



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 4 April 2016
Ref. no.:RK911/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KO47/16

Applicants

**Aida Dërguti, Bali Muharremaj, Enver Hoti
and 25 other Deputies of the Assembly of the Republic of Kosovo**

**Constitutional review of Decision No. 05-V-233, dated 26 February
2016, on the election of the President of the Republic of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicants are Mrs. Aida Dërguti, Mr. Bali Muharremaj and Mr. Enver Hoti, who are also representing 25 other Deputies of the Assembly of the Republic of Kosovo (see Appendix).

Challenged decision

2. The Applicants challenge the Decision No. 05-V-233 of the Assembly of the Republic of Kosovo (hereinafter: the "Assembly"), *"on the election of the President of the Republic of Kosovo"* (hereinafter: "Decision of the Assembly"), taken during the extraordinary session of the Assembly on 26 February 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review by the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court") of the aforementioned Decision of the Assembly, by which Mr. Hashim Thaçi was elected the President of the Republic of Kosovo.
4. The Applicants claim that Article 86 [Election of the President], paragraphs 4 and 5, of the Constitution of the Republic of Kosovo (hereinafter: "the Constitution") have been violated because, according to the Applicants, *"[...] this election was accompanied by substantial and procedural violations of the Constitution of the Republic of Kosovo [...]"*.
5. The Applicants also request the Court to impose an Interim Measure. In addition, the Applicants request the Court to hold a hearing and invite them to present their case.

Legal basis

6. The Referral is based on Articles 113.5 and 116 of the Constitution, Articles 27 and 42 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rules 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

7. On 4 March 2016, the Applicants submitted the Referral to the Court.
8. On 7 March 2016, the President of the Court, by Decision GJR. KO47/16, appointed Judge Gresa Caka-Nimani as Judge Rapporteur. On the same date, by Decision KSH. KO47/16, the President of the Court appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
9. On 7 March 2016, the Court notified the Applicants of the registration of the Referral.
10. On 7 March 2016, the Court sent a copy of the Referral to the President-Elect, Mr. Hashim Thaçi, and invited him to submit comments on the Referral, if any, by 14 March 2016. The Court did not receive any comments.
11. On 7 March 2016, the Court submitted a copy of the Referral to the President of the Assembly of Kosovo with the explicit request to have it distributed to all

Deputies of the Assembly and to invite them to submit their comments on the Referral by 14 March 2016.

12. On 7 March 2016, the Court submitted a copy of the Referral to the President of the Republic of Kosovo, the Prime Minister of the Government of the Republic of Kosovo, and to the Ombudsperson, and invited them to submit their comments on the Referral, if any, by 14 March 2016. The Court did not receive any comments.
13. On 14 March 2016, the President of the Assembly submitted to the Court his comments on the Referral.
14. On 21 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel made an unanimous recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

15. On 24 February 2016, following the decision of the Presidency of the Assembly, the President of the Assembly of the Republic of Kosovo summoned the Deputies for an extraordinary session to be held on 26 February 2016. The agenda for this extraordinary session contained one item: *the election of the President of the Republic of Kosovo*.
16. According to the Minutes submitted by the Applicants, the extraordinary session developed as it follows:
17. On 26 February 2016, the President of the Assembly opened the extraordinary session and announced that the two (2) candidates proposed for the office of President of the Republic of Kosovo were Mr. Hashim Thaçi and Mr. Rafet Rama.
18. The Assembly Commission for Legislation, Mandates, Immunities and the Rules of Procedure of the Assembly and Supervision of the Anti-Corruption Agency confirmed that it reviewed the documentation concerning the two (2) candidates and concluded that the candidates proposed for the office of President of the Republic of Kosovo fulfilled all necessary requirements prescribed by the provisions of the Constitution and the Law on the President of the Republic of Kosovo.
19. Thereupon, according to the Minutes of the extraordinary session, the extraordinary session was interrupted several times because some of the Deputies of the Assembly had released teargas in the Assembly Hall.
20. Consequently, the President of the Assembly announced that the Presidency of the Assembly had rendered a decision (Decision, 05-V-252) to exclude six (6) Deputies from participation in the extraordinary session because of their behavior and actions, which hindered the continuation of the work of the extraordinary session.

