



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 9 September 2013
Ref. No.MKM 468/13

in

Case No. KO 108/13

Applicants

**Albulena Haxhiu and 12 other deputies of the Assembly of the Republic of
Kosovo**

Constitutional review of the Law, No. 04/L-209, on Amnesty

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

**Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge.**

**CONCURRING AND DISSENTING OPINION OF
JUDGE ROBERT CAROLAN**

I agree with the decision of the Majority that the draft law on Amnesty, Law No. 04/L-209, is compatible with the Constitution and that the procedure in adopting it was compatible with the Constitution.

However, I disagree with the Majority in its conclusion that Articles 1.1.10; 1.1.11; ; 1.1.15.10;1.1.15.11; 1.2.5; 1.2.9.7; 1.3.1; 1.3..5.6 and 1.3.5.7, granting amnesty to

persons who may have committed the crimes of destruction to property, arson and falsifying documents, are incompatible with the Constitution.

The Assembly of the Republic of Kosovo, in accordance with Article 65.15 of the Constitution, has the same authority, in its legislative discretion, to grant amnesty for these offenses as it had in granting amnesty for all of the offenses the Majority concludes are compatible with the Constitution. Although there are certain restrictions under international law and treaties limiting the authority of sovereign nations to grant amnesty for certain crimes, such as genocide, crimes against humanity and war crimes, the crimes of failing to report a criminal offense, aiding a perpetrator of a crime, destruction to property, arson and falsifying legal documents are not in that category of prohibited crimes. Therefore, there is no authority in the Constitution to support this distinction.

In fact, Article 4 of the Constitution provides that there shall be a separation of powers between the various branches of the Government of the Republic of Kosovo. It specifically provides, under paragraph 2, that:

“The Assembly of the Republic of Kosovo exercises the legislative power.”

It also provides, under paragraph 6, that:

“The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution.”

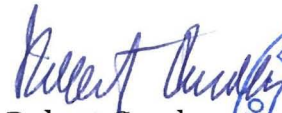
In exercising its authority and legislative discretion, the Assembly of the Republic of Kosovo adopted this law at approximately the same time that it enacted Law No. 04/L-199 on the Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia. It appears that this law on amnesty was enacted in part to fulfill some of the terms of this international agreement.

Whether the perpetrators of any of the crimes that are designated in the draft law should be granted amnesty is a public policy decision that the Assembly of the Republic, not the Constitutional Court, has the authority to decide unless and only to the extent that that public policy decision violates the Constitution. The amnesty granted for these offenses does not violate Article 46 of the Constitution that protects citizens from the arbitrary deprivation of their property, nor, in general, deprives third parties of access to civil legal remedies. Indeed, it does not modify or change the civil laws that would allow all citizens to pursue legal remedies to protect their property rights in the courts of Kosovo. Nor does it violate any citizen's right to pursue legal remedies in accordance with Article 32 of the Constitution nor to an effective legal remedy, pursuant to Article 54 of the Constitution and Articles 6 and 13 of the European Convention.

The right to initiate criminal proceedings and criminal investigations against anybody is a right that belongs to the Government and Government authorities, not to private citizens. Therefore, the crimes that the law now allows to be sheltered with amnesty merely restricts the Government and the Courts of Kosovo in initiating or pursuing criminal proceedings, not private citizens in initiating civil legal remedies.

Therefore, these abovementioned Articles of the Law No. 04/L-209 on Amnesty do not violate any constitutional rights, and thus are compatible with the Constitution of the Republic of Kosovo.

Respectfully submitted,



Robert Carolan
Judge

