



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

Prishtina, 3 April 2014
Ref.no.:AGJ598/14

JUDGMENT

in

Case No. KO44/14

Assessment of amendments to the Constitution proposed by the Government and submitted by the President of the Assembly of the Republic of Kosovo on 11 March 2014 by letter No. 04-DO-2186

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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

The Applicant

1. By Decision No. 1/174 of 6 March 2014, the Government of the Republic of Kosovo (hereinafter: the “Government”), by virtue of Article 144.1 of the Constitution of the Republic of Kosovo (hereinafter, the “Constitution”) proposed a number of amendments to the Constitution.

2. On 11 March 2014, the President of the Assembly of Kosovo, in accordance with Article 144.3 of the Constitution referred the Government's proposal for Amendments to the Constitution to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), for a prior assessment that the proposed amendments do not diminish any of the rights and freedoms guaranteed by Chapter II of the Constitution.
3. Therefore, the President of the Assembly is the Applicant in the proceedings before the Court (hereinafter: the "Applicant").

Subject matter

4. The subject matter of the Referral is sixteen (16) amendments of the Constitution, which were adopted on 6 March 2014 by Decision of the Government, No. 01/174.

Legal Basis

5. 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 (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

6. On 11 March 2014, the Applicant, by letter No. 04-DO-2186, referred the Government's proposed amendments to the Court, requesting it to assess whether these amendments do not diminish any of the rights and freedoms set forth in Chapter II of the Constitution. These amendments are set out in the Annex attached hereto.
7. On 11 March 2014, the President of the Court, by Decision No. GJR. KO44/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KO44/14, appointed the Review Panel consisting of Judges Robert Carolan (Presiding), Ivan Čukalović and Artta Rama-Hajrizi.
8. On 14 March 2014, the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit information and supporting documents regarding the procedures undertaken pursuant to Article 144 of the Constitution not later than 20 March 2014. Moreover, the Court requested the Applicant to provide a copy of the notification to each Deputy of the Assembly in order to allow him/her to submit, not later than 22 March 2014, comments on the above request to the Court, in particular, in light of the interpretation of Article 144.3 of the Constitution by this Court in similar cases.
9. On 14 March 2014, the Court also notified the Prime Minister of the registration of the Referral and requested him to submit, not later than 22 March 2014,

information and supporting documents regarding the procedures undertaken pursuant to Article 144 of the Constitution.

10. On 14 March 2014, a copy of the Referral was communicated to the President of the Republic of Kosovo and the Ombudsperson.
11. To this date, the Court has not received the requested information and supporting documents neither from the Applicant, nor from the Prime Minister.
12. On 31 March 2014, the Court deliberated on the Referral and decided unanimously that the Referral is admissible and the proposed amendments to the Constitution do not diminish the human rights and freedoms set forth in Chapter II of the Constitution.

Summary of facts

13. The Assembly approved the text of the Constitution, which entered into force on 15 June 2008. In its Chapter XIII [Final Provisions], Article 144 [Amendments] of the Constitution empowers the Government, the President or one fourth (1/4) of the deputies of the Assembly of Kosovo to propose amendments to this Constitution.
14. On 6 March 2014, the Government, pursuant to Article 93.9 of the Constitution, adopted Decision No.01/174 proposing sixteen (16) amendments to the Constitution.
15. On 10 March 2014, the Prime Minister, by letter No. 57/2014, forwarded the Government's Proposal for Amendments to the Applicant.
16. On 11 March 2014, the Applicant, by letter No. 04-DO-2186, and in accordance with Article 144.3 of the Constitution, referred the Government's Proposal for amending the Constitution to the Court, requesting the Court to assess whether the proposed amendments do not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Assessment of the admissibility of the Referral

17. In order to be able to adjudicate the Applicant's referral, the Court must examine whether the admissibility requirements have been fulfilled, as laid down in the Constitution and further specified in the Law and the Rules of Procedure.
18. In this respect, the Court needs first to determine whether it has jurisdiction to provide the assessment of the Government's proposed amendments to the Constitution.
19. The Court recalls that, pursuant to Article 113.9 of the Constitution:

"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”.