21. Thereafter, the Presidency of the Assembly also rendered a decision (Decision, 05-V-253) to exclude another five (5) Deputies on the same ground because of their behavior and actions hindered the continuation of the work of the extraordinary session.
22. In continuation, before the voting started, the President of the Assembly invited all parliamentary groups to nominate their respective representatives to the *ad hoc* Voting Commission on the Election of the President of the Republic of Kosovo (hereinafter: the "Commission"). The heads of the parliamentary groups of PDK, LDK, SLS and 6+ nominated their respective representatives to the Commission. In addition, one Deputy representing one of the parliamentary groups in the opposition, Vetëvendosje, was nominated to serve as a member in the Commission, claiming to also represent the other two parliamentary groups in the opposition, AAK and NISMA.
23. Thereafter, the President of the Assembly announced that Deputies representing the parliamentary groups in the opposition had left the extraordinary session. According to the Minutes of the extraordinary session, the representative of the parliamentary group of Vetëvendosje participated in the Commission's proceedings during the first and third rounds of voting.
24. The President of the Assembly opened the first round of voting and called the Deputies by their respective names to proceed to cast their vote in the ballot box. This procedure was managed and supervised by the Commission.
25. In the first round, eighty one (81) Deputies participated in the voting. Fifty (50) Deputies voted in favour of Mr. Hashim Thaçi, whereas four (4) Deputies voted in favour of Mr. Rafet Rama. Twenty seven (27) votes were invalid. Thereafter, the Commission declared that a second round of voting was to be held.
26. The Assembly then held a second round, where eighty one (81) Deputies participated in the voting. Sixty four (64) voted in favour of Mr. Hashim Thaçi, whereas two (2) Deputies voted in favour of Mr. Rafet Rama. Fifteen (15) votes were invalid. Thereafter, the Commission declared that a third round of voting was to be held.
27. After the third round of voting was held, the Commission declared that eighty one (81) Deputies participated in the voting. Seventy one (71) voted in favour of Mr. Hashim Thaçi. None of the Deputies voted for Mr. Rafet Rama. Ten (10) votes were invalid.
28. According to the Commission's final Report, signed by all its members, eighty one (81) Deputies voted during the third round of voting. The Commission, in its Report, stated that Mr. Hashim Thaçi was elected President of the Republic of Kosovo.
29. On the basis of this Report, the President of the Assembly announced that Mr. Hashim Thaçi was elected President of the Republic of Kosovo.

Applicants' allegations

30. The Applicants claim that "[...] *this election was accompanied by substantial and procedural violations of the Constitution of the Republic of Kosovo [...]*". In this regard, the Applicants allege violations of Article 86 paragraphs 4 and 5, of the Constitution.
31. The Applicants complain that, during the three rounds of voting, the requirements of Article 86, paragraph 4, were not met for the following reasons:

*"Based on the voting result of the third round, which like the first two rounds of voting was characterized by violations of the Constitution, namely of Article 86 (4) and (5), and Article 27 of the Rules of Procedure of the Assembly, the President of the Assembly announced the election of the President of the Republic of Kosovo. In this case, regarding the quorum provided under Article 86 (4) on the election of the President of the Republic, in Judgment KO29/11 of 30 March 2011 (Sabri Hamiti and other Deputies, Constitutional Review of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President of the Republic of Kosovo, dated 22 February 2011), in paragraph 85 "the Court notes that, as to the number of votes required for the election of the President of the Republic of Kosovo, Article 86-4 of the Constitution provides that the President of the Republic of Kosovo shall be elected by a two thirds (2/3) of the **"votes of all deputies"** (in the original Albanian version "me dy të tretat (2/3) e votave të të gjithë deputetëve") of the Assembly, meaning that all 120 deputies should vote, minus those properly excused by the President of the Assembly and that the candidate obtaining 80 or more votes of all deputies (in the first or second round) will be elected. Only if a 2/3 majority is not reached, a third round takes place. Article 27 of the Law on Deputies and Article 27(4) of the Rules of Procedure of the Assembly, contain identical wording: "two thirds (2/3) **of the votes of all deputies** of the Assembly". The explicit requirement and the finding of the Constitutional Court that "The requirement of Article 86, that all deputies had to vote, was, therefore, not met." is applicable also to the session of 26 March 2016 [Court's correction: 26 February 2016]. In other words, participation of all deputies in the session is not only their duty, but it is also a necessary "condition" for the validity of the elections."*

