



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

Pristina, 9 September 2013
Ref.no.:AGJ469/13

JUDGMENT

in

Case No. KO 95/13

Applicants

Visar Ymeri and 11 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement

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.

Applicants

1. The Applicants are Visar Ymeri, Albin Kurti, Glauk Konjufca, Rexhep Selimi, Afrim Kasolli, Liburn Aliu, Albulena Haxhiu, Albana Gashi, Florin Krasniqi, Emin Gërbeshi, Albana Fetoshi and Agim Kuleta, all of them deputies of the Assembly of the Republic of Kosovo. Before the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), the Applicants have authorized Mr. Visar Ymeri to represent them.

Challenged law

2. The Applicants challenge Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement (hereinafter: the “Law on Ratification”), which was adopted by the Assembly of the Republic of Kosovo (hereinafter: the “Assembly”) on 27 June 2013.

Subject Matter

3. The Applicants request the review of the constitutionality and the legality of the Law on Ratification, which was adopted by the Assembly by Decision No. 04-V-638 of 27 June 2013.

Legal Basis

4. Article 113.5 of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), Articles 42 and 43 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 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Proceedings before the Court

5. On 4 July 2013, the Applicants submitted their Referral to the Court.
6. On 4 July 2013, the President of the Constitutional Court, by Decision No.GJR.KO.95/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No.KSH.KO.95/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 5 July 2013, the Applicants submitted a correction of the Referral in accordance with Rule 31.1 of the Rules of Procedure which provides: *“At any time before the Judge Rapporteur has submitted the report, a party that has filed a referral or a reply, or the Court acting ex officio, may submit to the Secretariat a correction of clerical or numerical errors contained in the materials filed.”* The Applicants corrected page 17 of the Referral under Roman numeral VI (Statement of the Relief Sought), deleting Article 113.2, Rule 54 and Rule 55 of the Rules of Procedure. The Applicants also submitted the following additional documents to the Court: Authorization, the signatures and photocopy of the ID cards of the Deputies participating in the Referral.
8. On 9 July 2013, the Court notified the President of the Assembly and the Government of the Republic of Kosovo (hereinafter: the “Government”) of the submission of the Referral by the Applicants to the Court and asked them to

submit their comments and any documents that they deem necessary in respect to the Referral.

9. On 9 July 2013, the President of the Republic of Kosovo was informed about the Referral submitted to the Court by the Applicants.
10. On 18 July 2013, the Court received the following documents from the President of the Assembly:
 - a. The final report of the Committee for Legislation of 17 June 2013 on the Draft Law on Ratification;
 - b. The transcript of the plenary sessions of the Assembly of 27 June 2013 and 4 July 2013;
 - c. The minutes of the plenary sessions of the Assembly of 27 June 2013 and 4 July 2013;
 - d. The electronic voting register;
 - e. The Decision of the Assembly of 27 June 2013 on Adopting Law, No. 04/L-199, on Ratification. (Decision No. 04-V-638);
 - f. The Decision (No. 01/132) of the Government *“Approving the Draft Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement.”*;
 - g. The Law on Ratification;
 - h. The First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia (hereinafter: the “First International Agreement”);
 - i. The Implementation Plan of the agreement (hereinafter: the “Implementation Plan”).
11. The Court has not received any comments either from the Assembly or from the Government.
12. The Review Panel considered the Report prepared by the Judge Rapporteur, Judge Snezhana Botusharova, and made a recommendation to the full Court.
13. On 2 September 2013, the Court deliberated and voted on the Referral.

Summary of facts

14. On 18 October 2012, the Assembly, upon the proposal of the Parliamentary Groups: Democratic Party of Kosovo (PDK), Alliance for the future of Kosovo (AAK), Coalition for New Kosovo (AKR), Independent Liberal Party (SLS) and

Group 6+, approved Resolution no. 04-R-08, On the Normalization of Relations Between the Republic of Kosovo and the Republic of Serbia (published on the Webpage of the Assembly). According to this Resolution:

- a. *“the Assembly of the Republic of Kosovo supports the process of the solution of problems between two sovereign states, Kosovo and Serbia, in the interest of the normalization of problems between them, the improvement of citizens’ life and advancing the European agenda for the two states and the region.”*
- b. *“[...] the dialogue and its results should be in compliance with Kosovo’s sovereignty, international subjectivity, territorial integrity and inner regulation – unique constitutional order of Kosovo.”*
- c. *“[...] the Assembly of the Republic of Kosovo authorizes the Government of the Republic of Kosovo to direct this process, with participation of necessary Committees of the Assembly of Kosovo [...]”.*
- d. *“[...] the agreements reached as a result of the dialogue shall be ratified by the Assembly of the Republic of Kosovo.”*

15. On 22 April 2013, during an extra-ordinary session requested by the Prime Minister, the Assembly approved Resolution no. 04-R-10, on Giving Consent to the Signing of the First Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia. (Published on the Webpage of the Assembly). According to this Resolution:

- a. *“the Assembly of Kosovo grants consent and supports signing of the first agreement for normalization of relations between the Republic of Kosovo and the Republic of Serbia [...]”;*
- b. *“[...] the Assembly of Kosovo supports the promises contained in this agreement [...]”*

16. On 28 May 2013, the Government adopted Decision No. 01/132, *“Approving the Draft Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement.”* Furthermore, in accordance with this Decision, the General Secretary of the Office of the Prime Minister proceeded with the Draft Law for review and adoption by the Assembly.

17. On the same date, the President of the Assembly sent to all Deputies of the Assembly the Draft Law on Ratification. Furthermore, the Committee on Legislation was assigned to review this Draft Law and to present to the Assembly a report with recommendations.

18. On 24 June 2013, the Committee for Legislation sent to the Deputies of the Assembly the Recommendation that the Draft Law on Ratification should be reviewed and adopted by the Assembly. This Committee proposed three amendments to this Law:

- a. Amendment 1: *“Remove from the title of the draft law the words “AND IMPLEMENTATION PLAN FOR THIS AGREEMENT”;*

- b. Amendment 2: Article 1 of the Draft Law rephrased as follows “*Article 1 – Purpose, This law ratifies the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and Republic of Serbia, initialed on 19 April 2013 by the Prime Minister of the Republic of Kosovo and Prime Minister of Serbia, adopted by the Government of the Republic of Kosovo on 22 April 2013, Decision No.01/126, and by the Assembly of the Republic of Kosovo on 22 April 2013, Resolution No.04-R-10.*”;
 - c. Amendment 3: Article 2 of the Draft Law is rephrased as follows “*Article 2 - Scope of work, The scope of work of this law is the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and Republic of Serbia and is an integral part of this Law. This law will be implemented by the Republic of Kosovo with the assistance of the European Union (EU), the Forces of the North Atlantic Treaty Organization in Kosovo (KFOR) and the Organization for Security and Co-operation in Europe (OSCE).*”
19. On 27 June 2013, the Assembly held a plenary session where Law, No. 04/L-199, on Ratification was voted upon and adopted. The proposed amendments by the Committee for Legislation were not approved. According to the electronic voting register and the transcript of the Assembly, of the Deputies present, 84 voted in favour, 3 were against and 1 Deputy abstained.
20. On the same day, the President of the Assembly (Decision No. 04-V-638), pursuant to Article 65.1 [Competencies of the Assembly] of the Constitution, which provides that “*The Assembly of the Republic of Kosovo; (1) adopts laws, resolutions and other general acts;*” and Article 18 [Ratification of International Agreements] of the Constitution and Rule 60 [Ratification of International Agreements] of the Rules of Procedure of the Assembly “*Adopted Law no. 04/L-199 on the Ratification of the First International Agreement on the Principles Governing the Normalization of Relations between the Republic of Kosovo and Republic of Serbia.*” Furthermore, pursuant to point 2 of this decision, “*The law is sent for promulgation to the President of the Republic of Kosovo.*”

Arguments presented by the Applicants

As to the procedural aspect of the Referral

21. The Applicants submit the Referral to the Court for the constitutional review of the contested Law, as they consider that the Law on Ratification and the First International Agreement annexed to the Law have not been adopted in accordance with legislative procedures, both within the Government, and when being dealt with by the Assembly. The Applicants allege the following three procedural violations:
- a) The procedure followed in adopting the draft Law on Ratification by the Government violated Articles 5 and 11.1 of the Law on International

- Agreements as the draft Law was not submitted to other relevant agencies and ministries for review;
- b) The procedure followed for submission by the Government of the draft Law to the Assembly violated Articles 54.1.b and 60.2 of the Rules of Procedure of the Assembly, as the draft Law was not accompanied, *inter alia*, by a Declaration on budgetary implications; and
 - c) The procedure followed for adoption of the draft Law by the Assembly violated Articles 60.3 and 54.1 of the Rules of Procedure of the Assembly, as well as specific rules contained in Annex 2 of the Rules of Procedure, as the draft Law was never submitted to various Assembly Committees for review.
22. The Applicants allege that the procedure followed in adopting the draft Law on Ratification by the Government violated Articles 5 and 11.1 of the Law on International Agreements (Law no. 04/L-52). The Applicants first explain the concept of reservations in international law and, in this connection, refer to Article 3.1.9 of the Law on International Agreements, providing that, *"Reservations – a unilateral declaration made by the competent state body at the time of conclusion, ratification, adhesion or approval of an agreement which aims at excluding or modifying the legal impacts of certain provisions."* Considering that the Kosovo legislation in force envisages the instrument of reservation, they hold that every agreement between the Republic of Kosovo and any international subject must take into consideration Article 11 of this Law, according to which, in each case where there is a question of international agreements having implications for the internal legislation, the responsible institution must prepare a document that explains those implications.
23. The Applicants further refer to Article 11.1 of the Law, which reads as follows: *"If any reservations and/or declarations are made regarding the International Agreement, the responsible ministry or state agency shall report these to the relevant ministries and Government agencies during the review procedure under Article 5 of this Law,"* while its paragraph 2 stipulates that: *"The responsible ministry or state agency shall include the text of these reservations and/or statements into the draft law of the Republic of Kosovo on the ratification of the International Agreement or the draft decree of the President of the Republic on the ratification of the International Agreement, respectively, and shall arrange for the translation of these reservations and/or statements into the foreign language concerned."*
24. In the Applicants' view, the text of the draft First International Agreement should have been sent to the agencies or ministries in the relevant fields for review, pursuant to Article 5 of the Law.
25. The Applicants further allege that the procedure followed for submission by the Government of the draft Law to the Assembly violated Articles 54.1.b and 60.2 of the Rules of Procedure of the Assembly. The Applicants also refer to Article 54 [Conditions for presenting a Draft Law], paragraph 1, of the Rules of Procedure of the Assembly, according to which the Draft Law presented to the Assembly shall contain:

- a. Explanatory note on the objectives that are aimed to be achieved by the Law, its harmonization with the applicable legislation and reasoning of the provisions of the Law.
 - b. Declaration on budgetary implications in the first year and subsequent years.
 - c. Declaration on approximation and harmonization with EU legislation and with the comparative table of acts it refers to.
26. The Applicants argue that the Government has processed the Draft Law on Ratification, while it only contains the explanatory memorandum, but not the important Declaration on budgetary implications as provided by Article 54.1.b and a financial statement as required by 60.2 of the Rules of Procedure of the Assembly. In their opinion, since Items 7 and 10 of the Agreement envisage the integration of parallel security and judicial structures, there is no doubt that the Agreement has budgetary implications.
 27. The Applicants further allege that the procedure followed for adoption of the draft Law on Ratification by the Assembly violates Articles 60.3 and 54.1 of the Rules of Procedure of the Assembly. They quote Article 60.3 of the Rules of Procedure of the Assembly, providing that *“Proceeding a Draft Law on ratification of international agreements is special and shall be subject to only one review”*. It implies that, since it is a special procedure and excludes a second review of the draft law, accordingly, the procedure at the permanent and functional committees must be developed, prior to the vote in the plenary session of the Assembly where the draft Law on Ratification should be adopted.
 28. The Applicants also allege that the draft Law on Ratification did not go through the review procedures at the permanent committees for Budget and Finances and for Foreign Affairs and, by virtue of Article 54.1 of the Rules, should also have been reviewed by the Functional Committee as the lead committee, as well as the Committees for Legislation and Judiciary, Budget and Finance, European Integration, Human Rights, Gender Equality, Missing Persons and Petitions, Rights and Interests of Communities and Returns, as main committees.
 29. They further submit that the Legislation Committee of the Assembly, when reviewing the draft Law on Ratification, never reviewed the constitutionality and legality of what is now the ratified law. Moreover, taking into account its responsibilities laid down in Annex 2, Item 3 of the Rules of Procedure of the Assembly, reading: *“Analyses and evaluates the conformity of acts adopted by the Assembly with the Constitution”*, and *“Reviews the legality and constitutionality of draft laws”*, the Committee has rejected such a review, despite the fact that this matter is part of its main responsibilities.
 30. The Applicants add that in Annex 2, Item 5 [Committee on Foreign Relations] of the Rules of Procedure of the Assembly, two items, in particular, define the duties of this Committee, namely: *“Ratifying existing treaties en bloc or separately, which Kosovo wants to sign”*, and *“Following the ongoing negotiations for participation in new treaties led by the Government and initiating the debate on ratification of these new treaties.”*

31. As to the first Item, they maintain that it emphasizes the ratification of agreements of existing treaties that Kosovo is willing to sign and, therefore, alludes to the review by the Committee prior to any of the state bodies undertaking the initiative to conclude an international agreement. The aim of the first paragraph is to always obtain the opinion of the Committee on Foreign Relations prior to the conclusion of an agreement by Kosovo.
32. As to the second Item mentioned above, the Applicants consider that the Committee on Foreign Relations is entitled to initiate debates by the Assembly on the pre-ratification procedure which, in their view, is similar to the Anglo-Saxon system of checks and balances, whereby the legislative and executive powers in the decision-making process are balanced against the state actions in international relations. They emphasize that the Rules of Procedure of the Assembly are rules with a special legal classification in the legal hierarchy, since they are a formal source of the Constitution and, as such, obligatory, superseding the law.
33. The Applicants conclude that the Government has ignored the Committee on Foreign Relations contrary to the Rules of Procedure of the Assembly.

As to the substantial aspect of the Referral:

34. The Applicants also submit the Referral to the Court for the constitutional review of the contested Law on Ratification itself, because the First International Agreement annexed to the Law on Ratification contains 15 Items concerning the establishment of the Association/Community of the Municipalities in the North, which allegedly violate the Constitution as follows:
 - a. Items 1 to 6 violate Article 1.1 of the Constitution, because they violate the indivisibility and uniqueness of the state of Kosovo;
 - b. Item 1 violates Article 3.1 of the Constitution, pursuant to which the Republic of Kosovo is a multi-ethnic society, as well as the principles expressed in Article 123.3 of the Constitution in relation to the principles of Local Self-Governance;
 - c. Item 3 violates Article 1.1 of the Constitution regarding the qualification of Kosovo as a unique state;
 - d. Item 4 violates the constitutional principles provided in Article 123 and 124 of the Constitution and also exceeds the principles of Article 2 of the European Charter on Local Self-Governance (hereinafter: the "ECLSG");
 - e. Item 6 violates Article 1.1 of the Constitution in relation to the qualification of the Republic of Kosovo as a unique state;
 - f. Item 7 violates the general constitutional principles in relation to the security sector, as laid down in Article 125.2 of the Constitution;
 - g. Item 9 violates Article 3.1 (multi-ethnic qualification of the Republic of Kosovo) and Articles 125.2 and 24.2 of the Constitution;
 - h. Item 10 violates Articles 102.2 and 24.1 of the Constitution and Article 6 ECHR in conjunction with Articles 13 and 14 ECHR;
 - i. Item 11 violates Article 139.1 of the Constitution;
 - j. Item 14 violates Article 2.2 in conjunction with Article 20.1 of the Constitution.

