respective signatures and presented to the Interim Secretariat of the Assembly.

2. The election of the President of the Assembly is done without debate and by secret ballot, with a majority of votes in the presence of more than half of all members of the Assembly. In the event that no candidate has obtained the required majority, a second round is followed, whereby the two candidates who received the most votes are voted for.

3. Voting is organized publicly and run by a voting committee, composed of five deputies, which reflects, as far as possible, the political composition of the Parliament. The oldest member at age performs the duty of the chairman of the committee voting and announce the voting results.

4. The leader of the session immediately invites the Assembly Speaker to take his place.

Article 15 – Formation of Parliamentary Groups

1. MPs may form parliamentary groups of party affiliation or political orientation.

2. Establishing a parliamentary group requires a minimum of 7 members. Each member can only be a member of a parliamentary group. An outgoing member of the parliamentary group, may join another parliamentary group after only six months from the date of departure.

3. When the number of members of a parliamentary group falls below the number prescribed by paragraph 2 of this Article, the group ceases to exist.

4. Within 3 days from the date of election of the President of the Assembly, any member states in writing to which parliamentary group he/she chooses. Only deputies who do not declare the above or do not belong to any parliamentary group may form a mixed group.

5. Each member has the right to leave the parliamentary group. For this he/she must submit a written statement to the head of the parliamentary group and notify the Bureau of the Assembly.

6. MPs elected in the legislature, within 3 days from the oath, declares in writing to which parliamentary group he/she belongs.

Bulgaria

80. Articles 75 and 76 of the Constitution of the Republic of Bulgaria provide:

Article 75

A newly elected National Assembly shall be convened for a first session by the President of the Republic within a month following its election. Should the President fail to do so, it shall be convened by one-fifth of the Members of the National Assembly.

Article 76

1. *The first session of the National Assembly shall be opened by the senior present Member.*

2. *At the first session the Members shall swear the following oath:*

"I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the country and in all my actions to be guided by the interests of the people. I have sworn."

3. *The National Assembly shall elect at the same session its Chairperson and Deputy Chairpersons.*

81. Chapter II and Chapter IV of the Rules of Procedure of the Bulgarian National Assembly provide:

Chapter Two

CONSTITUTION OF THE NATIONAL ASSEMBLY AND CHANGES IN THE PRESIDING BODY

Article 3.

(1) The first sitting of the National Assembly shall be opened by the eldest Member present. The said Member shall chair the sitting until the National Assembly elects its President.

(2) The Members of the National Assembly shall take a spoken oath in pursuance of Article 76, paragraph 2 of the Constitution to be documented by signing individual oath papers.

Article 4.

(1) Under the Chair of the eldest Member debates shall be held exclusively on the election of President of the National Assembly as well as the election itself.

(2) At the first sitting of the National Assembly the Members shall adopt rules of procedure on the terms and conditions for election of President and Vice-Presidents of the National Assembly.

Article 5.

(1) The President and Vice-Presidents of the National Assembly can be discharged of their powers before the expiry of the term upon:

- 1. his/her own request;*
- 2. a motion in writing of not less than one third of all Members when he/she is objectively incapable of fulfilling his/her duties, or is systematically abusing his/her authority or fails to carry out the duties within his/her competencies.*
- 3. a motion in writing by the parliamentary group, formed by the parliamentary represented party or coalition, which has nominated them.*

(2) The Vice-Presidents of the National Assembly shall be discharged of powers before the term expiry when they have quit the parliamentary group which has nominated them, or when they have been dismissed by it.

(3) In the cases under item 1 of paragraph 1 and 2, the discharge shall be announced without a debate or vote.

(4) In the cases of items 2 and 3 of paragraph 1 the motion shall be put to a vote at the first sitting following the submission date, allowing a hearing to the person concerned. The motion shall be deemed carried if it has been supported by more than one half of the Members of the National Assembly in attendance.

(5) In case of discharge under paragraph 1 and 2, a new election shall take place within 14 days after the decision was adopted under the terms and conditions determined in rules of procedure, adopted by the National Assembly. Until the holding of a new election for President of the National Assembly, the latter shall be chaired by the Vice-President, nominated by the parliamentary represented party or coalition, which has nominated the President.

Article 6.

The National Assembly shall elect 8 Secretaries from among the Members.

Article 7.

At subsequent sittings, the National Assembly shall elect Standing Committees.

Chapter Four

PARLIAMENTARY GROUPS

Article 12.

(1) The Members of the National Assembly may form Parliamentary Groups.

(2) The minimum number of Members of the National Assembly to form a Parliamentary Group shall be 10 (ten).

(3) If the membership of a Parliamentary Group falls below the required minimum, such Group shall cease to exist.

(4) Where a parliamentary group cease to exist the Vice-President elected by it shall be discharged of powers before the expiry of term. The discharge shall be announced at the earliest plenary sitting with no debate or vote.

Article 13.

(1) Each Parliamentary Group shall submit to the President of the National Assembly a resolution on its establishment and a list of its leadership and members signed by all members thereof.

(2) The Parliamentary Groups, their leaderships and any changes therein shall be recorded in a special register of the National Assembly.

(3) The President of the National Assembly shall announce the Parliamentary Groups so registered and their leaderships at a plenary sitting. Every change in the composition of a Parliamentary Group shall be announced by the President of the National Assembly at a plenary sitting.

(4) Any permanent assistants to a Parliamentary Group shall be appointed on the Assembly's staff. On the advice of every Parliamentary Group concerned, the number of such staff shall be approved by the President of the National Assembly in proportion of 1:10 to the number of its members, but not less than 2 for each parliamentary group.

Article 14.

(1) No Member of the National Assembly may be member of more than one Parliamentary Group.

(2) The terms of group membership, the commencement and termination thereof, and the rights and duties of group members shall be established by the Parliamentary Group concerned and in accordance with the provisions of these Rules.