20. Consequently, the Court has jurisdiction to assess that the proposed amendments do not diminish the rights and freedom guaranteed by Chapter II of the Constitution.
21. Furthermore, the question needs to be answered 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 reiterates that, pursuant to the same Article, “*The President of the Assembly of Kosovo refers proposed constitutional amendments...*” In the present Referral, the President of the Assembly, by letter of 11 March 2014, submitted the request for a prior assessment of the proposed amendments to the Constitution to this Court. It follows that, by virtue of Article 113.9 of the Constitution, the Applicant is an authorized party, entitled to refer this case to the Court.
22. Therefore, since the Court has jurisdiction to deal with it and the Applicant is an authorized party, pursuant to Article 113.9 of the Constitution, the Referral is admissible.

Scope of the Constitutional assessment

23. As stated in the section “Proceedings before the Court” above, the Applicant submitted to the Court sixteen (16) amendments to the Constitution proposed by the Government.
24. In this respect, the Court emphasizes that the Constitution, as the highest legal act of the Republic of Kosovo, must be respected formally and solemnly when proposing amendments to it. Therefore, the Court, mindful of the necessity for legal certainty in relation to this issue, refers to Article 112 [General Principles] of Chapter VIII [Constitutional Court] of the Constitution, providing that the Constitutional Court is the final authority for the interpretation of the Constitution and compliance of laws with the Constitution.
25. Furthermore, the Court confirms that the constitutional review under Article 144.3 of any proposed amendment to the Constitution must be considered in light of Chapter II [Fundamental Rights and Freedoms], including the legal order of the Republic of Kosovo, the very basis of which – by virtue of Article 21 [General Principles] of Chapter II of the Constitution - consists of human rights and freedoms mentioned in that Chapter (See, Case Nos. KO29/12 and KO48/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 20 July 2012; see, also Case No. KO61/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 31 October 2012, par. 18).
26. The Court is also of the view that Chapter III [Rights of Communities and Their Members] and other rights may be applicable in this process, since the specific rights set forth therein, are an extension of the human rights and freedoms provided in Chapter II of the Constitution, in particular, of those laid down in Article 24 [Equality before the Law]. This is particularly so in light of the provisions of Article 21 [General Principles], paragraph 2, which provides that

Kosovo shall protect and guarantee human rights and fundamental freedoms as provided by the Constitution, but not necessarily only those contained in Chapter II alone (See, Cases Nos. KO29/12 and KO48/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 20 July 2012).

27. The Court also considers that Article 21 of the Constitution should be read in conjunction with Article 7.1 of the Constitution that defines the values of the constitutional order of the Republic of Kosovo which is based "*on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of the law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers and a market economy.*"
28. Therefore, the assessment of the constitutionality of the proposed amendments by this Court will not only be made by taking into account the human rights and freedoms contained in Chapter II, but also the entire letter and spirit of the Constitution (See, Cases Nos. KO29/12 and KO48/12, Applicant: President of the Assembly of the Republic of Kosovo, Judgment of 20 July 2012).
29. The Court will now deal in turn with each of the proposed amendments.

Assessment of the Constitutionality of the Proposed Amendments

I. Proposed Amendment no. 24: Article 2, paragraph 2

30. Amendment no. 24 proposes to replace the word "means" in Article 2, paragraph 2 of the Constitution by the word "mechanisms".
31. According to the current Article 2 [Sovereignty], paragraph 2: "*The sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law.*"
32. The amended Article 2, paragraph 2 would read as follows: "*The sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all **mechanisms** provided in this Constitution and the law.*"

Assessment of the constitutionality of proposed Amendment no. 24

33. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
34. Therefore, the Court confirms that the proposed Amendment no. 24 is in conformity with Chapter II of the Constitution.

II. Proposed Amendment no. 25: Article 73, paragraph 1, point 2

35. Amendment no. 25 proposes that Article 73, paragraph 1, point 2, of the Constitution be deleted and amended as follows:

“(2) members of the Kosovo Armed Forces.”

36. According to the current Article 73 [Ineligibility], paragraph 1, point 2:

“1. The following cannot be candidates or be elected as deputies of the Assembly without prior resignation from their duty:

[...]

(2) members of the Kosovo Security Force;

[...].”

37. The amended Article 73 paragraph 1, point 2 would read as follows:

“1. The following cannot be candidates or be elected as deputies of the Assembly without prior resignation from their duty:

[...]

(2) members of the Kosovo Armed Forces;

[...].”

Assessment of the constitutionality of proposed Amendment no. 25

38. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

39. Therefore, the Court confirms that the proposed Amendment no. 25 is in conformity with Chapter II of the Constitution.

III. Proposed Amendment no. 26: Article 84, paragraph 12

40. Amendment no. 26 proposes to delete paragraph 12 of Article 84 of the Constitution and to amend it as follows:

“(12) is the Supreme Commander of the Kosovo Armed Forces”.

41. According to the current Article 84 [Competencies of the President], paragraph 12:

“The President of the Republic of Kosovo:

[...]

(12) is the Commander-in-Chief of the Kosovo Security Force;

[...].”

42. The amended Article 84, paragraph 12 would read as follows:

“The President of the Republic of Kosovo:

[...]

(12) is the Supreme Commander of the Kosovo Armed Forces;

[...].”

Assessment of the constitutionality of proposed Amendment no. 26

43. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

44. Therefore, the Court confirms that the proposed Amendment no. 26 is in conformity with Chapter II of the Constitution.

IV. Proposed Amendment no. 27: Article 84, paragraph 20

45. Amendment no. 27 proposes to delete paragraph 20 of Article 84 of the Constitution and to amend it as follows:

“(20) appoints and dismisses the Chief of Defence, upon recommendation of the Prime Minister;”

46. According to the current Article 84 [Competencies of the President], paragraph 20:

“The President of the Republic of Kosovo:

[...]

(20) appoints the Commander of the Kosovo Security Force upon recommendation of the Government [N.B.: the Court notes that in the Albanian and Serbian version of this Article, instead of “the Government”, the words “the Prime Minister” appear];

[...].”

47. The amended Article 84, paragraph 20 would read as follows:

“The President of the Republic of Kosovo:

[...]

“(20) appoints and dismisses the Chief of Defence, upon recommendation of the Prime Minister;

[...].”

Assessment of the constitutionality of proposed Amendment no. 27

48. The Court notes that an additional competence has been vested in the President, as the Supreme Commander of the Kosovo Armed Forces, namely, the competence to dismiss the Chief of Defence.
49. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
50. Therefore, the Court confirms that the proposed Amendment no. 27 is in conformity with Chapter II of the Constitution.

V. Proposed Amendment no. 28: Article 94, paragraph 7

51. Amendment no. 28 proposes to add the word “and defence policy” following the word “Intelligence” in paragraph 7 of Article 94 of the Constitution.
52. According to the current Article 94 [Competencies of the Prime Minister], paragraph 7:

“The Prime Minister has the following competencies:

[...]

(7) consults with the President of the Republic of Kosovo on matters of intelligence;

[...].”

53. The amended Article 94, paragraph 7 would read as follows:

“The Prime Minister has the following competencies:

[...]

*(7) consults with the President of the Republic of Kosovo on matters of intelligence **and defence policy**;*

[...].”

Assessment of the constitutionality of proposed Amendment no. 28

54. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
55. Therefore, the Court confirms that the proposed Amendment no. 28 is in conformity with Chapter II of the Constitution.

VI. Proposed Amendment no. 29: Title of Chapter XI

56. Amendment no. 29 proposes to delete the title of Chapter XI of the Constitution and to amend it as follows:

*“Chapter XI - **Defence** and Security Sector.”*

57. The current title of Chapter XI reads *“Chapter XI - Security Sector”*.

Assessment of the constitutionality of proposed Amendment no. 29

58. The Court considers that the new title of Chapter XI does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
59. Therefore, the Court confirms that proposed Amendment no. 29 is in conformity with Chapter II of the Constitution.

VII. Proposed Amendment no.30: Article 125, paragraph 1

60. Amendment no. 30 proposes to add the word “defence” following the words “law enforcement” in paragraph 1 of Article 125 [General Principles] of Chapter XI of the Constitution.

61. According to the current Article 125, paragraph 1:

“1. The Republic of Kosovo has authority over law enforcement, security, justice, public safety, intelligence, civil emergency response and border control within its territory.”

[...].”

62. The amended Article 125, paragraph 1 would read as follows:

*“1. The Republic of Kosovo has authority over law enforcement, **defence**, security, justice, public safety, intelligence, civil emergency response and border control within its territory.”*

[...].”

Assessment of the constitutionality of proposed Amendment no. 30

63. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
64. Therefore, the Court confirms that the proposed Amendment no. 30 is in conformity with Chapter II of the Constitution.

VIII. Proposed Amendment no.31: Article 125, paragraph 2

65. Amendment no. 31 proposes to delete paragraph 2 of Article 125 of the Constitution and to amend it as follows:

“Defence and Security Institutions in the Republic of Kosovo shall protect and ensure independence of the country, public safety and the rights of all people in the Republic of Kosovo. The Institutions shall operate in full transparency and in accordance with internationally recognized democratic standards and human rights. Defence and Security Institutions shall reflect the ethnic diversity of the population of the Republic of Kosovo.”

66. According to the current Article 125 [General Principles], paragraph 2:

“2. Security institutions in the Republic of Kosovo shall protect public safety and the rights of all people in the Republic of Kosovo. The institutions shall operate in full transparency and in accordance with internationally recognized democratic standards and human rights. Security institutions shall reflect the ethnic diversity of the population of the Republic of Kosovo.”

Assessment of the constitutionality of proposed Amendment no. 31

67. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
68. Therefore, the Court confirms that the proposed Amendment no. 31 is in conformity with Chapter II of the Constitution.

IX. Proposed Amendment no. 32: Article 125, paragraph 3

69. Amendment no. 32 proposes to add the words “of Defence” following the words “international bodies” in paragraph 3 of Article 125 of Chapter XI of the Constitution.

70. According to the current Article 125 [General Principles], paragraph 3:

“3. The Republic of Kosovo fully respects all applicable international agreements and the relevant international law and cooperates with the international security bodies and regional counterparts.”

71. The amended Article 125, paragraph 3 would read as follows:

“3. The Republic of Kosovo fully respects all applicable international agreements and the relevant international law and cooperates with the international [security] bodies of Defence, and regional counterparts.”
[...]

Assessment of the constitutionality of proposed Amendment no. 32

72. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
73. Therefore, the Court confirms that the proposed Amendment no. 32 is in conformity with Chapter II of the Constitution.

X. Proposed Amendment no.33: Article 125, paragraph 4

74. Amendment no. 33 proposes to add the words “of Defence and” following the words “over institutions” in paragraph 4 of Article 125 of Chapter XI of the Constitution.

75. According to the current Article 125 [General Principles], paragraph 4:

“4. Civilian and democratic control over security institutions shall be guaranteed.”

76. The amended Article 125, paragraph 4 would read as follows:

*“4. Civilian and democratic control over institutions **of Defence and Security** shall be guaranteed.”*

Assessment of the constitutionality of proposed Amendment no. 33

77. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
78. Therefore, the Court confirms that the proposed Amendment no. 33 is in conformity with Chapter II of the Constitution.

XI. Proposed Amendment no. 34: Article 125, paragraph 5

79. Amendment no. 34 proposes to add the words “Defence and” following the words “institutions of” in paragraph 5 of Article 125 of Chapter XI of the Constitution.

80. According to the current Article 125 [General Principles], paragraph 5:

“5. The Assembly of the Republic of Kosovo oversees the budget and policies of the security institutions as provided by law.”

81. The amended Article 125, paragraph 5 would read as follows:

*“5. The Assembly of the Republic of Kosovo oversees the budget and policies of institutions of **Defence and Security** as provided by law.”*

Assessment of the constitutionality of proposed Amendment no. 34

82. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
83. Therefore, the Court confirms that the proposed Amendment no. 34 is in conformity with Chapter II of the Constitution.

XII. Proposed Amendment no.35: Article 126

84. Amendment no. 35 proposes to delete Article 126 of the Constitution and to amend it as follows:

“Article 126 [Kosovo Armed Forces]

- 1. **Kosovo Armed Forces are the national military armed forces of the Republic of Kosovo, and may send its members abroad in full conformity with its international responsibilities.***
- 2. **Kosovo Armed Forces shall protect the sovereignty, territorial integrity, citizens, property and interests of the Republic of Kosovo, and contribute to building regional stability and global peace.***
- 3. **The President of the Republic of Kosovo is the Supreme Commander of the Kosovo Armed Forces, which shall always subject to control by democratically elected civilian authorities.***
- 4. **Kosovo Armed Forces shall be professional, reflect ethnic diversity of the people of the Republic of Kosovo and shall be recruited from among the citizens of the Republic of Kosovo.***
- 5. **Chief of Defence is also Commander of the Kosovo Armed Forces, who shall be appointed and dismissed by the President of the Republic of Kosovo, upon recommendation of the Prime Minister.***
- 6. **Internal organization of the Kosovo Armed Forces shall be regulated by a special law”.***

85. According to the current Article 126 [Kosovo Security Force]:

“1. The Kosovo Security Force shall serve as a national security force for the Republic of Kosovo and may send its members abroad in full conformity with its international responsibilities.

2. The Kosovo Security Force shall protect the people and Communities of the Republic of Kosovo based on the competencies provided by law.

3. The President of the Republic of Kosovo is the Commander-in-Chief of the Kosovo Security Force, which shall always be subject to control by democratically elected civilian authorities.

4. The Kosovo Security Force shall be professional, reflect ethnic diversity of the people of the Republic of Kosovo and shall be recruited from among the citizens of the Republic of Kosovo.

5. The Commander of the Kosovo Security Force shall be appointed by the President of the Republic of Kosovo upon the recommendation of the Government. Internal organization of the Kosovo Security Force shall be determined by law.”

Assessment of the constitutionality of proposed Amendment no. 35

86. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
87. Therefore, the Court confirms that the proposed Amendment no. 35 is in conformity with Chapter II of the Constitution.

XIII. Proposed Amendment no. 36: Article 127, paragraph 1

88. Amendment no. 36 proposes to delete Article 127, paragraph 1 of the Constitution and amend it as follows:

*“The Security Council of the Republic of Kosovo in cooperation with the President of the Republic of Kosovo and the Government develops the **defence and** security strategy for the Republic of Kosovo. The Security Council shall also have an advisory role on all matters relating to **defence and** security in the Republic of Kosovo.”*

89. According to the current Article 127 [Kosovo Security Council], paragraph 1:

“1. The Security Council of the Republic of Kosovo in cooperation with the President of the Republic of Kosovo and the Government develops the security strategy for the Republic of - Kosovo. The Security Council of the Republic of Kosovo shall also have an advisory role on all matters relating to security in the Republic of Kosovo.”

Assessment of the constitutionality of proposed Amendment no. 36

90. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
91. Therefore, the Court confirms that the proposed Amendment no. 36 is in conformity with Chapter II of the Constitution.

XIV. Proposed Amendment no.37: Article 129, paragraph 1

92. Amendment no.37 proposes to replace the word “in the Republic of Kosovo”, in paragraph 1 of Article 129 of the Constitution by the word “of the Republic of Kosovo”.
93. According to the current Article 129 [Kosovo Intelligence Agency], paragraph 1:

“1. The Kosovo Intelligence Agency shall identify, investigate and monitor threats to security in the Republic of Kosovo.”

94. The amended Article 129, paragraph 1 would read as follows:

*“1. The Kosovo Intelligence Agency shall identify, investigate and monitor threats to security **of the Republic of Kosovo.**”*

Assessment of the constitutionality of proposed Amendment no. 37

95. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

96. Therefore, the Court confirms that the proposed Amendment no. 37 is in conformity with Chapter II of the Constitution.

XV. Proposed Amendment no. 38: Article 131, paragraph 7

97. Amendment no. 38 proposes to replace the word “Kosovo Security Force” in paragraph 7 of Article 131 of the Constitution by the word “Kosovo Armed Forces”.

98. According to the current Article 131 [State of Emergency], paragraph 7:

“7. The President of the Republic of Kosovo may, upon consultation with the Government and the Assembly, order mobilization of the Kosovo Security Force to assist in the State of Emergency.”

99. The amended Article 131, paragraph 7 would read as follows:

*“7. The President of the Republic of Kosovo may, upon consultation with the Government and the Assembly, order mobilization of the **Kosovo Armed Forces** to assist in the State of Emergency.”*

Assessment of the constitutionality of proposed Amendment no. 38

100. The Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

101. Therefore, the Court confirms that the proposed Amendment no. 38 is in conformity with Chapter II of the Constitution.

XVI. Proposed Amendment no. 39

102. Amendment no. 39 proposes to add a new Article following Article 128 [Kosovo Police] of the Constitution. The proposed amendment reads as follows:

Article 128 A
[Parliamentary Commissioner for the Armed Forces and
Kosovo Police]

1. *“Parliamentary Commissioner for the Armed Forces and Kosovo Police is an independent institution which shall respond to the Assembly of Kosovo.*
2. *The role, duties and responsibilities of the Parliamentary Commissioner shall be defined by a special law.”*

Assessment of the constitutionality of proposed Amendment no. 39

103. The Court notes that the proposed Amendment establishes a new independent public institution, the role, duties and responsibilities of which shall be defined by a special law.
104. In this regard, the Court recalls that a similar institution exists in a number of European countries such as Austria, Germany, Netherlands, Norway, Sweden, and others. For instance, the Basic Law of Germany, as amended, provides for a Parliamentary Commissioner for the Armed Forces, vesting it with powers “to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight over the Armed Forces”; adding also that “Details shall be regulated by a federal law.” (See, German Law on Parliamentary Commissioner for Armed Forces, dated 16 June 1982, BGBl. IS. 677 and amended on 5 February 2009, BGBl. IS. 160). Such an institution also functions in the region (e.g., in Bosnia and Herzegovina).
105. The Court considers that the proposed new Article 128 A of the Constitution does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.
106. Therefore, the Court confirms that the proposed Amendment no. 39 is in conformity with Chapter II of the Constitution.

XVII.

107. With regards to point XVII of the Draft Amendments proposed by the Government (See, Annex), the Court notes that the entry into force of the Amendments to the Constitution is regulated by Article 144, paragraph 4 of the Constitution.

FOR THESE REASONS

The Constitutional Court, based on Articles 113.9 and 144.3 of the, Constitution, Article 20 of the Law and Rule 56.1 of the Rules of Procedure, in its session held on 31 March 2014,

UNANIMOUSLY, DECIDES AS FOLLOWS:

- I. The Referral containing the Government's Proposal for Amendments to the Constitution, submitted by the President of the Assembly of the Republic of Kosovo on 11 March 2014, is admissible;
- II. The Court confirms that all sixteen (16) Amendments contained in the Government's Proposals for Amendments of the Constitution, submitted by the President of the Assembly on 11 March 2014, do not 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.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani

Annex

Amendments as proposed by the Government of the Republic of Kosovo in its Letter to the President of the Assembly of the Republic of Kosovo, Ref. 54/2014 dated 10 March 2014



Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria - Vlada - Government

DRAFT AMENDMENTS OF THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

Assembly of the Republic of Kosovo;
Pursuant to article 65 (2) of the Constitution of the Republic of Kosovo,
Approves,

AMENDMENT OF THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

I.

Amendment no. 24

Article 2, paragraph 2., the word "means" to be replaced by the word "mechanisms".

II.

Amendment no. 25

Article 73, paragraph 1, point 2, should be deleted and amended as follows:

(2) members of the Kosovo Armed Forces;

III.

Amendment no. 26

Article 84, paragraph 1, point 12, should be deleted and amended as follows:

(12) is the Supreme Commander of the Kosovo Armed Forces;

IV.

Amendment no. 27

Article 84, paragraph 1, point 20. should be deleted and amended as follows:

(20) appoints and dismisses Chief of Defence, upon recommendation of the Prime Minister;

V.

Amendment no. 28

Article 94, paragraph 1, point 7 following the word "Intelligence", should be added the word "and defence policy".

VI.

Amendment no. 29

The Title of Chapter XI should be deleted and amended as follows:

Chapter XI – Defence and Security Sector

VII.

Amendment no. 30

Article 125, paragraph 1, following the word "law enforcement,", should be added the word "defence".

VIII.

Amendment no. 31

Article 125, paragraph 2, should be deleted and amended as follows:

2. Defence and Security Institutions in the Republic of Kosovo shall protect and ensure independence of the country, public safety and the rights of all people in the Republic of Kosovo. The institutions shall operate in full transparency and in accordance with internationally recognized democratic standards and human rights. Defence and Security Institutions shall reflect the ethnic diversity of the population of the Republic of Kosovo.

IX.

Amendment no. 32

Article 125, paragraph 3, following the word "international bodies,", should be added the word "of Defence,".

X.

Amendment no. 33

Article 125, paragraph 4, following the word "over institutions,", should be added the word "of Defence and,".

XI.
Amendment no. 34

Article 125, paragraph 5, following the word "institutions of," should be added the word "Defence and,".

XII.
Amendment no. 35

Article 126 should be deleted and amended as follows:

Article 126 (Kosovo Armed Forces)

1. *Kosovo Armed Forces are the national military forces of the Republic of Kosovo, and may send its members abroad in full conformity with its international responsibilities.*
2. *Kosovo Armed Forces shall protect the sovereignty, territorial integrity, citizens, property and interests of the Republic of Kosovo, and contribute to building and maintaining regional, stability and global peace.*
3. *The President of the Republic of Kosovo is the Supreme Commander of the Kosovo Armed Forces, which shall always subject to control by democratically elected civilian authorities.*
4. *Kosovo Armed Forces shall be professional, reflect ethnic diversity of the people of the Republic of Kosovo shall be recruited from among the citizens of the Republic of Kosovo.*
5. *Chief of Defence is also Commander of the Kosovo Armed Forces, who shall be appointed and dismissed by the President of the Republic of Kosovo, upon the recommendation of the Prime Minister.*
6. *Internal organization of the Kosovo Armed Forces shall be regulated by a special law.*

XIII.
Amendment no. 36

Article 127, paragraph 1, should be deleted and amended as follows:

1. *The Security Council of the Republic of Kosovo in cooperation with the President of the Republic of Kosovo and the Government develops the defence and security strategy for the Republic of Kosovo. The Security Council of the Republic of Kosovo shall also have an advisory role on all matters relating to defence and security in the Republic of Kosovo. "*

XIV.
Amendment no. 37

Article 129, paragraph 1, the word "in the Republic of Kosovo" should be replaced by the word "of the Republic of Kosovo".

XV.
Amendment no. 38

Article 131, paragraph 7, the word "Kosovo Security Force" should be replaced by the word "Kosovo Armed Forces".

XVI.
Amendment no. 39

Following Article 128, a new Article should be added and amended as follows:

Article 128A
Parliamentary Commissioner for the Armed Forces and Kosovo Police

1. Parliamentary Commissioner for the Armed Forces and Kosovo Police is an independent institution which shall respond to the Assembly of Kosovo.
2. The role, duties and responsibilities of the Parliamentary Commissioner shall be defined by a special law.

XVII.

Constitutional amendments shall enter into force immediately upon their adoption by the Assembly of the Republic of Kosovo.