32. Based on the Referral, the Applicants refer to the Judgment of the Court in Case KO29/11, Applicants: *Sabri Hamiti and other deputies*, Judgment of 30 March 2011 (hereinafter: Judgment in Case KO29/11). They consider that the procedure for the election of the President of the Republic of Kosovo is unconstitutional and invalid, because according to the Applicants, not all hundred and twenty (120) Deputies participated in the voting.
33. In addition, the Applicants raise a number of questions in the form of a request to the Court to submit them to the Assembly for clarification. The Applicants request the Court to address the Assembly with the following questions:

a) Were **all deputies** of the Assembly present in the session of 26 February 2016? If not, which is evident because 39 deputies, or about 1/3 of the deputies of the Assembly, were absent, were the deputies who were absent in the session of 26 February 2016 **excused by the President of the Assembly** for their absence?

b) If the deputies were not excused by the President of the Assembly, what were the reasons for their absence?

c) When the session of 26 February 2016 was held, was the Assembly of Kosovo in full composition as is foreseen by Article 64 (1) [Structure of Assembly] of the Constitution "The Assembly has one hundred twenty (120) deputies elected [...]?"

d) If the Assembly was not in full composition, which deputies were absent without being excused by the President of the Assembly?

e) How is justified the fact of the absence of the deputy and Head of the Parliamentary Group of Vetëvendosje Movement, Mr. Glauk Konjufca, who is in prison without the immunity of the Deputy being waived by the Assembly of Kosovo, as is foreseen by the Constitution under Article 75 (1) and (2), Law on Rights and Responsibilities of the Deputy No. 03/L-111 under Article 9 (2) and (9) for offenses which are already amnestied by Law on Amnesty No. 04/L-209?

(f) How is justified the lack of full composition of the Assembly, namely failure to immediately fill the vacant seat of deputy as per requirement of Article 70 (4) [Mandate of Deputies] of the Constitution following the resignation of the Deputy, Mr. Ramush Haradinaj?

g) How is explained the collective exclusion of the deputies of opposition parties from the session, as the President of the Assembly did in the session of 26 February 2016?

h) How does the Assembly explain the unjustified absence, respectively without excuse of the President of the Assembly, of the deputies of the governing coalition parties: Adem Salihaj, Anton Quni, Gëzim Kelmendi, Hatim Baxhaku, Shpejtim Bulliqi, Vjosa Osmani?

i) Since "The election of the President of Kosovo who, pursuant to Article 83 [Status of the President], is the Head of State and represents the unity of the people of the Republic of Kosovo, is of such importance [...]" according to Judgment KO29/11 of 30 March 2011, paragraph 84, what were the reasons for the absence of the deputies from the governing coalition parties?

34. The Applicants consider that "All raised questions deserve special attention of the Court, as in the election of the President we are dealing not only with the Head of State, but more importantly we are dealing with the office that represents the unity of the people of the Republic of Kosovo."

Applicants' requests

35. The Applicants request the Court to declare unconstitutional the Decision of the Assembly on the election of the President of the Republic of Kosovo.
36. In addition, the Applicants request the Court to impose an Interim Measure by suspending the Decision of the Assembly until the Court has rendered a decision. The Applicants reason their request by stating that *"These measures are necessary to avoid risks or irreparable damage for the future of the country"*.
37. The Applicants also request the Court to hold a hearing and invite them to present their case.

Comments submitted by the President of the Assembly

38. In his submission to the Court, the President of the Assembly informed the Court about the procedure followed for the election of the President of the Republic of Kosovo during the extraordinary session held on 26 February 2016.
39. In addition, the President states that the procedure for the election of the President is evidenced by the Reports of the *ad hoc* Voting Commission for the election of the President, as well as the Minutes of the extraordinary session of the Assembly. According to the submission of the President of the Assembly:

"[...]"

8. After the implemented procedure for the election of the President of the Republic of Kosovo, described according to the abovementioned data, the submitter of this reply notes that the Assembly of the Republic of Kosovo applied the procedure for the election of the President, in accordance with Article 86 of the Constitution, due to the following reasons: In the procedure for the election of the President were nominated and participated at least two candidates; The nominations of the candidates were verified and it was concluded that they are in accordance with Article 86 of the Constitution. The three rounds of voting in the implementation of the procedures for the election of the President of the Republic of Kosovo were conducted on equal conditions, because in the three rounds of voting, 2/3 of all deputies of the Assembly participated in the voting. During the conduct of the three rounds of voting, no break was announced and took place; Three rounds of voting, during the conduct of the procedure for the election of the President of the Republic of Kosovo, were conducted as a single procedure; During the conduct of the three rounds of voting, 2/3 of all deputies of the Assembly of the Republic of Kosovo were present; During the conduct of the three rounds of voting for the election of the President of the Republic of Kosovo, 2/3 of all deputies of the Assembly of the Republic of Kosovo have voted.

9. The submitter of this reply reiterates that all other legal and political actions taken by the Assembly and the deputies as individuals, during the conduct of the extraordinary session, of 26 February 2016, for the election

of the President of the Republic of Kosovo, do not constitute constitutional issues that are related to the constitutional procedure of the election of the President, in accordance with Article 85 and 86 of the Constitution, and furthermore, these actions do not affect the constitutional aspect of the conduct of the procedure for the election of the President of the Republic of Kosovo.

[...].”

40. Accordingly, in his comments submitted to the Court, the President of the Assembly of the Republic of Kosovo states that the provisions of Article 86 of the Constitution were respected during the Assembly extraordinary session of 26 February 2016 for the election of the President of the Republic of Kosovo.

Scope of the Referral

41. The Court recalls that the Applicants contest the constitutionality of Decision No. 05-V-233 adopted by the Assembly “*on the election of the President of the Republic of Kosovo*” as regards to its substance and the procedure followed on the basis of Article 113, paragraph 5 of the Constitution.
42. In this respect, the Applicants claim that this Decision has violated Article 86, paragraphs 4 and 5, of the Constitution. In particular, they claim that the required quorum necessary for the election of the President was not present, as required by Article 86, paragraph 4 and 5, of the Constitution.
43. The Court observes that the Applicants have not presented any arguments in relation to the substance of the contested Decision.
44. In addition, to the extent that the Applicants have also requested the Court to address a series of questions to the Assembly, the Court finds that this request does not come within the scope of referrals submitted under Article 113.5 of the Constitution. Article 113.5 provides “*Ten (10) or more Deputies of the Assembly, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed*” [The Court notes that the Serbian version of this Article reads as follows: [...] have the right to contest the constitutionality of any law adopted by the Assembly [...]]. The Court also notes that under the Constitution, it has no jurisdiction to serve as an intermediary for addressing Applicants’ questions to the Assembly.
45. Therefore, the Court finds that based on the jurisdiction of the Court provided by Article 113.5 of the Constitution, the Scope of this Referral is limited to the question of compatibility with Article 86, paragraphs 4 and 5, of the Constitution, as it pertains to the procedure followed in the Assembly when voting for the election of the President of the Republic of Kosovo on 26 February 2016.

Admissibility of the Referral

46. In order for the Court to be able to adjudicate on the Applicants' Referral, it is necessary to first examine whether the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure have been met.

47. The Court needs to determine whether the Applicants can be considered as an authorized party. In that respect, Article 113.5 of the Constitution provides that:

"Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed".

48. In the present Referral, twenty eight (28) Deputies challenge the Decision No. 05-V-233 of the Assembly on "the election of the President of the Republic of Kosovo" of 26 February 2016. Therefore, the Applicants are an authorized party, entitled to refer this case to the Court, by virtue of Article 113.5 of the Constitution.

49. As to the further requirement of Article 113.5 of the Constitution, that the Applicants must have submitted the Referral *"within eight (8) days from the date of adoption"* of any decision by the Assembly, the Court notes that the Assembly adopted its Decision on 26 February 2016, whereas the Applicants submitted the Referral to the Court on 4 March 2016. The Applicants, therefore, have met the deadline for filing a referral to the Court, as provided by Article 113.5 of the Constitution.

50. The Court needs to also assess whether the Applicants have fulfilled the conditions laid down in Article 42 of the Law and the Admissibility Criteria laid down in Rule 36 of the Court's Rules of Procedure.

51. Article 42 of the Law specifies the criteria for the Accuracy of the Referral, when the referrals are made pursuant to Article 113.5 of the Constitution. Article 42 of the Law provides:

"1. In a referral made, pursuant to Article 113, Paragraph 5 of the Constitution, the following information shall, inter alia, be submitted:

1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;

1.2. provisions of the Constitution or other act or legislation relevant to this referral; and

1.3. presentation of evidence that supports the contest."

52. In addition, the Court needs also to assess whether the Applicants have sufficiently substantiated their claims as required by Rule 36 of the Rules of Procedure.

53. In this respect, Rule 36 of the Rules of Procedure contains the following requirement:

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim;”

54. In continuation, in accordance with the Scope of the Referral as determined by the Court in this Resolution, the Court will only assess whether the Applicants' Referral complies with Article 42 of the Law and Rule 36 of the Rules of Procedure as it pertains to the question whether, during the procedure for the election of the President of the Republic of Kosovo, Article 86, paragraphs 4 and 5, have been violated.

55. In this respect, the Court refers to Article 86 [Election of the President], paragraphs 4 and 5, of the Constitution which provides that:

“[...]

4. The President of the Republic of Kosovo shall be elected by a two thirds (2/3) majority of all deputies of the Assembly.

5. If a two thirds (2/3) majority is not reached by any candidate in the first two ballots, a third ballot takes place between the two candidates who received the highest number of votes in the second ballot, and the candidate who receives the majority of all deputies of the Assembly shall be elected as President of the Republic of Kosovo.

[...].”

56. In terms of the procedure followed for the election of the President of the Republic of Kosovo, three (3) rounds of voting were conducted. All three (3) voting rounds were conducted by secret ballot. From these three (3) voting rounds, the following conclusions can be drawn:
57. In the first round of voting, eighty one (81) Deputies cast their vote. Fifty (50) Deputies voted in favour of Mr. Hashim Thaçi, whereas four (4) Deputies voted in favour of Mr. Rafet Rama. Twenty seven (27) votes were invalid.
58. In the second round of voting, eighty one (81) Deputies cast their vote. Sixty four (64) voted in favour of Mr. Hashim Thaçi, whereas two (2) Deputies voted in favour of Mr. Rafet Rama. Fifteen (15) votes were invalid.

59. In the third round of voting, eighty one (81) Deputies cast their vote. Seventy one (71) voted in favour of Mr. Hashim Thaçi. None of the Deputies present voted for Mr. Rafet Rama. Ten (10) votes were invalid.
60. Therefore, the Court notes that it is clear that in all three (3) rounds of voting eighty one (81) Deputies participated in the vote.
61. The Court observes that the Applicants' complaint is specifically concerned with the question of the required quorum for the election of the President of the Republic of Kosovo, as provided by Article 86, paragraphs 4 and 5 of the Constitution.
62. The Court notes that quorum refers to the minimum number of Deputies, who must be present for any decision to be validly taken. Article 69, paragraph 3 of the Constitution provides that the Assembly of Kosovo has its quorum when more than one half (1/2) of all Assembly Deputies are present. This provision applies unless the Constitution specifically requires a greater majority for a decision to be taken. Where the Constitution specifically prescribes that a greater number of Deputies is required for a decision to be taken, then the required majority determines the necessary quorum.
63. The Court reiterates that for the process for the election of the President of the Republic of Kosovo to be valid, in the first and second rounds of voting, at least two thirds (2/3) of all Deputies must be present and voting, whereas in the third round, at least the majority of all Deputies must be present and voting, in accordance with paragraphs 4 and 5 of Article 86 of the Constitution.
64. For the first round to be valid, at least two thirds (2/3) of all Deputies of the Assembly must be present and voting. If this requirement is not met, the first round will be null and void. Accordingly, a second round cannot take place. For the second round to be valid, the same number, namely, at least two thirds (2/3) of all Deputies of the Assembly must be present and voting. If this requirement is not met, the second round of voting will be null and void. Only when the first and the second rounds of voting are valid, the third round takes place. In order to be valid, the third round requires at least the presence and voting of the majority of all Deputies of the Assembly.
65. As the Constitution stipulates in paragraphs 4 and 5 of the Article 86, the candidate who receives the votes of at least two thirds (2/3) of all Deputies of the Assembly in the first or the second round, or the votes of at least the majority of all deputies of the Assembly in the third round, will be elected the President of the Republic of Kosovo.
66. Accordingly, in the present case, it is clear that at least two thirds (2/3) of all Deputies were present and voting in the first and the second rounds of voting, whereas the required majority of all Deputies was also present and voting in the third round of voting.
67. In the present Referral, the Applicants raise specific concerns due to the fact that not all hundred and twenty (120) Deputies were present or formally

excused for their absence during the extraordinary session. In this regard, the Applicants quote specifically paragraph 85 of the Judgment in Case KO29/11. Paragraph 85 of the aforementioned Judgment in Case KO29/11 states:

*“In this respect, the Court notes that, as to the number of votes required for the election of the President of the Republic of Kosovo, Article 86.4 of the Constitution provides that the President of the Republic of Kosovo shall be elected by a two thirds (2/3) of the **“votes of all deputies”** (in the original Albanian version “me dy të tretat (2/3) e votave të të gjithë deputetëve”) of the Assembly, meaning that all 120 deputies should vote, minus those properly excused by the President of the Assembly, and that the candidate obtaining 80 or more votes of the votes of all deputies (in the first or second round) will be elected. Only if a 2/3 majority is not reached, a third round takes place. Article 27 of the Law on Deputies and Article 27(4) of the Rules of Procedure of the Assembly, contains identical wording: “two thirds (2/3) of the **votes of all deputies** of the Assembly”.*

68. The Applicants in their opinion consider that paragraph 85 of the Judgment in Case KO29/11 implies that if all hundred and twenty (120) Deputies are either not present or formally excused by the President of the Assembly that then the President of the Republic of Kosovo could not be considered to be elected by two thirds (2/3) of all Deputies of the Assembly as required by Article 86, paragraph 4.
69. The Court first recalls that in the Judgment in Case KO 29/11 it had, among others, found that in the first and second rounds of voting there had been an insufficient number of Deputies present to make up at least the required two thirds (2/3) majority, as required by Article 86, paragraphs 4 and 5 of the Constitution. Accordingly, the first and the second rounds of voting had been null and void and a second or a third round, respectively, could not have taken place. Whereas in the present case, the number of Deputies present and voting during the three rounds of voting was sufficient to meet the required majority for the election of the President as foreseen in Article 86, paragraphs 4 and 5.
70. Furthermore, the Court notes that the interpretation of paragraph 85 of the Judgment in Case KO29/11 as maintained in the Applicant's Referral does not correspond with the Court's assessment made in that Judgment. Paragraph 85 of the Judgment in Case KO29/11 must be understood within the context of the overall scope of that Judgment and in particular, its section as it pertains to the “Vote by the Assembly”, specifically, paragraphs 80 through 84 of the same Judgment. These paragraphs provide:

80. Moreover, Law No. 03/L-111 on Rights and Responsibilities of the Deputy (hereinafter: the “Law on Deputies”) and Articles 3 and 21 of the Rules of Procedure of the Assembly, adopted on 29 April 2010 further emphasize that the Deputies of the Assembly are representatives of the people and shall have an equal right and obligation to participate fully in the proceedings of the Assembly and carry out their task as representatives of the people of Kosovo in accordance with the Constitution, the Law and the Rules of Procedure of the Assembly. That is to say, by receiving the vote of the citizens, deputies have an obligation

towards them, *inter alia*, as stipulated by Article 40 [Obligations] of the Law on Deputies, by being obliged to participate in the Plenary Sessions and in meetings of the assisting bodies of the Assembly in which they are a member. If the deputy cannot participate in the Assembly Sessions or in the meetings of the assisting authorities of the Assembly in which he/she is a member, he/she must inform in time the President of the Assembly respectively the President, Vice President of that assisting body, by submitting the reasons for his/her absence, as required by Article 40.3 of the Law on Deputies.

81. Their obligation as deputies is further reflected in the oath that the Assembly Members must take before the Assembly after the verification of their mandates, pursuant to Article 10 of the Rules of Procedure of the Assembly, providing:

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

82. Furthermore, the Court emphasizes that, pursuant to Article 27 of the Rules of Procedure of the Assembly, the members of the Assembly shall comply with the Code of Conduct that is annexed to those Rules. The Code of Conduct clearly provides that the Members of the Assembly have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

83. In these circumstances, all 120 deputies of the Assembly should feel obliged, by virtue of the Constitution, the Law on Deputies, the Rules of Procedure of the Assembly and the Code of Conduct, to participate in the plenary sessions of the Assembly and to adhere to the procedures laid down therein, but most of all an obligation *vis-a-vis* the people of Kosovo that elected them.

84. The election of the President of Kosovo who, pursuant to Article 83 [Status of the President], is the Head of State and represents the unity of the people of the Republic of Kosovo, is of such importance, that all deputies, as the representatives of the people of Kosovo, should consider it their constitutional duty, unless excused by the President of the Assembly, to participate in the procedure for the election of the President as laid down in Article 86 [Election of the President] of the Constitution.

71. In addressing the Applicants' claims, the Court first notes and recalls paragraph 1 of Article 70 [Mandate of the Deputies] of the Constitution that "Deputies of the Assembly are representatives of the people and are not bound by any obligatory mandate" as well as Article 74 [Exercise of Function] of the Constitution that "Deputies of the Assembly of Kosovo shall exercise their

function in best interest of the Republic of Kosovo and pursuant to the Constitution, Laws and Rules of Procedure of the Assembly”.

72. In continuation, the Court notes that, the wording that “*all 120 deputies should vote*” referred to in paragraph 85 of the Judgment in Case KO29/11, must be understood within the meaning of paragraphs 83 and 84 of that Judgment. The obligation of Deputies to participate in the plenary sessions of the Assembly is regulated by and derives from the Law on the Rights and Responsibilities of Deputies (hereinafter: the “Law on Deputies”), Rules of Procedure of the Assembly and the Deputies’ Code of Conduct. Failure to fulfill the obligations as set forth by the Law on Deputies, does not invalidate a decision of the Assembly, as long as the necessary majority for a decision to be taken as specified in the Constitution, is maintained in the Assembly.
73. Further, the Court notes that, the wording “*minus those properly excused by the President of the Assembly*”, referred to in paragraph 85 of Judgment in Case KO29/11, must be understood within the meaning of paragraph 80 to 82 of that Judgment. As referred to in paragraph 80 of Judgment in Case KO29/11, the legal obligation of Deputies to inform the President of the Assembly, respectively the President, Vice President of an assisting body, by submitting the reasons for his/her absence, derives from and is required by the Law on Deputies, Article 40.3 specifically. Again, failure to fulfill the obligations as set forth by the Law on Deputies, does not invalidate a decision of the Assembly, as long as the necessary majority for a decision to be taken as specified in the Constitution, is maintained in the Assembly.
74. Accordingly, the Court concludes that it is neither a constitutional prerequisite nor a requirement for the validity of the decision for the election of the President of the Republic of Kosovo under Article 86, paragraphs 4 and 5 that all hundred and twenty (120) Deputies be present and voting, as stipulated by the Applicants’ Referral.
75. Based on the foregoing, the Applicants’ claim as to the violation of Article 86, paragraphs 4 and 5, does not stand.
76. Therefore, based on Article 42, paragraph 1.3 of the Law and Rule 36 (1), (d) and (2), (d) of the Rules of Procedure, the Referral is inadmissible as manifestly ill-founded on a constitutional basis, because the Applicants have not sufficiently substantiated their claims that the Decision of the Assembly “on the election of the President of the Republic of Kosovo”, is in violation of Article 86, paragraphs 4 and 5 of the Constitution.

Request for Interim Measure

77. As to the request for interim measures, the Court notes that the Applicants request the Court to suspend the Decision of the Assembly until the Court has rendered a decision.
78. The Applicants reason their request by stating that:
- “These measures are necessary to avoid risks or irreparable damage for the future of the country”.*
79. Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, provide that *“when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures”.*
80. The Court further refers to Rule 55 (4) of the Rules of Procedure, which provides:
- (a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and
(c) the interim measures are in the public interest.
If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.
81. However, since the Applicant’s Referral is manifestly ill-founded and, therefore, inadmissible, the Court concludes that the request for interim measure can no longer be subject of the review, and, therefore, it must be rejected.

Request for a hearing

82. The Court recalls that the Applicants request the Court to hold a hearing and invite them to present their case.
83. In this respect, the Court notes that based on Rule 39 [Right to a Hearing and Waiver] of its Rules of Procedure: *“Only referrals determined to be admissible may be granted a hearing before the Court, unless the Court by majority vote decides otherwise.”* The Court took into account the documents that were provided and did not require any additional information in order to reach its Decision on the case. For this reason, the Court considers that the hearing is not necessary.

FOR THESE REASONS

The Constitutional Court, based on Article 113.5 of the Constitution, Article 27 and Article 42, paragraph 1.3 of the Law and Rules 36 (1), (d) and (2), (d), 39 and 55 (4) of the Rules of Procedure, on 21 March 2016, by majority

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. TO REJECT the Request for Public Hearing;
- IV. TO NOTIFY this Decision to the Parties;
- V. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- VI. This Decision is effective immediately.

Judge Rapporteur

Gresa Caka-Nimani
Gresa Caka-Nimani

President of the Constitutional Court



Ata Rama-Hajrizi
Ata Rama-Hajrizi

Appendix

Vetëvendosje

1. Visar Ymeri
2. Albin Kurti
3. Aida Dërguti
4. Sali Salihu
5. Ilir Deda
6. Shqipe Pantina
7. Albulena Haxhiu
8. Mytaher Haskuka
9. Besnik Bislimi
10. Besa Baftiu
11. Ismajl Kurteshi
12. Rexhep Selimi
13. Puhie Demaku
14. Fisnik Ismaili

AAK

15. Bali Muharremaj
16. Rrustem Berisha
17. Daut Haradinaj
18. Donika Kadaj-Bujupi
19. Teuta Haxhiu
20. Lah Brahimag
21. Pal Lekaj
22. Time Kadrijaj

NISMA

23. Fatmir Limaj
24. Valdete Bajrami
25. Haxhi Shala
26. Zafir Berisha
27. Shukrije Bytyqi
28. Enver Hoti