(3) A Member of the National Assembly may resign from his/her Parliamentary Group by addressing his/her resignation in writing to the leader of the Group and to the President of the National Assembly, which shall be announced at a plenary sitting.

(4) On resignation from the Parliamentary Group or on dismissal from it the Member shall lose his/her seat in Standing Committees as a representative of the respective Parliamentary Group, in National Assembly delegations and other elected offices at the National Assembly.

(5) A parliamentary group member who has quit or has been expelled from it shall become a National Assembly Member of no membership with a parliamentary group.

(6) The Members of the European Parliament from the Republic of Bulgaria may also participate in the work of the Parliamentary Groups in a non-voting capacity and according to the registration with the Central Electoral Commission of the party or coalition on the ticket of which they have been elected.

Croatia

82. Article 73 of the Constitution of Croatia provide:

Article 73

[...]

The Croatian Parliament shall be constituted at the first session by the selection of its President by the majority of its members present.

83. The Standing Orders of the Croatian Parliament in part two provides:

Part Two

Constitution of Parliament, Commencement of Duties of Members of Parliament, Suspension and Termination of the Term of Office of Members of Parliament

Article 4

Parliament shall be summoned to its first, Constitutive Session by the President of the Republic.

Until the election of the Speaker of Parliament, the session shall be temporarily chaired by the Speaker of Parliament from the preceding term, or if he/she is prevented from attending, by the oldest present Member of Parliament.

Until the election of the Speaker of Parliament, the temporary chair shall have all rights and duties of the Speaker of Parliament with reference to chairing the session.

Parliament shall be constituted with the election of the Speaker at the first session in which the majority of the Members of Parliament are present.

After the election of the Speaker of Parliament, the elected Speaker shall take the chair.

When Parliament is constituted, the Croatian national anthem shall be played.

Article 5

At its Constitutive Session, Parliament shall also elect the members to the Credentials and Privileges Commission.

In addition to the Speaker of Parliament and the Commission referred to in paragraph 1 hereof, the Deputy Speakers of Parliament, the Secretary of Parliament and the Secretary of the Session of Parliament, the Elections, Appointments and Administration Committee and other working bodies may also be elected at the Constitutive Session of Parliament.

A minimum of 1/3 of elected Members of Parliament shall be entitled to submit proposals for the election of the bodies referred to in paragraphs 1 and 2 hereof at the Constitutive Session.

Germany

84. Article 40 of the Basic Law of the Republic of Germany provide:

Article 40 [Presidency - Rules of procedure]

1. The Bundestag shall elect its President, Vice-Presidents and secretaries. It shall adopt rules of procedure.

85. The Rules of Procedure of the German Bundestag provides:

Rule 1 Constituent meeting

(1) The first meeting of the newly elected Bundestag shall be convened by the outgoing President and shall be held not later than the thirtieth day after the election (Article 39 of the Basic Law).

(2) At the first meeting of the Bundestag, the Member of the Bundestag who is the most advanced in years, or, should he or she decline, the next oldest, shall take the Chair until the newly elected President or one of the Vice-Presidents assumes the office.

(3) The President by age shall appoint Members of the Bundestag to act as Secretaries on a provisional basis. The roll of Members of the Bundestag shall then be called.

(4) After the presence of a quorum has been ascertained, the President, Vice-Presidents and Secretaries shall be elected.

Rule 2

Election of the President and the Vice-Presidents

(1) The Bundestag shall, in secret and separate ballots (Rule 49), elect the President and the Vice-Presidents for the duration of the electoral term. Every parliamentary group in the German Bundestag shall be represented on the Presidium by at least one Vice-President.

(2) The person receiving the votes of the majority of the Members of the Bundestag shall be elected. If a majority is not obtained in the first ballot, new candidates may be proposed for a second ballot. If a majority of the votes of the Members of the Bundestag is still not obtained, a third ballot shall be held. If there is only one candidate in the third ballot, this candidate shall be elected if he or she receives the majority of votes cast. Where there are several candidates, the two candidates with the highest number of votes shall move into the third ballot; the person who obtains the most votes shall be elected. In the event of a tie, the President in the Chair shall draw lots to decide which of the two candidates is elected.

(3) Further ballots involving a candidate unsuccessful in a third ballot are only permissible with the agreement of the Council of Elders. If new candidates are proposed following unsuccessful proceedings pursuant to paragraph (2), the electoral proceedings pursuant to paragraph (2) shall be set in motion once again.

Rule 10

Formation of parliamentary groups

(1) The parliamentary groups shall be associations of not less than five per cent of the Members of the Bundestag, and their members shall belong to the same party or to parties which, on account of similar political aims, do not compete with each other in any Land. Where Members of the Bundestag form such an association on grounds other than those set out in the first sentence of this paragraph, its recognition as a parliamentary group shall require the consent of the Bundestag.

(2) The formation of a parliamentary group, its designation, and the names of the chairpersons, members and guests shall be communicated to the President in writing.

(3) Parliamentary groups may admit guests who, while not counting towards the strength of the group, shall be taken into account in the distribution of posts (Rule 12).

(4) Members of the Bundestag who wish to form an association but do not reach the prescribed minimum strength for parliamentary group status may be recognised as a grouping. Paragraphs (2) and (3) shall apply to them mutatis mutandis.

(5) Joint technical working parties set up by parliamentary groups shall not affect the number of posts to which the parliamentary groups are entitled in line with their relative strengths.

Greece

86. Article 65 of the Constitution of Greece provide:

Article 65

1. Parliament shall determine the manner of its free and democratic operation by adopting its own Standing Orders; these shall be adopted by the Plenum as specified in Article 76 and shall be published in the Government Gazette on the order of the Speaker.

2. Parliament shall elect from among its members the Speaker and the other members of the Presidium as provided by the Standing Orders.

3. The Speaker and Deputy Speakers shall be elected at the beginning of each parliamentary term. This provision shall not apply to the Speaker and Deputy Speakers elected by the first session of the Fifth Revisionary Parliament. On a recommendation by fifty Members the Parliament may reprimand the Speaker or a member of the Presidium thus causing the termination of his tenure.

87. The Rules of the Hellenic parliament provide:

The Presidium (articles 6 – 12 of the Standing Orders)

The Presidium consists of:

- the Speaker of the Hellenic Parliament*
- seven (7) Deputy Speakers*
- three (3) Deans*
- six (6) Secretaries*

The Presidium's fundamental feature is its multi-partisan composition. Thus the first, second and third Deputy Speaker, two of the Deans and four of the Secretaries are affiliated to the governing party; the fourth Deputy Speaker, one dean and a Secretary belong to the major opposition party; the fifth Deputy Speaker and one Secretary are members of the second-biggest opposition party; the sixth Deputy Speaker is affiliated with the third-largest party of the opposition, and the seventh Deputy Speaker belongs to the fourth. A member of the Presidium, who must certainly be an

elected MP, cannot be a Cabinet member (Minister or Under-Secretary). Should a Presidium member agree to assume ministerial or Under-Secretarial duties, then ipso facto he/she has to step down from the post.

The Speaker and the Deputy Speakers are elected at the beginning of each term for the entire duration of that term. Deans and Secretaries' terms last for as long as the regular session period for which they were elected lasts.

Macedonia

88. Articles 63 and 67 of the Constitution of the Republic of Macedonia provide:

Article 63

The Representatives for the Assembly are elected for a term of four years. The mandate of Representatives is verified by the Assembly. The length of the mandate is reckoned from the constitutive meeting of the Assembly. Each newly-elected Assembly must hold a constitutive meeting 20 days at the latest after the election was held. The constitutive meeting is called by the President of the Assembly of the previous term. If a constitutive meeting is not called within the time laid down, the Representatives assemble and constitute the Assembly themselves on the twenty-first day after the completion of the elections. Elections for Representatives to the Assembly are held within the last 90 days of the term of the current Assembly, or within 60 days from the day of dissolution of the Assembly. [...]

Article 67

The Assembly elects a President and one or more Vice-Presidents from the ranks of the Representatives by a majority vote of the total number of Representatives. [...]

89. Chapter II of the Rules of Procedure of the Assembly of the Republic of Macedonia provide:

II. ESTABLISHMENT OF THE ASSEMBLY

1. *Constitutive Session of the Assembly and verification of the mandate of the Members of the Assembly*

Article 9

Providing the Constitutive Session is not called by the outgoing President, the session shall be held on the 21st day from the day of completion of elections, at 10:00 hours, and shall be called by the most senior Member of the Assembly by years of age. If the most senior Member of the Assembly by years of age refuses to call the session, that right passes on to the next most senior Member of the Assembly elected, in line up to the elected Member of the Assembly who accepts to call the first session.

The Member of the Assembly who called the first session (the Chairperson) shall preside over the Assembly's session until the newly elected President or one of the Vice-Presidents takes on the duty.

Article 10

The Chairperson presiding over the first session appoints two of the elected Members who shall, subject to need, replace the Chairperson in presiding over the session.

The Chairperson shall by a roll-call of the elected Members verify the number of the attending elected Members.

The Assembly may be established if the majority of the elected Members are attending the session.

Once the quorum is established, the President and Members of the Assembly's Verification Committee (Verification Committee) are elected.

Article 11

The mandate of the Members of the Assembly shall be verified by the Assembly at the Constitutive Session, upon a proposal by the Verification Committee.

Article 12

The Verification Committee shall be elected by the Assembly at the Constitutive Session, upon a proposal by the Chairperson.

Verification Committee shall be composed of a president and four members from among the Members of the Assembly belonging to various political parties represented in the Assembly.

Article 13

The Verification Committee, on the basis of the report of the State Election Commission shall submit a written report to the Assembly for the election of each Member of the Assembly, with a separate proposal for verification of the mandate of each Member of the Assembly.

Article 14

The Assembly shall thoroughly review the report of the Verification Committee.

Providing the Verification Committee denies the election of a Member of the Assembly, it shall suggest to the Assembly to postpone the verification of his/her mandate. The Assembly shall debate and vote separately for each such proposal.

Article 15

The Assembly can postpone the verification of the mandate of a Member of the Assembly and conclude to require that the State Election Commission conduct the necessary insights to check the legality and accuracy of that election and report in no more than 30 days to the Assembly.

Article 16

Until receiving the notification of the State Election Commission, the Member of the Assembly whose verification of the mandate has been postponed, shall not be entitled to attend the Assembly's sessions.

Article 17

The verification of the mandate of Members of the Assembly elected from supplementary lists, or that have become Members of the Assembly from the list of candidates for the remaining of the mandate shall be done by the Assembly at the first subsequent session on the basis of the report from the State Election Commission, and upon the proposal of the Committee on Procedural and Mandate and Immunity Related Issues.

Article 18

With the verification, the Member of the Assembly shall be entitled to rights and obligations determined with the Constitution, the law and with these Rules of Procedure.

Article 19

An identity card and a card for electronic voting shall be issued to the Member of the Assembly, whose mandate is verified.

The identity card shall include the right to immunity and the other rights that can be exercised on the basis of the function of a Member of the Assembly.

The President of the Assembly shall pass the more detailed regulation related to the content, shape and method of issuing of the identity cards of the Members of the Assembly, as well as the registry of the issued identity cards.

The Secretary General of the Assembly shall be responsible for the issuing and the registry of the issued identity cards.

2. Election of the Committee on Elections and Appointments

Article 20

At its Constitutive Session, the Assembly, upon the proposal of at least ten Members of the Assembly, shall elect a Committee on elections and appointments.

An adequate representation shall be ensured in the Committee of Members belonging to the political parties represented in the Assembly.