Relief sought by the Applicants:

35. The Applicants request the Court to declare that, in the adoption of the Law on Ratification and the ratification of the First International Agreement:

A. The Government violated the procedural rules contained in Article 11 [Reservations and declarations] in conjunction with Article 5 [The Procedural Review of the draft International Agreements] of Law No. 04/L-052 on International Agreements;

B. The Government and the Assembly violated the procedural rules contained in Chapter XIII [Law-Making Procedure] of the Rules of Procedure of the Assembly:

- (1) Article 54 [Conditions for presenting a Draft-Law], para.1;
- (2) Article 57 [Review of a Draft-Law by Committees], para. 1; and
- (3) Article 60 [Ratification of international agreements], para.2; as well as

Annex Nr. 2 [Scope of Activities and Responsibilities of the Parliamentary Committees] of the Rules of Procedure of the Assembly:

- (1) item 3 [Committee on Legislation and Judicial Affairs]; and
- (2) item 5 [Committee on Foreign Relations] of the Rules of Procedure of the Assembly; and

C. The contested Law and Annex 1 to this Law violate the following Articles of the Constitution:

Chapter I [Basic Provisions]:

- (1) Article 1 [Definition of State], para. 1;
- (2) Article 2 [Sovereignty], para. 2;
- (3) Article 3 [Equality before the Law], para.1;
- (4) Article 20 [Delegation of Sovereignty], para. 1;

Chapter VII [Justice System]:

- (1) Article 102 [General Principles of the Justice System], para. 2;

Chapter X [Local Government and Territorial Organization]:

- (1) Article 123 [General Principles], para. 3;
- (2) Article 124 [Local Self-Government Organization and Operation];

Chapter XI [Security Sector]:

- (1) Article 125 [General Principles], para. 2;

Chapter XII [Independent Institutions]:

- (1) Article 139 [Central Election Commission], para. 1.

36. The Applicants finally ask the Court to decide that the contested Law is invalid.

Admissibility of the Referral

37. In order for the Court to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.
38. In this respect, the Court refers to Article 113.1 of the Constitution, which establishes that *"The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties."*
39. As to these requirements, the Court notes that the Applicants made their Referral pursuant to Article 113.5 of the Constitution which provides as follows:

"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." **[the Serbian version differs from the English and Albanian versions]**

40. In this connection, the Court observes that, when a law or an act of the Assembly is under review under Article 113.5 of the Constitution, the review procedure will be of a suspensive nature, meaning that the law will be barred from being promulgated until the Court has taken a final decision on the case. In accordance with Article 43 (2) of the Law, in the event that a law adopted by the Assembly is contested under Article 113.5 of the Constitution *"such a law [...] shall be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities determined in the final decision of the Constitutional Court on this contest."*, meaning that the adopted Law should not be returned to the Assembly but should be forwarded to the President of the Republic of Kosovo for promulgation of the Law without the Articles which have been declared incompatible with the Constitution by the Court in its Judgment.
41. In the present case, the Court notes that the Referral was submitted by 12 Deputies of the Assembly of Kosovo, which is more than the minimum required by Article 113.5 of the Constitution, and therefore the requirement for an authorised party is satisfied.
42. In addition, the Court takes into account Article 42 of the Law which governs the submission of a Referral under Article 113.5 of the Constitution and reads as follows:

Article 42 - Accuracy of the Referral

1. In a referral made pursuant to Article 113, Paragraph 5 of the Constitution the following information shall, inter alia, be submitted: [the Albanian and Serbian versions differ from the English version]

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.

43. Apart from the names and signatures of the Deputies who submitted the Referral, the contested Law and the relevant provisions of the Constitution as well as the evidence in support of the Referral are mentioned.
44. As to the challenged law, the Court notes that the Applicants contest the Law no. 04/L-199 on Ratification.
45. The requirements of Article 42 of the Law are, therefore, satisfied.
46. As to the time limit, the Court notes that the Law, No. 04/L-199, on Ratification was adopted by the Assembly on 27 June 2013 (Decision No. 04-V-638) and that the Referral was submitted to the Court on 4 July 2013. Therefore, the Referral has been submitted within the constitutionally prescribed period of eight days.
47. Thus, the Court considers that there are no grounds to declare the Referral, which raises important constitutional questions, inadmissible.

Comparative analysis

48. Before entering into the question whether or not the contested law is in violation of the Constitution, the Court will conduct a comparative analysis as to the relationship between international treaties and the domestic legal order of a state. In general, in all constitutional states, an international agreement is first signed by a high representative of the state. The signature indicates only 'the intention to be bound by the agreement'. In order for the rights and obligations contained in the agreement to enter into force and become binding on the state, the agreement must be constitutionally ratified by the highest legislative organ of the state, which is the state parliament, congress or assembly, as the holder of 'state sovereignty'.
49. The Constitutions of different European countries approach the issue of constitutional review of the ratification of international agreements in various ways. These differences are a result of the various ways in which the relationship between an international agreement and the domestic legal order are defined. This definition can be understood as falling along a scale of constitutional approaches.
50. At one end of the scale is the approach taken by the United Kingdom where international agreements are concluded by the Queen through her Minister for Foreign and Commonwealth Affairs and do not have to be ratified by the British Parliament before becoming binding on the state. Once concluded, they bind the state only in its relations with other countries, and have no effect on the internal legal order of the United Kingdom. In order for the provisions of an international agreement to become effective within the domestic legal order, specific legislation must be adopted containing those provisions and defining

their operation within domestic law. Once incorporated through specific legislation, these provisions remain of an inferior legal order than the Constitution of the state.

51. At the opposite end of the scale is the approach taken by the Netherlands. Here, following ratification by Parliament, the international agreement becomes binding on the state in its relations with other countries, and any self-executing provisions of the agreement become binding within the internal legal order. What is more, the provisions of ratified international agreements are of superior legal order even than the Constitution of the state, and domestic legislation may be reviewed by all courts for compliance with obligations deriving from such international agreements.
52. The Constitutional system of Kosovo falls in between these two examples. Following ratification by the Assembly, an international agreement becomes binding on the state in its relations with other states, and such agreements become part of the internal legal system. However, those provisions of an international agreement which are self-executable are of superior legal order to the legislation of Kosovo, while remaining of inferior legal order to the Constitution of Kosovo, as defined in Article 19 of the Constitution. Self-executing provisions of international agreements may be applied directly within the internal legal order of Kosovo, but their application remains subject to the Constitution.

Albania

53. In respect of Albania, the Court notes that the Constitution of Albania in its Article 91, point “ë”, amongst other competencies, authorizes the President to enter into international agreements according to the law. Furthermore, Article 121 of the Constitution specifies the types of international agreements which must be ratified by the Assembly. Following the ratification by the Assembly and the publication of the international agreement in the Official Journal, the ratified international agreement becomes part of the internal legal order pursuant to Article 122 of the Constitution.
54. As to the role of the Constitutional Court of Albania concerning ratification of international agreements, Article 131 of the Constitution provides that the Constitutional Court *inter alia* decides on “*the compatibility of international agreements with the Constitution, prior to their ratification.*”
55. In this respect, the Court refers to Decision No. 15, of 15 April 2010 of the Constitutional Court of Albania where it reviewed the compatibility with the Constitution of Albania of the Agreement signed between the Republic of Albania and the Republic of Greece on the delimitation of their respective zones of the continental shelf and other areas of the sea which belong to the respective countries according to International Law. The Constitutional Court of Albania found the Agreement incompatible with Articles 3, 4, 7 and 92 of the Constitution of Albania.

Bosnia and Herzegovina

56. In respect of Bosnia and Herzegovina, the Court notes that its Constitution in Article IV regulates the powers of the Parliamentary Assembly and reads as follows: *“The Parliamentary Assembly shall have responsibility for: [...] (d) Deciding whether to consent to the ratification of treaties.”*
57. Article V of the Constitution of Bosnia and Herzegovina provides that: *“The Presidency shall have responsibility for: (d) Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina.”*
58. As to the competences of the Constitutional Court of Bosnia and Herzegovina, the Court notes that the Constitution does not give that Court any jurisdiction in respect of reviewing international agreements.

Bulgaria

59. In respect of Bulgaria, the Court notes that its Constitution grants competencies to both the President and the Government to conclude international treaties in the circumstances established by law. Article 98 of the Constitution reads as follows: *“The President of the Republic shall: [...] 3. conclude international treaties in the circumstances established by the law;”* Article 106 of the Constitution reads as follows: *“The Council of Ministers [...] conclude, confirm or denounce international treaties when authorized to do so by law.”*
60. As to the Assembly, the Court notes that its competencies are prescribed by Article 85 of the Constitution of Bulgaria, reading as follows: *“The National Assembly shall ratify or denounce by law all international treaties which: 1. are of a political or military nature; 2. concern the Republic of Bulgaria’s participation in international organizations; 3. envisage corrections to the borders of the Republic of Bulgaria; 4. contain obligations for the treasury; 5. envisage the State’s participation in international arbitration or legal proceedings; 6. concern fundamental human rights; 7. affect the action of the Law or require new legislation in order to be enforced; 8. expressly require ratification.”*
61. The role of the Constitutional Court of Bulgaria is determined by Article 149.4 of the Constitution, which stipulates that: *“The Constitutional Court shall: [...] 4. rule on the compatibility between the Constitution and the international treaties concluded by the Republic of Bulgaria prior to their ratification, and on the compatibility of domestic laws with the universally recognized norms of international law and the international treaties to which Bulgaria is a party; [...]”*

Croatia

62. The Constitution of Croatia provides as follows in respect to the incorporation of International Agreements into the domestic legal order:

“[...]”

Chapter VII [International Relations]

Part 1 [International Agreements]

Article 138 [Concurrent Power]

International agreements shall be concluded, in conformity with the Constitution, law and the rules of international law, depending on the nature and contents of the international agreement, within the authority of the Croatian Parliament, the President of the Republic and the Government of the Republic of Croatia.

Article 139 [Ratification, Qualified Ratification]

(1) International agreements which entail the passage of amendment of laws, international agreements of military and political nature, and international agreements which financially commit the Republic of Croatia shall be subject to ratification by the Croatian Parliament.

(2) International agreements which grant international organizations or alliances powers derived from the Constitution of the Republic of Croatia, shall be subject to ratification by the Croatian Parliament by two-thirds majority vote of all representatives.

(3) The President of the Republic shall sign the documents of ratification, admittance, approval or acceptance of international agreements ratified by the Croatian Parliament in conformity with sections 1 and 2 of this Article.

(4) International agreements which are not subject of ratification by the Croatian Parliament are concluded by the President of the Republic at the proposal of the Government, or by the Government of the Republic of Croatia.

Article 140 [Priority Over Law]

International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.

[...]

63. However, as to the role of the Constitutional Court of Croatia in respect of the ratification of international agreements, the Court notes that the Constitution does not grant any power to the Court to review international agreements as such. This was reaffirmed by Decision U-I/1583/2000 whereby the Constitutional Court of Croatia rejected the claim for constitutional review of a ratification law enacted by the legislative body. The Constitutional Court of Croatia held that it is competent to review the constitutionality of the act on the ratification of an international agreement, but not the international agreement itself (i.e. its substantive content) which is part of the ratification act.

Macedonia

64. In the Republic of Macedonia the relation between national and international law is regulated by two related articles of the Constitution. According to Article 118 of the Macedonian Constitution, international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. According to Article 68 of the Constitution, the Parliament ratifies international agreements.
65. As to the Constitutional Court of Macedonia, the Court notes that Article 110 of the Macedonian Constitution does not expressly provide for the competence of the Constitutional Court to review the constitutionality of international treaties, nor is there any competence to review the conformity of laws which ratified international treaties. Notwithstanding this, in 2002, the Macedonian Constitutional Court repealed the law on ratification of a bilateral agreement because the agreement contained provisions breaching the Constitution, but it did not repeal the said provisions of the agreement finding that, to do so, it would have been in breach of international law. The Macedonian Constitutional Court argued that, since the Constitution incorporates ratified treaties into the body of the internal legal order in a rank below the Constitution, the Court builds its competence on the theory that since a ratified international treaty becomes part of the domestic legal order, it must, as any other regulation, be in accordance with the Constitution, and therefore reviewable by the Court. However, this attitude has changed and the majority of judges of the Macedonian Constitutional Court have taken the stance that control of constitutionality in case of international agreements is carried out by the Parliament in the process of their ratification, after which they become part of the domestic legal order and are self-executing. Thus, the Macedonian Constitutional Court will not review international treaties.

Slovenia

66. The Constitution of the Republic of Slovenia, in its Article 8, provides that, *“Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.”*
67. As to international treaties, pursuant to Article 153, *“Laws, regulations and other general legal acts must be in conformity with the Constitution. Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal acts must also be in conformity with other ratified treaties.”*
68. As to the Constitutional Court of Slovenia, the Court notes that Article 160 [Powers of the Constitutional Court] contains relevant provisions in relation to international agreements. Namely, paragraph 1 provides that the Constitutional Court, *inter alia*, decides *“[...] on the conformity of laws and other regulations with ratified treaties and with the general principles of international law [...]”*. In addition, paragraph 2 of the same Article reads that *“In the process of*

ratifying a treaty, the Constitutional Court, on the proposal of the President of the Republic, the Government or a third of the deputies of the National Assembly, issues an opinion on the conformity of such treaty with the Constitution. The National Assembly is bound by the opinion of the Constitutional Court.”

69. In this respect, the Court refers to Decision U-I-128/98 of the Constitutional Court of Slovenia, where it held: “[...] *The Constitutional Court is always empowered to review a statute even if this is, concerning its contents, an individual legal act. By assuming the provisions of an international agreement into the act on ratification, they are not given the legal nature of statutory provisions. Similarly, only because the act on ratification assumes an international agreement, the provisions of this act are not given the legal nature of an international agreement. Thus, the act on ratification and the international agreement, which adoption is confirmed by the former, are not the same legal act. Also concerning their legal nature, these two legal acts are not identical. Therefore, the Constitutional Court has jurisdiction to review the constitutionality of the act on the ratification of an international agreement, pursuant to that provision of the Constitution which confers on the Court the jurisdiction to decide on the consistency of statutes with the Constitution. [...]*”

Merits

70. The Court notes that the Applicants allege that Law No. 04/L-199 on Ratification of the First International Agreement of Principles Governing the Normalization of the Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement is in violation of the Constitution as regards the procedure followed for its adoption and its substance.

As to the procedure followed for adopting the contested Law

71. The Applicants complain that the procedure for adopting the contested law is in violation of:
- a. Article 11, paragraphs 1 and 2, of Law No. 04/L-052 on International Agreements, because “[...] *no declaration and no reservation is attached to the draft law*”;
 - b. Article 54, paragraph 1, and Article 60, paragraph 1, of the Rules of Procedure of the Assembly, because “[...] *the financial statement is missing.*”
 - c. Article 57, paragraph 1, and point 2 of Annex 2 of the Rules of Procedure of the Assembly, because “[...] *the Committee for Legislation and the Committee for Budget and Finance have not reviewed and have not given an opinion in respect to whether the agreement is in compliance with the Constitution or not.*”
 - d. Point 5 of Annex 2 of the Rules of Procedure of the Assembly, because “[...] *the Committee for Foreign Relations has not reviewed it.*”
72. However, the Court reiterates that it can only analyze the steps undertaken by the Government and the Assembly for the adoption of the contested law, on the basis of the relevant constitutional provisions.

73. In this connection, the Court notes that the competencies of the Assembly are determined in Article 65 of the Constitution, of which, for the present case, only its paragraphs 1 and 4 are relevant, reading as follows:

*“The Assembly of the Republic of Kosovo:
(1) adopts laws, resolutions and other general acts;
[...]
(4) ratifies international treaties;”*

74. In the present case, the Assembly, pursuant to its competence under Article 65.1 of the Constitution, voted and adopted the Law on Ratification, in accordance with the requirements for the adoption of a law foreseen in Article 80.1 [Adoption of Laws] which provides: *“Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.”*

75. Furthermore, the Court also refers to Article 18.1 of the Constitution and Article 10.2 of Law No. 04/L-052 on International Agreements, which defines the procedure for the ratification of international agreements. Article 18.1 [Ratification of International Agreements] reads as follows:

*“International agreements relating to the following subjects are ratified by two thirds (2/3) vote of all deputies of the Assembly:
(1) territory, peace, alliances, political and military issues;
(2) fundamental rights and freedoms;
(3) membership of the Republic of Kosovo in international organizations;
(4) the undertaking of financial obligations by the Republic of Kosovo;”*

76. As such, the ratification of the ‘First International Agreement’ comes within the scope of Article 18.1 of the Constitution, and, therefore, requires a two-thirds majority vote in the Assembly for the adoption of the Law on Ratification.

77. As to the question which authority of a State has the power to conclude international treaties, the Court refers to Article 2 (c) of the Vienna Convention on the Law of Treaties of 1969, which defines “full powers” as meaning *“[...] a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;”*.

78. In this regard, the Court notes that the reference to the “competent authority” to conclude international agreements, leaves it to the internal law of each State to determine the authority that issues the full powers. Usually, such documents emanate from the Head of State (or somebody to whom he/she has delegated the necessary powers), the head of government or the foreign minister and bear the official emblem and, in some cases, the seal of a country.

79. In addition, the internal law of Kosovo that regulates which institutions are authorized to conclude international agreements is specified in Article 6 of Law No. 04/L-052 on International Agreements which reads as follows:

[...]

1. The President and the Prime Minister and the Minister of Foreign Affairs shall be entitled to perform all acts relating to the conclusion of the International Agreements of the Republic of Kosovo, in compliance with the Constitution of Republic of Kosovo and the Vienna Convention on the Law of Treaties.

2. The head of a diplomatic mission of the Republic of Kosovo or the authorized representative of the Republic of Kosovo at an international conference, international organization or one of its bodies shall be entitled to negotiate the conclusion of an International Agreement of the Republic of Kosovo or to approve its text with the State to which he is accredited or at the international conference, international organization or one of its bodies.

3. Other persons may perform acts relating to the conclusion of the International Agreements of the Republic of Kosovo only provided they possess powers granted to them on the basis of the laws in force and according to the procedure established in Article 6 of this Law.

[...]

80. In the present case, the Court notes that, on 18 October 2012, the Assembly authorized the Government to lead the process of reaching an agreement between the Republic of Kosovo and the Republic of Serbia in order to normalize the relations between these two states (see paragraph 14). In addition, the Court notes that the Assembly has subsequently issued other decisions whereby it has declared support for the Government to continue these negotiations (see paragraph 15).
81. Following this, the Government, pursuant to the authorization granted by the Assembly of the Republic of Kosovo, entered into the First International Agreement with the Republic of Serbia on 19 April 2013.
82. In this regard, the Court refers to Article 10 of Law No. 04/L-052 on International Agreements, which provides that:

[...]

1. Assembly of the Republic of Kosovo by two thirds (2/3) votes of all deputies shall ratify the international agreement on following issues:

1.1. territory, peace, alliances, political and military issues;

1.2. fundamental rights and freedoms;

1.3. membership of the Republic of Kosovo in international organizations;

1.4. the undertaking of financial obligations by the Republic of Kosovo.

2. International Agreements referred to in paragraph 1 of this Article shall be ratified by a law by two thirds (2/3) vote of all deputies of the Assembly of the Republic of Kosovo.

[...]"

83. In respect of the requirement established in Article 10.2 of Law No. 04/L-052 on International Agreements, the Court notes that, for the purposes of the incorporation into the Kosovo legal order of the agreement, the Government is responsible to submit to the Assembly, according to the established procedure, a draft of the appropriate law, pursuant to Article 15.3 of Law No. 04/L-052 on International Agreements, which reads as follows: *"If a law or any other legal act has to be passed for the purpose of implementation of an International Agreement of the Republic of Kosovo, the Government of the Republic of Kosovo shall submit to the Assembly according to the established procedure a draft of the appropriate law or shall adopt an appropriate decision of the Government or ensure according to its competence the passing of another legal act."*
84. Moreover, the Court notes that, on 28 May 2013, the Government, pursuant to its competences under Article 92.4 of the Constitution and on the basis of the Resolution no. 04-R-08 (see paragraph 14), proposed for adoption to the Assembly a Draft Law on Ratification.
85. In this respect, the Court refers to Article 60 of the Rules of Procedure of the Assembly which regulates the adoption of this kind of laws, which is different from other laws, and stipulates as follows:

"[...]"

- 1. The Assembly of the Republic of Kosovo ratifies international agreements by law, pursuant to Article 18 of the Constitution of the Republic of Kosovo.*
- 2. The Draft-Law on ratification of international agreements shall contain the text of the international agreement, reasons for such ratification and financial statement, in cases of financial implications.*
- 3. Proceeding a Draft-Law on ratification of international agreements is special and shall be subject to only one reading.*

[...]"

86. In this regard, particular attention should be paid to the wording of Article 60, paragraph 3, which provides that *"Proceeding a Draft-Law on ratification of international agreements is special and shall be subject to only one reading."* Other laws adopted by the Assembly require more than one reading.
87. In view of the above considerations, the Court notes that the Assembly followed the procedures prescribed in Articles 65.1, 65.4 and 18.1 of the Constitution, Article 10 of the Law on International Agreements and Rule 60 of the Rules of Procedure of the Assembly.

88. The Court, therefore, concludes that that the procedure for adopting the contested law was followed in accordance with the provisions as provided by the Constitution.
89. Furthermore, as to the Applicants' allegations that "[...] *the financial statement is missing.*", the Court notes that Article 60 paragraph 2 of the Rules of Procedure of the Assembly specifies clearly that a financial statement shall be attached only *in case* there are financial implications, which is within the discretion of the Government to assess whether there will be financial implications or not.
90. Moreover, Article 60 of the Rules of Procedure, which is applicable in the present case, foresees only that the draft law on ratification of international agreements contains:
 - a. the text of the international agreement;
 - b. the reasons for such ratification; and
 - c. a financial statement, in case of financial implications.
91. In this respect, the Court considers that this complaint concerns a question of legality, and as such falls outside of the jurisdiction of the Court. Therefore, the Court will not deal with it, as previously held by the Court in Case KO 29/11: "[...] *its duty is only to review alleged breaches of the Constitution.*" (see Case KO 29/11, Applicant Sabri Hamiti and other Deputies, Judgment of 30 March 2011).
92. As to the part of the Referral regarding the procedural complaint for the adoption of the Law on Ratification, the Court concludes that the procedure followed for the adoption of this Law is compatible with the Constitution of the Republic of Kosovo.

As to the substance of the contested Law

93. The Applicants make a number of specific complaints with respect to the various Items contained in the First International Agreement.
94. In this respect, the Court observes that international agreements serve to satisfy a fundamental need of States to regulate by consent issues of common concern, and thus to bring stability into their mutual relations. Thus, International Agreements are instruments for ensuring stability, reliability and order in international relations and therefore these international agreements have always been the primary source of legal relations between the States.
95. In this connection, the Court remarks that it first needs to consider whether or not it is competent under the Constitution to deal with these complaints. As mentioned above in the comparative analysis, there are some Constitutions that empower the Constitutional Court to review the conformity of international agreements with the Constitution. For example Albania and Bulgaria empower their Constitutional Court to review the constitutionality of an international agreement prior to its ratification, while Bosnia and Herzegovina, Croatia and Macedonia have chosen not to give jurisdiction to their Constitutional Court to

review international agreements. In addition, Slovenia has adopted a mixed system whereby, during the ratification procedure, the Constitutional Court reviews the constitutionality of international agreements if expressly requested to do so by the President, the Government or one third of the Deputies of the Parliament.

96. Thus, the comparative analysis reveals that Constitutional Courts of the countries surveyed generally do not have jurisdiction to review the constitutionality of international agreements after the adoption of the ratification law by the Parliament. However, some Constitutional Courts may indeed review the constitutionality of international agreements prior to its ratification.
97. The Court considers that the Law on Ratification and the First International Agreement are two separate legal acts. Each of these acts follows a different legal procedure, for the adoption of the Law on Ratification in the first-mentioned case, and for the signing of the First International Agreement in the second-mentioned case, respectively. As to the adoption of the Law on Ratification by the Assembly, the Court notes that the ratification law was adopted by the required two-thirds majority in one reading. Therefore, the Court considers that the adoption by the Assembly of the Law on Ratification was in compliance with the procedural provisions of the Constitution.
98. In addition, the Court is of the opinion that the purpose of the contested law is to establish the binding nature of the agreement on the Kosovo state, and to incorporate the First International Agreement into the Kosovo legal system.
99. Regarding the substance of the First International Agreement, the Court notes that no Article of the Constitution provides for a review by the Court of the constitutionality of the substance of international agreements.
100. In these circumstances, it follows that under the Constitution the Court has jurisdiction to review the Law on Ratification, but is not empowered to review whether the international agreement as such is in conformity with the Constitution.
101. The Court concludes that it is not within its jurisdiction *ratione materiae* to review the constitutionality of the First International Agreement. Consequently, it rejects the Applicants request to review the constitutionality of the First International Agreement.

FOR THESE REASONS

The Constitutional Court therefore, pursuant to Article 113.5 of the Constitution, Article 20 of the Law and Rule 36 of the Rules, on 2 September 2013,

DECIDES

- I. UNANIMOUSLY, TO DECLARE the Referral admissible;
- II. UNANIMOUSLY, TO DECLARE that the procedure followed for the adoption of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement is compatible with the Constitution of the Republic of Kosovo;
- III. BY MAJORITY TO REJECT the Applicants' request to review the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan to this agreement as being outside of the scope of the Court's jurisdiction *ratione materiae*.
- IV. TO DECLARE that pursuant to Article 43 of the Law, this law adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation;
- V. TO NOTIFY this Judgment to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;
- VI. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20(4) of the Law;
- VII. TO DECLARE this Judgment effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani