



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

Prishtina, 29 January 2013
Ref No.: AGJ367/13

JUDGMENT

in

Case KO09/13

**Confirmation of the proposed constitutional amendment, submitted by the
President of the Assembly of the Republic of Kosovo on 18 January 2013 by
letter No. 04-DO-1357**

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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Introduction

1. On 22 June 2012, the President of the Assembly of Kosovo submitted the first Referral (Case No. KO 61/12) to the Constitutional Court of Kosovo regarding the proposal of the Government for constitutional amendments, requesting the confirmation whether the amendments proposed by the Government diminish any of the rights and freedoms, as provided by Chapter II of the Constitution.
2. On 31 October 2012, the Constitutional Court decided:

“...
• *By unanimity*

 - I. *The Referral submitted by the President of the Assembly on 22 June 2012 containing proposed amendments to the Constitution of the Republic of Kosovo is admissible;*

• *By majority*

 - II. *The new proposed Amendment 1 -Amnesty, first paragraph in respect to **"persons designated by name"**, diminishes human rights and freedoms set forth in Chapter II of the Constitution;*

• *By unanimity*

 - III. *The new proposed Amendment 1 -Amnesty, second and third paragraphs, does not diminish human rights and freedoms set forth in Chapter II of the Constitution;*
 - IV. *The proposed Amendment 2 –Article 108 [Kosovo Judicial Council] of the Constitution does not diminish human rights and freedoms set forth in Chapter II of the Constitution;*

...”
3. On 17 December 2012, the Presidency of the Assembly (Decision No. 04-P-124/k), pursuant to Article 67.6 [Election of President and Deputy Presidents] of the Constitution which provides that *“The President and the Deputy Presidents form the Presidency of the Assembly. The Presidency is responsible for the administrative operation of the Assembly as provided in the Rules of Procedure of the Assembly.”* and Article 82 [Procedures for amending the Constitution] of the Rules of the Assembly which provides that *“the Government, the President or one-fourth (1/4) of the members of the Assembly, may propose the amendment of the Constitution, 2. Any amendment shall require the approval of two thirds (2/3) of all members of the Assembly, including two thirds (2/3) of all members of the Assembly who hold reserved or set-aside seats for the representatives of non-majority communities in the Republic of Kosovo”* as well as the Judgment of the Constitutional Court in case KO-61/12, issued the conclusion to request from the Government of the Republic of Kosovo that, in the capacity of the proposer, it reformulate the proposal of Amendment 1 to the Constitution of the Republic of Kosovo, which has to do with amnesty, in compliance with the Judgment of the Constitutional Court no. KO-61/12.

4. On 11 January 2013, Deputy Prime Minister and Minister of Justice forwarded to the Prime Minister, Mr. Hashim Thaçi, the proposal for constitutional amendment introducing Amnesty as a competence of the Assembly of the Republic of Kosovo, in compliance with the instructions of the Constitutional Court as per the Judgment AGJ303/12 on the proposal for introducing Amnesty as a constitutional category. Furthermore, Deputy Prime Minister and Minister of Justice informed the Prime Minister, Mr. Hashim Thaçi, that the Ministry of Justice will also prepare a general Law on Amnesty, where the procedures on approving respective laws for granting amnesty, exceptions, as well as the manner of its subsequent implementation will be clarified.
5. On 16 January 2013, the Government of the Republic of Kosovo, "pursuant to Article 92.4, of the Constitution which provides: *"The Government makes decisions in accordance with this Constitution and the laws, proposes draft laws, proposes amendments to existing laws or other acts and may give its opinion on draft laws that are not proposed by it"* and Article 93.4 of the Constitution which provides that the Government *"makes decisions and issues legal acts or regulations necessary for the implementation of laws as well as Article 144.1 of the Constitution which provides that 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"*, adopted Decision No. 01/113 approving the proposal of the Ministry of Justice for amending the Constitution of the Republic of Kosovo (hereinafter: Proposals of the Government for amendment of the Constitution).
6. On 18 January 2013, the President of the Kosovo Assembly submitted to the Court "the amendment proposed by the Government of Kosovo to the Constitution of the Republic of Kosovo (...) to confirm whether the proposed amendment would diminish human rights and freedoms set forth in Chapter II of the Constitution".

Legal basis

7. The Referral is based on Articles 113.9 and 144.3 of the Constitution, Articles 20 and 54 of the Law No. 03/ L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (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").

Proceedings before the Court

8. On 18 January 2013, the President of the Assembly of Kosovo referred to the Constitutional Court the Government's proposal of constitutional amendment requesting it to confirm whether the amendment proposed by the Government would diminish any of the rights and freedoms as provided by Chapter II of the Constitution.
9. On 25 January 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (presiding), Snezhana Botusharova and Ivan Čukalović.
10. On 25 January 2013, the President of the Assembly was informed that the Court registered the Referral.
11. On the same day, a copy of the Referral was delivered to the President of the Republic of Kosovo, the Prime Minister of the Republic of Kosovo and the Ombudsperson.
12. On 29 January 2013, after having considered the report of Judge Altay Suroy, the Review Panel made a recommendation to the Court on the admissibility of the Referral.

Assessment of the admissibility of the Referral

13. The Court must first examine whether the admissibility requirements are met as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
14. Article 113.9 of the Constitution stipulates that:

"The President of the Assembly of Kosovo refers proposed constitutional amendments before approval by the Assembly to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution".
15. The President of the Assembly submitted the referral for a prior assessment of the proposed amendment to the Constitution. Therefore, pursuant to Article 113.9 of the Constitution, the President of the Assembly is an authorized party to refer this case to the Court.

Scope of the constitutional review

16. The President of the Assembly submitted one (1) amendment proposed by the Government of the Republic of Kosovo.
17. The confirmation of the constitutionality of the proposed amendment by this Court will be made not only by taking into account the human rights and freedoms contained in Chapter II, but also the entire letter and spirit of the constitutional order of the Republic of Kosovo, as further explained under paragraphs 56 to 71 of the Judgment delivered in Cases K.O. 29/12 and K.O. 48/12 (Proposed Amendments of the Constitution submitted by the President of the Assembly of the Republic of Kosovo on 23 March 2012 and 4 May 2012, respectively), on 20 July 2012.

Constitutionality of the proposed constitutional amendment

Proposed Amendment 1: Amnesty

18. Amendment 1 proposes adding a new paragraph 15 to Article 65 of the Constitution of the Republic of Kosovo, which reads as follows:

"(15) grants amnesty in accordance with respective law, which shall be approved by two-thirds (2/3) of the votes of all the members of the Assembly."
19. Thus, the proposed amendment suggests adding to the existing competencies of the Assembly a new competence, namely, the competence to grant amnesty in accordance with respective law which shall be approved by two-thirds (2/3) of the votes of all members of the Assembly.
20. The Court considers that the proposed amendment is in compliance with the Judgment of the Constitutional Court Case No. KO 61/12. The Court confirms that the new proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.9 and Article 144.3 of the Constitution, Article 20 of the Law on the Constitutional Court and in accordance with the Rule 56(1) of the Rules of Procedure, in the session held on 29 January 2013, unanimously

DECIDES

- I. The Referral filed by the President of the Assembly on 18 January 2013 containing the proposed amendment to the Constitution of the Republic of Kosovo is admissible;
- II. The new proposed amendment 1 – Amnesty, Article 65 paragraph 15 of the Constitution does not diminish human rights and freedoms set forth in Chapter II of the Constitution;
- III. This Decision shall be notified to the parties and it 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



Altay Suroy



President of the Constitutional Court



Prof. dr. Enver Hasani