3. Election of President and Vice-Presidents of the Assembly

Article 21

The Assembly shall elect a President and Vice-Presidents of the Assembly from among its Members.

The number of vice-presidents shall be determined by the Assembly, upon a proposal by the President of the Assembly. The Vice-Presidents shall be elected from among Members belonging to various political parties represented in the Assembly.

One of the Vice-Presidents shall be elected from among the Members belonging to the biggest opposition party represented in the Assembly.

Article 22

Candidates for the President of the Assembly may be proposed by the Committee on elections and appointments, or by at least twenty Members of the Assembly.

A Member of the Assembly can propose only one candidate for President of the Assembly.

Article 23

The proposals for the candidates for President of the Assembly shall be submitted in a writing at the session of the Assembly and shall contain the name and surname of the candidate with biography data and an explanation, as well as the names and surnames of the Members of the Assembly that submit the proposal and their signatures.

The order of the candidates for President of the Assembly shall be determined in accordance with the alphabet order of their surnames.

Article 24

The vote for the election of a President of the Assembly shall be presided by the Chairperson.

If the Assembly decides that the President of the Assembly should be elected by a secret ballot, the Chairperson shall be assisted in the election by the Secretary General and three Members of the Assembly, elected by the Assembly upon a proposal by the Chairperson, from among the Members belonging to different political parties represented in the Assembly.

Article 25

The Member of the Assembly shall be entitled to vote only for one of the proposed candidates for President of the Assembly. Providing the Member of the Assembly votes for more candidates for President of the Assembly, the voting of that Member of the Assembly shall be declared null and void.

Article 26

The candidate winning the majority of the votes out of the total number of Members of the Assembly shall be elected for President of the Assembly.

Providing there is only one candidate proposed and if in the first vote he/she does not win the necessary majority of the votes, the complete election procedure shall be repeated.

If two candidates are proposed for President, and if neither of them wins the necessary majority of the votes during the first voting, the voting shall be repeated.

If three or more candidates are proposed for President of the Assembly, the voting shall be repeated for the two candidates who have won the biggest number of votes in the first round of vote.

If among the candidates with biggest number of votes, there are candidates with the same number of votes, the voting shall be repeated for all the candidates with biggest number of votes.

If during the second round of the voting neither of the candidates wins the necessary majority of votes, the complete election procedure shall be repeated.

Article 27

The provisions of these Rules of Procedure that apply to the proposal of candidates and election of President of the Assembly shall also apply to the proposal of candidates and election of Vice-Presidents of the Assembly.

Article 28

The candidate with the majority votes out of the total number of Members of the Assembly shall be elected Vice-President.

If more candidates are proposed for Vice-Presidents than the number of Vice-President that is to be elected, and if the planned number of Vice-

Presidents is not elected, the voting shall be repeated for election of the number of Vice-Presidents that were not elected, from among the candidates that won the greatest number of votes.

If the necessary number of Vice-Presidents is not elected in the second round of voting, the election procedure shall be repeated for the number of Vice-Presidents that are still not elected.

If the number of proposed candidates equals the necessary number of positions, and the planned number of positions is not elected, the complete election procedure shall be repeated for that number of Vice-Presidents that were not elected.

2. Parliamentary groups

Article 33

Parliamentary groups shall be established in the Assembly. One parliamentary group shall be composed of at least five Members of the Assembly that belong to one or more political parties.

The Member of the Assembly shall be a member to only one parliamentary group.

The parliamentary group shall appoint a coordinator of the parliamentary group and no more than two deputies.

The parliamentary group shall submit to the President of the Assembly a list signed by every member of the group, the coordinator and his/her deputy.

The parliamentary group is entitled to expert advice and a separate office, according to the number of Members of the Assembly in the group.

The President of the Assembly shall be informed on any change of the composition of the parliamentary group, the coordinator and his/her deputy, and he shall further inform the Members of the Assembly thereon.

Portugal

90. Articles 149, 173 and 180 of the Constitution of Portugal provide:

Article 149 Constituencies

1. Members shall be elected for constituencies that shall be geographically defined by law. The law may create plurinominal and uninominal constituencies and lay down the nature and complementarity thereof, all in such a way as to ensure that votes are converted into seats in accordance with the proportional representation system and using d'Hondt's highest-average rule.

2. With the exception of the national constituency, if any, the number of Members for each plurinominal constituency in Portuguese territory shall be proportional to the number of citizens registered to vote therein.

Article 173 Sitting following elections

1. The Assembly of the Republic shall sit by right on the third day following the calculation of the general results of its election, or, in the case of elections called because a legislature is due to reach its term and the said third day falls before the said legislature reaches its term, on the first day of the following legislature.

2. In the event that such date falls when the Assembly is not in full session, it shall sit for the purposes of Article 175.

Article 180 Parliamentary groups

1. The Members elected for each party or coalition of parties may form a parliamentary group.

2. Each parliamentary group shall possess the following rights:

a. To take part in Assembly committees in proportion to the number of its Members, and to appoint its representatives on such committees;

b. To be consulted when the order of business is set, and to appeal to the Plenary against that order of business;

c. To cause the holding of emergency debates on issues of urgent current public interest, which the Government shall attend;

d. In each legislative session, to cause the holding of two debates on a matter of general or sectoral policy, by calling on the Government to attend the Assembly;

e. To ask the Standing Committee to take steps to convene the Plenary;

f. To move the formation of parliamentary committees of inquiry;

g. To initiate legislation;

h. To make motions rejecting the Government's Programme;

i. To make motions of no confidence in the Government;

j. To be regularly and directly informed by the Government as to the situation and progress of the main matters of public interest.

3. Each parliamentary group shall possess the right to dispose of places in which to work at the Seat of the Assembly, together with technical and administrative staff of its choice, as laid down by law.

4. Members who do not belong to any parliamentary group shall be ensured certain minimum rights and guarantees, as laid down by the Rules of Procedure.

