



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

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Pristine, 15 May 2012  
Ref. No.: AK 234 /12

**Case KO38/12**

**Assessment of the Government's Proposals for Amendments of the  
Constitution submitted by the President of the Assembly of the Republic  
on 12 April 2012**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

**The Referral**

1. On 28 March 2012, the Government of the Republic of Kosovo, pursuant to Articles 92 (4), 93 (4) and (9) and 144 (1) adopted a Decision No. 02/68 on the approval of the proposals for Amendments of the Constitution of the Republic of Kosovo (hereinafter referred to as "the Government's Proposals for Amendments of the Constitution").
2. In accordance with the same decision, the Secretary General of the Office of the Prime Minister was tasked to forward the Government's Proposals for Amendments of the Constitution to the Assembly of the Republic of Kosovo.
3. On 5 April 2012, the Secretary General of the Office of the Prime Minister forwarded the Government's Proposals for Amendments of the Constitution to the Secretary of Kosovo Assembly.

4. On 12 April 2012, the President of the Assembly of Kosovo in accordance with Article 144(3) of the Constitution referred the Government's Proposals for Amendments of the Constitution to the Constitutional Court, for a prior assessment that the proposed amendments do not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
5. The President of the Assembly is, therefore, the Applicant in the proceedings before the Constitutional Court.
6. The Referral is based on Articles 113(9) and 144(3) of the Constitution, Article 20 and 54 of the Law on the Constitutional Court of the Republic of Kosovo (No. 03/ L-121) of 16 December 2008 (hereinafter, the "Law"), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules of Procedure").
7. Subject matter of the referral is 22 proposed amendments to the Constitution of the Republic of Kosovo approved by the Decision No. 02/68 of the Government of Kosovo on 28 March 2012.
8. At the outset it should be noted that the majority of the proposed amendments relate to the changes within the Chapter XIII "Final Provisions" and the Chapter XIV "Transitional Provisions" of the Constitution.
9. Indeed, these amendments express the intent of Government to propose changes to the Constitution that are necessary to end supervised independence of the Republic of Kosovo. This is also clear from the Preamble of the Government's Proposals for Amendments of the Constitution, since it recalls the Resolution on Ending International Supervision of Independence, approved by the Assembly of Kosovo on 31 January 2012.

#### **Proceedings before the Court**

10. On 12 April 2012, the President of the Assembly submitted a Referral concerning the Government's Proposals for Amendments of the Constitution.
11. On 13 April 2012, the President appointed Judge Kadri Kryeziu as Judge Rapporteur and Judges Robert Carolan (Presiding), Altay Suroy and Snezhana Botusharova as composing the Review Panel.
12. On 20 April 2012, the President of the Assembly was notified that the Court has registered the Referral.
13. On the same date, the Referral was communicated to the President of the Republic of Kosovo, Prime Minister of Kosovo and to the Ombudsperson.
14. On 23 April 2012, the Court also informed the International Civilian Representative (ICR) that the aforementioned referral had been received by the Court.
15. On 2 May 2012, the Court notified the ICR that the Government's Proposals for Amendments of the Constitution relate, inter alia, to several transition provisions in the Constitution as well as the authority of the ICR to continue to function. In that letter, the Court emphasised that the Law on Constitutional Court provides that the Court should submit its decision on the proposed amendments to the extent possible within 60 days of the receipt of the referral.

16. The Court emphasized that the amendments propose, *inter alia*, deletion of Articles 146 and 147 of the *Constitution* that specify the mandate, powers and obligations of the ICR. The Court also referred to Article 5.2. Annex IX, of the Comprehensive Proposal for the Kosovo Status Settlement (CPS) that provides “The mandate of the ICR shall be terminated when the International Steering Group determines that Kosovo has implemented the terms of this settlement.”
17. The Law on Constitutional Court obliges the Court to issue a decision on the proposed amendments within 60 days. Meanwhile, the Court will proceed with its assessment, under the understanding that the Government’s Proposals for Amendments of the Constitution will not be put forward for their adoption by the Assembly before the condition from Article 5.2. Annex IX of the CPS related to the termination of the ICR mandate has been met.
18. The Review Panel considered the Report prepared by the Judge Rapporteur, and made a recommendation to the full Court.
19. On 10 May 2012 the Court deliberated and voted on the Referral.

### **Assessment of the admissibility of the Referral**

20. As to the Referral with regards to prior assessments of proposed amendments of the Constitution, pursuant to Article 144 [Amendments] the Court observes that, in order to be able to adjudicate the referral, it is necessary to first examine whether the admissibility requirements laid down in the in the Constitution and further specified in the Law and the Rules of Procedure have been fulfilled.
21. In that respect, the Court needs first to determine whether it has jurisdiction to provide the assessment of the Government’s Proposals for Amendments of the Constitution.
22. The Court recalls that, pursuant to Article 113 (9) of the Constitution, “[T]he President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution”.
23. Consequently, the Court has jurisdiction to assess that the proposed amendments do not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.
24. The next question is who can be considered as an authorized party to refer the referral to the Court, pursuant to Article 113(9) of the Constitution. The Court again reiterates that, pursuant to first part of sentence of Article 113 (9), “The President of the Assembly of Kosovo refers proposed Constitutional amendments .....”.
25. In the present Referral, the President of the Assembly, Dr. Jakup Krasniqi, submitted the request for a prior assessment of the proposed amendments of the Constitution. Therefore, the Applicant is an authorized party, entitled to refer this case to the Court, by virtue of Article 113.9 of the Constitution.
26. Therefore, the Referral is admissible, since the Court has jurisdiction to deal with it and the Applicant is an authorized party.

## Assessment of the constitutionality of the proposed amendments

### Scope of the constitutional assessment

27. The Court will now deal in turn with each of the amendments mentioned in the Government's Proposals for Amendments of the Constitution and submitted by the Applicant on 12 April 2012.
28. As a preliminary remark, the Court emphasizes that, pursuant to Article 112 [General Principles] of Chapter VIII [Constitutional Court], the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. It is, therefore, up to the Court to interpret Article 144 [Amendments] of the Constitution as it deems necessary.
29. Having this in mind, the Court, under Article 144.3 of the Constitution, considers whether a proposed amendment to the Constitution will diminish any of the rights and freedoms set forth in Chapter II [Fundamental Rights and Freedoms].
30. Turning to Chapter II, the Court notes that, pursuant to Article 21 [General Principles], human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis for the legal order of the Republic of Kosovo. Moreover, under Article 21.2, it falls upon the Republic of Kosovo to protect and guarantee human rights and fundamental freedoms as provided by the Constitution.
31. Thus, the Court considers that Article 21 determines the scope of Chapter II to incorporate also those human rights and fundamental freedoms laid down elsewhere in the Constitution. It follows that the Court must assess whether the proposed amendments diminish any of the rights and freedoms guaranteed by the Constitution as a whole.

### The Proposed Amendments

#### I. Proposed Amendment 1

32. Amendment 1 proposes that paragraph 4 of Article 58 is changed as follows:

*“The Republic of Kosovo shall adopt adequate measures as may be necessary to promote, in all areas of economic, social, political and cultural life, full and effective equality among members of communities, **and the effective participation of their members in public life and decision making.** Such measures shall not be considered to be an act of discrimination.”*
33. The Court considers that the wording of the proposed amendment of Article 58(4) of the Constitution reinforces the effective participation of members of communities in public life.
34. Therefore, the Court confirms that the proposed amendment 1 does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## II. Proposed Amendment 2

35. Amendment 2 proposes that paragraph 1 of Article 81 to be changed as follows:

### **Article 81 [Legislation of Vital Interest]**

1. The following laws shall require for their adoption, amendment or repeal both **the majority of the Assembly deputies and the majority of the Assembly deputies who hold seats reserved or guaranteed for representatives of Communities that are not in the majority:**”
36. The Court considers that the wording of the proposed amendment of Article 81(1) of the Constitution does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
37. Therefore, the Court confirms that Amendment 2 is in conformity with Chapter II.

## III. Proposed Amendment 3

38. Amendment 3 proposes that paragraph 5 of Article 81 of the Constitution be changed as follows:

(5) Laws on protection of cultural heritage and **special protected areas.**”

39. The Court considers that the wording of the proposed amendment of Article 81(5) of the Constitution, namely adding “and special protected areas”, does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
40. Therefore, the Court confirms that proposed amendment 3 is in conformity with Chapter II.

## IV. Proposed Amendment 4

41. Amendment 4 proposes that Article 143 of the Constitution be deleted.
42. Article 143 of the Constitution reads as follows:

### **“Article 143 [Comprehensive Proposal for the Kosovo Status Settlement]**

Notwithstanding any provision of this Constitution:

1. All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo’s obligations under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. They shall take all necessary actions for their implementation.
2. The provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo.
3. The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail.”

43. The Court considers that the proposed deletion of Article 143 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

#### **V. Proposed Amendment 5**

44. Amendment 5 proposes that Article 144 of the Constitution (Amendments) be moved to Chapter I- Basic Provisions.
45. Article 144 of the Constitution reads as follows:

##### **Article 144 [Amendments]**

1. The Government, the President or one fourth (1/4) of the deputies of the Assembly of Kosovo as set forth in the Rules of Procedure of the Assembly may propose changes and amendments to this Constitution.
  2. Any amendment shall require for its adoption the approval of two thirds (2/3) of all deputies of the Assembly including two thirds (2/3) of all deputies of the Assembly holding reserved or guaranteed seats for representatives of communities that are not in the majority in the Republic of Kosovo.
  3. Amendments to this Constitution may be adopted by the Assembly only after the President of the Assembly of Kosovo has referred the proposed amendment to the Constitutional Court for a prior assessment that the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of this Constitution.
  4. Amendments to the Constitution enter into force immediately after their adoption in the Assembly of the Republic of Kosovo.
46. The Court considers that the proposed moving of Article 144 of the Constitution to the Chapter I (Basic Provisions) does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

#### **VI. Proposed Amendment 6**

47. Amendment 6 proposes that Article 145 of the Constitution (Continuity of International Agreements and Applicable Legislation) be moved to Chapter I- Basic Provisions.
48. Article 145 of the Constitution reads as follows:

##### **Article 145 [Continuity of International Agreements and Applicable Legislation]**

1. International agreements and other acts relating to international cooperation that are in effect on the day this Constitution enters into force will continue to be respected until such agreements or acts are renegotiated or withdrawn from in accordance with their terms or until they are superseded by new international agreements or acts covering the same subject areas and adopted pursuant to this Constitution.
2. Legislation applicable on the date of the entry into force of this Constitution shall continue to apply to the extent it is in conformity with this Constitution until repealed, superseded or amended in accordance with this Constitution.

49. The Court considers that the proposed moving of Article 145 of the Constitution to the Chapter I (Basic Provisions) does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

#### **VII. Proposed Amendment 7**

50. Amendment 7 proposes that Article 146 of the Constitution be deleted.
51. Article 146 of the Constitution reads as follows:

##### **Article 146 [International Civilian Representative]**

Notwithstanding any provision of this Constitution:

1. The International Civilian Representative and other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 have the mandate and powers set forth under the said Comprehensive Proposal, including the legal capacity and privileges and immunities set forth therein.
  2. All authorities in the Republic of Kosovo shall cooperate fully with the International Civilian Representative, other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 and shall, inter alia, give effect to their decisions or acts.
52. The Court considers that the proposed deletion of Article 146 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

#### **VIII. Proposed Amendment 8**

53. Amendment 8 proposes that Article 147 of the Constitution be deleted.
54. Article 147 of the Constitution reads as follows:

##### **Article 147 [Final Authority of the International Civilian Representative]**

Notwithstanding any provision of this Constitution, the International Civilian Representative shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in Article 146 and this Article.

55. The Court considers that the proposed deletion of Article 147 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **IX. Proposed Amendment 9**

56. Amendment 9 proposes that Article 148 of the Constitution be deleted.
57. Article 148 of the Constitution reads as follows:

### **Article 148 [Transitional Provisions for the Assembly of Kosovo]**

1. For the first two (2) electoral mandates, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosniak community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively.

2. Notwithstanding paragraph 1 of this Article, the mandate existing at the time of entry into force of this Constitution will be deemed to be the first electoral mandate of the Assembly, provided that such mandate continues for a period of at least two (2) years from the date of entry into force of this Constitution.

58. The Court considers that the proposed deletion of Article 148 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **X. Proposed Amendment 10**

59. Amendment 10 proposes that Article 149 of the Constitution be deleted.
60. Article 149 of the Constitution reads as follows:

### **Article 149 [Initial Adoption of Laws of Vital Interest]**

Notwithstanding the provisions of Article 81 of this Constitution, the laws of vital interest enumerated therein shall be initially adopted by the majority vote of the deputies of the Assembly present and voting.

61. The Court considers that the proposed deletion of Article 149 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **XI. Proposed Amendment 11**

62. Amendment 11 proposes that Article 150 of the Constitution be deleted.
63. Article 150 of the Constitution reads as follows:

### **Article 150 [Appointment Process for Judges and Prosecutors]**

1. The comprehensive, Kosovo-wide review of the suitability of all applicants for permanent appointments, until the retirement age determined by law, as judges and public prosecutors in Kosovo shall continue to be carried out in accordance with Administrative Direction 2008/02 and shall not be affected by the termination of the United Nations Mission in Kosovo (UNMIK)'s mandate or the entry into force of this Constitution.



2. All successful candidates who have been appointed or reappointed as judges and prosecutors by the Special Representative of the Secretary General (SRSG) as part of the Appointment Process shall continue to serve in their posts until the natural expiration of their appointment, or until such time as they are dismissed in accordance with law.
  3. The Independent Judicial and Prosecutorial Commission shall submit recommendations on candidates for appointment or reappointment as judges and prosecutors in writing to the Kosovo Judicial Council, which shall exercise final authority to propose to the President of Kosovo candidates for appointment or reappointment as judges and prosecutors.
  4. All successful candidates who have been appointed or reappointed as judges and prosecutors by the President of Kosovo on the proposal of the Kosovo Judicial Council as part of the Appointment Process shall continue to serve in their posts until the natural expiration of their appointment, or until such time as they are dismissed in accordance with law.
  5. Notwithstanding Article 105 of this Constitution, the mandate of all judges and prosecutors successfully completing the appointment process set forth in this Article and who have exercised the function for at least two years prior to appointment pursuant to this article is permanent until the retirement age as determined by law or unless removed in accordance with law.
64. The Court considers that the proposed deletion of Article 150 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **XII. Proposed Amendment 12**

65. Amendment 12 proposes that Article 151 of the Constitution be deleted.
66. Article 151 of the Constitution reads as follows:

### **Article 151 [Temporary Composition of Kosovo Judicial Council]**

Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Kosovo Judicial Council shall be composed as follows:

1. Five (5) members shall consist of the Kosovan members of the Independent Judicial and Prosecutorial Commission who have been vetted by the Independent Judicial and Prosecutorial Commission as part of Phases 1 and 2 of the Appointment Process, in accordance with Administrative Direction 2008/02. Of these five (5) members, one (1) judge and one (1) prosecutor, randomly selected, shall serve on the Kosovo Judicial Council until the natural expiration of their existing mandates, at which time they shall be replaced by one (1) judge and one (1) prosecutor vetted by the Independent Judicial and Prosecutorial Commission and elected by their peers following methods intended to ensure the widest representation of the judiciary and prosecutorial service. The remaining two (2) judges and one (1) prosecutor, from among the five Kosovan Independent Judicial and Prosecutorial Commission members, shall serve on the Kosovo Judicial Council for an additional one (1) year term after the natural expiration of their existing mandates, at which time they shall be replaced by the same procedure as their former Independent Judicial and Prosecutorial Commission colleagues. In the event that an entity responsible for matters related to the appointment, disciplining and dismissal of prosecutors were established, all five remaining members of the Kosovo Judicial Council shall be judges.

2. The remaining eight (8) members of the Council shall be elected by the Assembly of Kosovo as set forth by this Constitution, except that two (2) out of the four (4) members elected by deputies holding seats attributed during the general distribution of seats shall be international members selected by the International Civilian Representative on the proposal of the European Security and Defense Policy Mission. One of the international members shall be a judge.

67. The Court considers that the proposed deletion of Article 151 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

### **XIII. Proposed Amendment 13**

68. Amendment 13 proposes that Article 152 of the Constitution be deleted.

69. Article 152 of the Constitution reads as follows:

#### **Article 152 [Temporary Composition of the Constitutional Court]**

Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Constitutional Court shall be composed as follows:

1. Six (6) out of nine (9) judges shall be appointed by the President of the Republic of Kosovo on the proposal of the Assembly.

2. Of the six (6) judges two (2) judges shall serve for a non-renewable term of three (3) years, two (2) judges shall serve for a non-renewable term of six (6) years, and two (2) judges shall serve for a non-renewable term of nine (9) years. Mandates of initial period judges shall be chosen by lot by the President of the Republic of Kosovo immediately after their appointment.

3. Of the six (6) judges, four (4) shall be elected by a two-thirds (2/3) vote of the deputies of Assembly present and voting. Two (2) shall be elected by majority of the deputies of the Assembly present and voting including the consent of the majority of the deputies of the Assembly holding seats reserved or guaranteed for representatives of Communities that are not in the majority in Kosovo.

4. Three (3) international judges shall be appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights. The three (3) international judges shall not be citizens of Kosovo or any neighboring country.

5. The International Civilian Representative shall determine when the mandates of the international judges expire and the judges shall be replaced as set forth by the Constitution.

70. The Court considers that the proposed deletion of Article 152 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

#### **XIV. Proposed Amendment 14**

71. Amendment 14 proposes that Article 153 of the Constitution be deleted.
72. Article 153 of the Constitution reads as follows:

##### **Article 153 [International Military Presence]**

Notwithstanding any provision of this Constitution, the International Military Presence has the mandate and powers set forth under the relevant international instruments including United Nations Security Council Resolution 1244 and the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. The Head of the International Military Presence shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in theatre regarding interpretation of those aspects of the said Settlement that refer to the International Military Presence. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in this Article.

73. The Court considers that the proposed deletion of Article 153 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

#### **XV. Proposed Amendment 15**

74. Amendment 15 proposes that Article 154 of the Constitution be deleted.
75. Article 154 of the Constitution reads as follows:

##### **Article 154 [Kosovo Protection Corps]**

The Kosovo Protection Corps shall be dissolved within one year after entry into force of this Constitution. Until such dissolution, the International Military Presence, in consultation with the International Civilian Representative and the Republic of Kosovo, shall exercise executive authority over the Kosovo Protection Corps and shall decide on the schedule of its dissolution.

76. The Court considers that the proposed deletion of Article 154 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

#### **XVI. Proposed Amendment 16**

77. Amendment 16 proposes that Article 155 (Citizenship) of the Constitution be moved to Chapter I- Basic Provisions.
78. Article 155 of the Constitution reads as follows:

##### **Article 155 [Citizenship]**

1. All legal residents of the Republic of Kosovo as of the date of the adoption of this Constitution have the right to citizenship of the Republic of Kosovo.
2. The Republic of Kosovo recognizes the right of all citizens of the former Federal Republic of Yugoslavia habitually residing in Kosovo on 1 January 1998 and their direct descendants to Republic of Kosovo citizenship regardless of their current residence and of any other citizenship they may hold.

79. The Court considers that the proposed moving of Article 155 of the Constitution to the Chapter I (Basic Provisions) does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

### **XVII. Proposed Amendment 17**

80. Amendment 17 proposes that Article 156 (Refugees and Internally Displaced Persons) to be deleted.

81. Article 156 of the Constitution reads as follows:

#### **Article 156 [Refugees and Internally Displaced Persons]**

The Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession.

82. The Court considers that the proposed deletion of Article 156 of the Constitution the Court could diminish some rights and freedoms set forth in Chapter II of the Constitution.

83. In fact, Article 22 of the Constitution adopts, by reference several international conventions. It specifically provides, in part:

#### **“Article 22 [Direct Applicability of International Agreements and Instruments]**

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols.

84. Articles 13 and 14 of the Universal Declaration of Human Rights (UDHR) specifically provides as follows:

#### **Article 13 of the UDHR**

“(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.”

#### **Article 14**

“(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(3) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

85. Similarly, Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) guarantees freedom of movement. It reads as follows:

**Article 2 of Protocol No. 4 to the ECHR**

**“Freedom of movement**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

86. Without Article 156 the positive obligation that the Republic of Kosovo has to enforce the human rights guaranteed in Article 13 and 14 UDHR could be significantly diminished. Without the positive support of the Government, as now required by Article 156 of the Constitution, to guarantee the human right of freedom of movement set forth, inter alia, in the UDHR and ECHR this right could easily be ignored or diminished.

87. That would be contrary to Article 1 of the ECHR that obliges the States to “secure everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.”

88. Article 35 of the Constitution guarantees citizens and foreigners of the right to free movement both within and in and out of the Republic of Kosovo. It specifically provides:

**“Article 35 [Freedom of Movement]**

1. Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence.
2. Each person has the right to leave the country. Limitations on this right may be regulated by law if they are necessary for legal proceedings, enforcement of a court decision or the performance of a national defence obligation.
3. Citizens of the Republic of Kosovo shall not be deprived the right of entry into Kosovo...”

89. Article 156 places an positive obligation on the Republic of Kosovo to assist refugees and internally displaced persons in exercising their right of free movement. Without this constitutional mandate on the Republic of Kosovo to positively assist those persons in exercising that right they may not be able to actually exercise that right.
90. Article 46 of the Constitution guarantees that no one will be arbitrarily deprived of property. It provides:

**“Article 46 [Protection of Property]**

1. The right to own property is guaranteed.
  2. Use of property is regulated by law in accordance with the public interest.
  3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
  4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.”
91. The Court recalls that protection of property is also guaranteed by Article 1 protocol No. 1 to the Convention that reads:

**“Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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

92. Article 156 places an positive burden on the Republic of Kosovo to assist refugees and internally displaced persons in exercising their right to not have their property arbitrarily taken from them. Without this constitutional mandate on the Republic of Kosovo to positively assist those persons in exercising that right they may not be able to actually exercise that right.
93. For all these reasons, the Court confirms that that proposed amendment 17 appears to diminish the rights and freedoms set forth in Chapter II of the Constitution as specified above

## **XVIII. Proposed Amendment 18**

94. Amendment 18 proposes that Article 157 of the Constitution be deleted.
95. Article 157 of the Constitution reads as follows:

### **Article 157 [Auditor-General of Kosovo]**

Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Auditor-General of the Republic of Kosovo shall be an international appointed by the International Civilian Representative.

96. The Court considers that the proposed deletion of Article 157 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **XIX. Proposed Amendment 19**

97. Amendment 19 proposes that Article 158 of the Constitution be deleted.
98. Article 158 of the Constitution reads as follows:

### **Article 158 [Central Banking Authority]**

Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Governor of the Central Bank of the Republic of Kosovo shall be appointed by the President of the Republic of Kosovo following consent by the International Civilian Representative.

99. The Court considers that the proposed deletion of Article 158 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **XX. Proposed Amendment 20**

100. Amendment 20 proposes that Article 159 of the Constitution be deleted.
101. Article 159 of the Constitution reads as follows:

### **Article 159 [Socially Owned Enterprises and Property]**

1. All enterprises that were wholly or partly in social ownership prior to the effective date of this Constitution shall be privatized in accordance with law.

2. All socially owned interests in property and enterprises in Kosovo shall be owned by the Republic of Kosovo.

102. The Court considers that the proposed deletion of Article 159 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **XXI. Proposed Amendment 21**

103. Amendment 21 proposes that Article 160 of the Constitution be deleted.
104. Article 160 of the Constitution reads as follows:

### **Article 160 [Publicly Owned Enterprises]**

1. The Republic of Kosovo shall own all enterprises in the Republic of Kosovo that are Publicly Owned Enterprises. All obligations related to such ownership rights shall be the obligations of the Republic of Kosovo. The Government of Kosovo may privatize, concession or lease a Publicly Owned Enterprise as provided by law.
  2. The ownership rights in a Publicly Owned Enterprise that provides services only in a specific municipality or in a limited number of municipalities shall be the ownership rights of the concerned municipality or municipalities. Obligations related to such ownership rights shall be the obligations of the concerned municipality or municipalities. The Assembly of Kosovo shall, by law, identify such Publicly Owned Enterprise and the concerned municipality or municipalities having ownership rights and related obligations with respect thereto. If authorized by law, the concerned municipality or municipalities may privatize, concession or lease such a Publicly Owned Enterprise.
105. The Court considers that the proposed deletion of Article 160 of the Constitution does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

## **XXII. Proposed Amendment 22**

106. Amendment 22 proposes that Article 161 of the Constitution be deleted and new article shall be added as follows:

"The individuals appointed by the International Civilian Representative in accordance with the Comprehensive Proposal for the Kosovo Status Settlement, 26 March, 2007 whose appointments have not been terminated prior to the declaration of the end of supervised independence shall continue to carry out their functions in the institution for the specified term of appointment. Kosovo shall accord to these individuals the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations."

107. Article 161 of the Constitution reads as follows:

### **Article 161 [Transition of Institutions]**

1. Except where the Constitution provides a different transition, all powers, responsibilities and obligations of the institutions foreseen by this Constitution are immediately vested in those institutions on the day of entry into force of this Constitution. The mandate of each institution as established prior to the entry into force of this Constitution remains intact and unchanged until its natural expiration or the next elections.
2. Until the first parliamentary elections following entry into force of this Constitution, the Presidency of the Assembly will remain in place with those powers foreseen under its existing mandate. As of the constitutive session of the first Assembly following the entry into force of this Constitution, the Presidency of the Assembly will be restructured to comply with the terms of this Constitution.



3. The provisions of Article 70.3(3) shall not apply until the constitutive session of the Assembly following the first parliamentary elections following the entry into force of this Constitution.

4. Until the establishment of the Kosovo Prosecutorial Council, its functions and responsibilities will be exercised by the Kosovo Judicial Council.

108. The Court considers that the proposed deletion of Article 161 of the Constitution and replacement with a new one does not appear to diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

**FOR THESE REASONS, BASED ON ARTICLE 113(9) OF THE CONSTITUTION,  
THE COURT UNANIMOUSLY DECIDES AS FOLLOWS:**

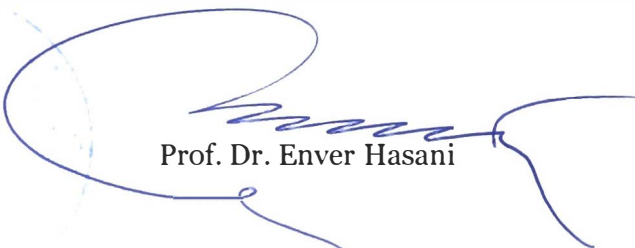
- I. The Referral containing the Government's Proposals for Amendments of the Constitution submitted by the President of the Assembly of the Republic on 12 April 2012 is admissible;
- II. The Court confirms that out of 22 amendments contained in the Government's Proposals for Amendments of the Constitution submitted by the President of the Assembly of the Republic on 12 April 2012, only Amendment 17 appears to diminish the rights and freedoms set forth in Chapter II of the Constitution;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law, and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**



Kadri Kryeziu



Prof. Dr. Enver Hasani