91. Chapter II of the Rules of Procedure of the Assembly of Portugal provides:

CHAPTER II

Parliamentary groups

Article 6

Formation of parliamentary groups

1 - The Members of the Assembly of the Republic who are elected for each party or coalition of parties may form a parliamentary group.

2 - Each parliamentary group shall be formed by means of a notification addressed to the President of the Assembly, which shall be signed by the Members of the Assembly of the Republic who compose the group and shall state the name of the group, its president, and its vice-presidents if any.

3 - Parliamentary groups shall notify the President of the Assembly of any change in their composition or leadership.

4 - The notifications referred to in paragraphs (2) and (3) shall be published in the Journal.

Article 13

Election of the President of the Assembly

1 - Nominations for President of the Assembly of the Republic must be signed by a minimum of one tenth and a maximum of one fifth of all the Members.

2 - Nominations shall be submitted to the serving President at least two hours before the moment at which the election takes place.

3 - The election shall take place during the first plenary sitting of each legislature.

4 - The candidate who obtains an absolute majority of the votes of all the Members of the Assembly of the Republic in full exercise of their office is elected President of the Assembly.

5 - If none of the candidates obtains that number of votes, a second ballot shall immediately be held solely between the two candidates who received the highest number of votes and have not withdrawn their nomination.

6 - If no candidate is elected, the process shall recommence.

Slovenia

92. Article 84 of the Constitution of Slovenia provides:

Article 84 President of the National Assembly

The National Assembly has a president who is elected by a majority vote of all deputies.

93. Chapter II of the Rules of Procedure of the National Assembly of Slovenia provides:

II. CONSTITUTING THE NATIONAL ASSEMBLY

Article 9

The National Assembly is constituted at the first session at which the election of more than half of the deputies is confirmed.

Article 10

(1) No later than five days before the first session of the National Assembly, the incumbent President of the National Assembly calls a meeting of the temporary leaders of the deputy groups and the deputies of the national communities to determine the draft agenda of the first session, the order of seating of the deputies in the chamber, the deputy groups whose members will hold the offices of chairman and deputy chairman on the Commission for Public Office and Elections and the number of members of this commission that belong to individual deputy groups, and possibly also to determine the deputy groups whose members will hold the offices of chairman and deputy chairman in other working bodies and the number of members of such working bodies belonging to individual deputy groups.

(2) Pending the formation of the Council of the President of the National Assembly, the temporary leaders of the deputy groups and the two deputies of the national communities decide on the proposals referred to in the first, second, and fourth indents of paragraph six of Article 21 of these Rules of Procedure and may propose a candidate for Secretary General of the National Assembly.

(3) The order of seating of the deputies in the chamber is determined by agreement among the deputy groups. If no agreement is reached, the order of seating is determined in a manner such that deputy seating among the vacant deputy seats is determined by the deputy groups in order from the largest to the smallest deputy group. Deputy groups with an equal number of members determine deputy seating in an order determined by prior lot.

Article 11

(1) Until deputy groups are formed in accordance with Article 16 of these Rules of Procedure, deputy groups consist of the deputies elected to the

National Assembly from the same list of candidates, deputies elected from voters' lists, and the deputies representing the national communities. The composition of a deputy group is established on the basis of the report on the election results.

(2) No later than three days after the publication of the -report on the election results, the representatives of the lists forward the names of the temporary leaders of the deputy groups from the preceding paragraph to the incumbent President of the National Assembly.

Article 12

(1) Preparations for the first session of the National Assembly are the responsibility of the incumbent President of the National Assembly.

(2) The temporary leaders of the deputy groups inform the incumbent President of the National Assembly of the proposed candidates for chairman, deputy chairman, and members of the Commission for Public Office and Elections.

(3) The draft agenda of the first session includes the appointment of the chairman and deputy chairman of the Commission for Public Office and Elections, the confirmation of the election of deputies, and the election of the President of the National Assembly, and may also include the election of the Vice-Presidents of the National Assembly, the appointment of chairmen and deputy chairmen of the working bodies, and the appointment of the Secretary General of the National Assembly.

(4) Until the President has been elected, the first session of the National Assembly is chaired by the oldest deputy.

Article 13

(1) The Commission for Public Office and Elections examines the report on the election results, the confirmation of the election of deputies, and any complaints by candidates or representatives of the lists of candidates.

(2) The National Assembly decides on the confirmation of the election of deputies on the basis of the report of the Commission for Public Office and Elections on the examination of the confirmation of elections and the content and admissibility of any complaints by candidates or representatives of the lists of candidates.

(3) The National Assembly decides collectively on the confirmation of elections which are not in dispute, and on each disputed election individually.

(4) A deputy whose election is still in dispute may not vote on the confirmation of his election.

(5) It is deemed that by deciding on a disputed election, the National Assembly has also decided on any complaint submitted to the National Assembly by a candidate or representative of a list of candidates.

Article 14

Following the confirmation of the elections, the National Assembly elects the President of the National Assembly.

Article 15

If at the first session the National Assembly fails to elect the Vice-Presidents of the National Assembly and to appoint the chairmen and deputy chairmen of the working bodies and the Secretary General of the National Assembly, it must elect or appoint them no later than 30 days after being constituted.

Article 16

Deputies form deputy groups in accordance with Article 29 of these Rules of Procedure no later than seven days after the National Assembly has been constituted.

Article 17

The provisions of Article 13 of these Rules of Procedure apply mutatis mutandis also to the procedure for confirming the election of a deputy replacing a deputy whose term of office has expired or a deputy whose term of office has been suspended due to his being elected President of the Government or appointed minister.

Relevant legal basis for the Referral

94. Article 67 (1 to 3) [Election of the President and Deputy Presidents] of the Constitution provides:

- 1. The Assembly of Kosovo elects the President of the Assembly and five (5) Deputy Presidents from among its deputies.*
- 2. The President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies of the Assembly.*
- 3. Three (3) Deputy Presidents proposed by the three largest parliamentary groups are elected by a majority vote of all deputies of the Assembly.*

95. Article 64 (1) [Structure of Assembly] of the Constitution provides:

“The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed amongst all parties, coalitions, citizens’ initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.”

96. Chapter III of the Rules of Procedure of the Assembly provides as follows:

“Chapter III – Inauguration of the Assembly

Article 7

Inaugural session of the Assembly

The inaugural session of the Assembly shall be convened by the President of the Republic of Kosovo within thirty (30) days from the day of official announcement of election results.

Article 8

Preparation of the inaugural session of the Assembly

- 1. The President of the previous term shall be responsible for preparations of the inaugural session of the Assembly.*
- 2. The President and the Presidency shall call a joint meeting with the leaders of political parties that have won seats in the Assembly not later than five days before holding the inaugural session of the Assembly's term, to prepare the draft agenda of the inaugural session of the Assembly, to decide on the seating order of Members of the Assembly, respectively political entities in the plenary hall, based on the number of Members of the Assembly of each political entity.*
- 3. If two or more parliamentary groups have the same number of Members of the Assembly then their seating order in the hall shall be decided by draw.*
- 4. The agenda of the inaugural session of the Assembly shall include establishment of an ad hoc committee for verification of the quorum and mandates, election of the president and five (5) Deputy Presidents of the Assembly.*

Article 9

Chairing of the inaugural session of the Assembly

- 1. Until the election of the President and Deputy Presidents of the Assembly, the inaugural session of the Assembly shall be chaired by the oldest Member of the Assembly and assisted by the youngest one.*
- 2. If the Member of the Assembly, namely Members of Assembly under paragraph 1 of this article, are absent in the inaugural session or refuse to chair the session, then Members of Assembly who are the closest of their age take over.*
- 3. After the agenda has been presented, the Chairperson of the inaugural session shall request from political parties represented in the Assembly, to appoint one member each in the ad hoc Committee for verification of quorum and mandates.*

4. The ad hoc Committee shall review the relevant documentation of elections and shall present a report on the validity of mandates of Members of the Assembly and shall verify the quorum of the inaugural session of the Assembly.

Article 10
Oath of the Members of Assembly

1. After verification of the mandates, the Members of the Assembly shall take a solemn oath. The text of the oath shall read as follows:

"I, Member of the Assembly of the Republic of Kosovo, swear that honestly and with devotion, shall carry out my duty and represent the people with dignity, shall work in the interest of Kosovo and all its citizens, shall be committed to protection and respect of the constitutionality and lawfulness, for protection of the territorial and institutional integrity of Kosovo, for guaranteeing human rights and freedoms, in accordance with the domestic laws and European standards. I swear!"

The statement of the oath shall be read by the Chairperson of the session. Members of Assembly take the oath by pronouncing the words "I swear". Each of the members shall sign the text of the Oath.

2. The Member of Assembly, who is absent at the inaugural session, when the oath is taken, shall take the oath in the first coming session.

Article 11
Mandate of the Assembly

1. The Assembly shall be elected for a mandate of four years. The mandate shall start from the inaugural session that shall be held within thirty (30) days from the day of official announcement of election results.

2. The mandate of the Assembly may be extended only in cases defined by Article 66, paragraph 4 of the Constitution of the Republic of Kosovo.

Article 12
Election of the President and Deputy Presidents of the Assembly

1. At the inaugural session of the IV term, the Assembly shall elect the President and the Deputy Presidents from among its Members. The President and the Deputy Presidents shall consist of the Presidency of the Assembly.

2. The Chairperson of the inaugural session shall request from the largest parliamentary group to propose a candidate for the President of the Assembly. The President of the Assembly shall be elected by majority of votes of all Members of Assembly.

3. The Chairperson of the inaugural session shall request from the three largest parliamentary groups to propose one candidate each for the Deputy

Presidents of the Assembly, who are elected by the majority of votes of all Members of Assembly.

4. The Presidency as well as other working bodies of the Assembly shall respect the gender composition of the Assembly.

5. The Chairperson of the Inaugural Session shall request from the Members of Assembly holding seats guaranteed for the Serb community and the Members of Assembly holding seats guaranteed for other non-majority communities to propose one candidate each for Deputy Presidents of the Assembly. The Deputy Presidents, under this item, shall be elected by majority of votes of all Members of Assembly.

6. The Chairperson of the inaugural session shall announce the voting results for election of the President and the Deputy Presidents of the Assembly and shall invite the newly-elected President to take his seat”.

97. The Court notes that, in relation to the first session conveyed after the parliamentary elections, the English version of the Constitution uses the word “constitutive session” (Article 66, para. 1 and 3 [Election and Mandate] of the Constitution) and the Rules of Procedure of the Assembly use “Inauguration of the Assembly” (heading of Chapter III) and “inaugural session” (Articles 7, 8 and 9). The Albanian version of the Constitution uses the word “seancë konstituive” (Article 66, para. 1 and 3 [Election and Mandate] of the Constitution) and the Rules of Procedure of the Assembly uses “KONSTITUIMI I LEGJISLATURËS” (heading of Chapter III) and, “konstituive e legjislaturës” (Articles 7, 8 and 9)”. The Court considers that the wording “constitutive session” serves better the purpose of clarity. Therefore, the Court has been using and will use the constitutional term “Constitutive Session”, meaning the first session conveyed after the parliamentary elections.

Merits of the Referral

98. The Applicants complain that the procedure followed by 83 Deputies to elect the President of the Assembly was in violation of paragraphs 2 and 3 of Article 67 [Election of the President and Deputy Presidents] of the Constitution and Chapter III [Inauguration of the Assembly] of the Rules of Procedure of the Assembly. Thus, in the Applicants’ view, the decision of the 83 Deputies, by which Mr. Isa Mustafa was elected President of the Assembly of the Republic of Kosovo, is unconstitutional.
99. The Court notes that the Referral concerns the election of the President of the Assembly pursuant to Article 67 (2) [Election of the President and Deputy Presidents] of the Constitution. The provision stipulates that *“The President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies of the Assembly.”*
100. The Court reiterates that it is not its task to evaluate the facts of the particular case, but to assess whether or not the above mentioned allegations have raised constitutional issues under the relevant constitutional provisions. Consequently, in the present case, the Court will only deal with questions of a

constitutional nature raised under Article 67 (2) of the Constitution and other related provisions.

101. The Court notes that in previous cases where the interpretation of the constitutional provisions were at stake, it has asked on numerous occasions that the *Travaux Préparatoires* be submitted in order to get acquainted with the intent of the drafters of the Constitution. The result has always been that the *Travaux Préparatoires* of the Constitution are not available. As a consequence, the Court has ruled that in the absence of the *Travaux Préparatoires* of the Constitution, it has to make the interpretation itself (See for example Case KO103/14, *The President of the Republic of Kosovo concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo*, Judgment of 1 July 2014).
102. Therefore, the Court cannot draw any conclusions as to the intentions of the drafters of the Constitution and cannot speculate what they meant. Furthermore, any comparison or taking arguments from the Constitutional Framework of Kosovo of 2001 is hardly relevant. The Constitutional Framework was in force until 15 June 2008 to regulate a different situation. On 9 April 2008, the new modern Constitution was adopted and is applied in the independent state of the Republic of Kosovo since 15 June 2008.
103. Consequently, the Court will make the necessary interpretation of Article 67 (2) [Election of the President and Deputy Presidents] of the Constitution.
104. As a preliminary remark, the Court observes that, in relation to the election of President and Deputy Presidents of the Assembly and the formation of the Government, the Constitution uses different expressions for one and the same reality. The different expressions are, namely: *the seats (...) are distributed (...) in proportion to the number of valid votes received (..) in the election (...)* [Article 64 (1) of the Constitution]; *the largest parliamentary group* [Article 67 (2) of the Constitution]; *the political party or coalition holding the majority in the Assembly* [Article 84 (14) of the Constitution]; *the political party or coalition that has won the majority in the Assembly* [Article 95 (1) of the Constitution].
105. That being said, the Court will have recourse to Article 64 (1) [Structure of Assembly] of the Constitution. It provides that “*The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed amongst all parties, coalitions, citizens’ initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.*”
106. The Court notes that the abovementioned Articles 64 (1) and 67 (2) of the Constitution are the legal basis for structuring and constituting the Assembly and Chapter III of the Rules of Procedure of the Assembly serves as a procedural tool and mechanism for the implementation of these constitutional provisions.

107. In this respect, the Court firstly notes that the rules of procedure for the conduct of the Constitutive Session of the Assembly were adopted on 29 April 2010; they are in force and have to be applied, including in relation to the agenda.
108. Secondly, the Court notes that the purpose of the Constitutive Session of the Assembly is to construe the new legislature after the elections, with the procedural help of the President of the previous legislature whose mandate was over before the new parliamentary elections took place. The Assembly is construed through the verification and confirmation of the mandate of the Deputies, the taking of the oath by the Deputies and the election of the President and the Deputy Presidents of the Assembly (See Article 8, paragraph 4, Article 10 and Article 12 of the Rules of Procedure of the Assembly).
109. Thirdly, the Court notes that the Constitutive Session of the Assembly cannot be considered as having been accomplished if the Assembly has not elected its President and Deputy Presidents.
110. The Court further considers that the Chairperson presiding the Constitutive Session, even though she is not elected, she is bound by the Constitution and the Rules of Procedure of the Assembly for the accomplishment of the Constitutive Session.
111. In order to assess whether the election of the President of the Assembly was constitutional, the Court will interpret the meaning of “largest parliamentary group”, according to Article 67 (2) of the Constitution. This interpretation is of crucial importance, as it is related as to who can propose the President of the Assembly.
112. The Court notes that Article 67 (2) of the Constitution is preceded by Article 64 (1) of the Constitution. Both provisions are intertwined and have to be taken into consideration together.
113. The Constitution in its Article 64 (1) stipulates that when structuring the Assembly the seats are to be distributed in proportion to the number of the votes received in the elections to the Assembly. The distribution is done amongst parties, coalitions, citizens’ initiatives and independent candidates proportionally to the results in the parliamentary elections. This means that parties, coalitions, citizens’ initiatives and independent candidates are awarded the number of seats, equalized to the mandates of the Deputies, that corresponds proportionally to the votes that they received in the elections, having in mind that these parties, coalitions, citizens’ initiatives and independent candidates passed the threshold. The Constitution prioritizes the election results as a criterion. It is applicable to the parties and coalitions that registered as such to participate in the elections as well as to the citizens’ initiatives and independent candidates.
114. The Court reiterates that *“The use of the terms “political party or coalition” when they are mentioned in connection with Article 84 (14) and Article 95, paragraphs 1 and 4, of the Constitution means a political party or coalition that is registered under the Law on General Elections, participates as an*

electoral subject, is included in the electoral ballot, passes the threshold and, thus, acquires seats in the Assembly” (See Case KO103/14, The President of the Republic of Kosovo concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo, Judgment of 1 July 2014).

115. Furthermore, the Court ruled that the “[...] *the political party or coalition can only be the one that has won the highest number of votes in the elections, respectively most of the seats in the Assembly.*” (See Case KO103/14, *The President of the Republic of Kosovo concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo*, Judgment of 1 July 2014).
116. Therefore, the largest parliamentary group according to Article 67 (2) of the Constitution is to be considered the party, coalition, citizens’ initiatives and independent candidates that have more seats in the Assembly, in the sense of Article 64 (1) of the Constitution, than any other party, coalition, citizens’ initiatives and independent candidates that participated as such in the elections. This group is to propose the President of the Assembly following the provisions of Article 67 (2) of the Constitution. This is what the Constitution envisages as parliamentary group and even more is *de facto* in accordance with the parliamentary practice in democratic states.
117. An additional argument is that a parliamentary group, in the strictest sense of the word (*in stricto sensu*) and according to the Rules of Procedure of the Assembly and its Annexes, can only be registered after the constitution of the Assembly, i.e. after the election of the President and Deputy Presidents of the Assembly.
118. At the moment of conveying the Constitutive Session of the Assembly, a parliamentary group is composed of the candidates that were elected as member of the Assembly on the ballot of the party, coalition, citizens’ initiatives and independent candidates that were registered in the election, participated in them, passed the legal threshold and acquired seats in proportion to the number of valid votes received by them in the election to the Assembly.
119. In the current case, the Chairperson of the Constitutive Session rightly gave the possibility to the largest parliamentary group to propose a candidate for the President of the Assembly, since according to the list of the certified election results the party that was the first in order of ranking had 37 Deputies. Therefore, to have given the possibility to another party, coalition, citizens’ initiatives and independent candidates would have been unconstitutional.
120. The Court observes that, according to the Transcript, after the suspension of the Constitutive Session due to a lack of quorum, a group of Deputies conveyed a meeting to table a motion to replace the Chairperson and they elected a President and Deputy Presidents of the Assembly.

121. The Court recalls that the Applicants challenge the constitutionality of this procedure and its outcome. Taking into account the above interpretation based on Articles 67 (2) in conjunction with 64 (1) and the Rules of Procedure of the Assembly, the Court finds that this challenged meeting is not in accordance with the constitutional requirements for a Constitutive Session to be considered as constitutional. Hence, this meeting is not to be considered as a Constitutive Session.
122. In these circumstances, the Court concludes that the decision as a result of this meeting does not correspond to a decision taken, under Article 67 (2) of the Constitution, during a Constitutive Session and by the largest parliamentary group. Consequently, the Decision No. 05-V-001 voted by 83 Deputies of the Assembly on the election of Mr. Isa Mustafa as the President of the Assembly, dated 17 July 2014, is null and void.
123. The Court reiterates that the election of President of the Assembly and Deputies is a prerequisite for the Assembly to start functioning as a legislative body. This requires all Deputies to be present and vote in order to constitute the Assembly. In its Case KO29/11, the Court ruled that “[...] *the Deputies of the Assembly are representatives of the people [...]*”. Furthermore, as to their obligation as deputies, Article 74 [Exercise of Function] of the Constitution provides that “*the deputies of the Assembly of Kosovo shall exercise their function in the best interest of the Republic of Kosovo and pursuant to the Constitution, Laws and Rules of Procedure of the Assembly.*” (See, Case KO29/11, *Sabri Hamiti and other Deputies requesting Constitutional Review of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President of the Republic of Kosovo, dated 22 February 2011*, Judgment of 30 March 2011).
124. Moreover, the Court reminds that voting in the Assembly can be carried out in different ways: voting for, against or abstain; by open ballot or secret ballot; or in any other ways (See paragraph 4 of Article 51 [Quorum and voting in the meetings of the Assembly] of the Rules of Procedure of the Assembly).
125. The Court considers that the different ways of voting are meant to secure the democratic and independent expression of the will of the Deputies and to ensure the rights of the Deputies and for the Deputies to comply with their duties.
126. The Court notes that nowhere in the Constitution it is provided that the failure to elect the President of the Assembly would trigger the holding of new parliamentary elections.
127. It is the right and duty of all Members of Assembly to find a way to elect President and Deputy Presidents of the Assembly in accordance with the constitutional provisions in conjunction with the relevant Rules of Procedure of the Assembly and make the Assembly functional.
128. When constituting the Assembly, all Deputies have to be present and vote the way they wish, openly or secretly, voting for, against or abstain and cannot be exempted from doing so.

129. The Court reiterates that its ruling is based on the subject matter of the Referral as mentioned in paragraphs 3 and 4 of this Judgment.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.5 of the Constitution, Articles 42 and 43 of the Law and Rule 56.1 of the Rules of Procedure, on 21 August 2014,

DECIDED

- I. TO DECLARE, unanimously, the Referral admissible;
- II. TO HOLD, by majority, that:
 - a. The meeting and procedure followed after adjournment of the Constitutive Session on 17 July 2014 by the Chairperson due to lack of quorum violated Article 67 (2) in conjunction with Article 64 (1) of the Constitution and Chapter III of the Rules of Procedure implementing these Articles;
 - b. The Decision No. 05-V-001 of 17 July 2014 is unconstitutional as regards the procedure followed and as well as in substance as it was not the largest parliamentary group that proposed the President of the Assembly and, therefore, is null and void;
 - c. The Constitutive Session of the Assembly, which started on 17 July 2014, has not been accomplished, namely by not electing President and Deputy Presidents of the Assembly. Therefore, the Assembly has to complete the Constitutive Session, by electing President and Deputy Presidents in accordance with Article 67 (2) in conjunction with Article 64 (1) of the Constitution and Chapter III of the Rules of Procedure implementing these Articles and this Judgment;
- III. TO NOTIFY this Judgment to the Parties;
- IV. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. TO DECLARE this Judgment effective immediately.

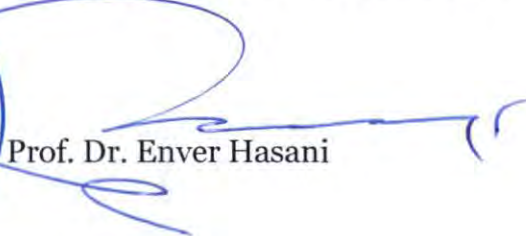
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani