



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-CC-2020-11

Before: **The Specialist Chamber of the Constitutional Court**
Judge Vidar Stensland, Presiding
Judge Antonio Balsamo
Judge Roumen Nenkov

Registrar: Fidelma Donlon

Date: 5 October 2020

Language: English

File name: Referral on proposed amendments to the Constitution of Kosovo

Classification: Public

Decision on Notification of the Referral and Request for Information

President of Kosovo
Hashim Thaçi

Prime Minister of Kosovo
Avdullah Hoti

**President of the Assembly
of Kosovo**
Vjosa Osmani – Sadriu

**Ombudsperson of the
Specialist Chambers**
Pietro Spera

**High Representative of the
Union for Foreign Affairs
and Security Policy/
Vice-President of the
European Commission**
Josep Borrell Fontelles

**Head of the European
Union Rule of Law Mission
in Kosovo (EULEX Kosovo)**
Lars-Gunnar Wigemark

I. BACKGROUND TO THE REFERRAL

A. EXCHANGE OF LETTERS

1. On 14 April 2014, the President of Kosovo and the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission exchanged letters with regard to the mandate of the European Union Rule of Law Mission in Kosovo (EULEX Kosovo), and the establishment and operation of a “specialist court” and a “specialist prosecutor’s office” for any proceedings arising from the investigations of the Special Investigative Task Force (SITF) (the “Exchange of Letters”).

2. The Exchange of Letters provided that Kosovo would adopt all legal measures in accordance with its law to establish a “specialist court” and a “specialist prosecutor’s office” in connection with SITF, including any constitutional amendment as needed. The Exchange of Letters also provides for the consultations in the process of amending Kosovo laws having an impact on the discharge of EULEX Kosovo mandate or the judicial proceedings arising from SITF investigations.

B. RATIFICATION OF THE EXCHANGE OF LETTERS

3. On 23 April 2014, the Assembly of Kosovo, by Law no. 04/L-274, ratified the Exchange of Letters as an international agreement between Kosovo and the European Union.

C. CONSTITUTIONAL AMENDMENT

4. On 7 March 2015, the Government of Kosovo proposed an amendment to the Constitution of the Republic of Kosovo (the “Constitution”) adding, after Article 161,

a new Article 162 on the Specialist Chambers and the Specialist Prosecutor's Office to the Constitution (the "Amendment").¹

5. On 9 March 2015, the President of the Assembly of Kosovo referred the Amendment to the Constitutional Court of Kosovo for a prior assessment, under Articles 113(9) and 144(3) of the Constitution, as to whether the Amendment did not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.²

6. On 14 April 2015,³ the Constitutional Court of Kosovo confirmed that the Amendment did not diminish the rights and freedoms guaranteed by Chapters II and III of the Constitution, as well as its letter and spirit. The Constitutional Court noted that the introduction of the Amendment derived from the international agreement between Kosovo and the European Union of 14 April 2014 (see paragraphs 1-3 above).⁴

7. On 3 August 2015, the Assembly of Kosovo amended the Constitution adding, after Article 161, a new Article 162 on the Specialist Chambers and the Specialist Prosecutor's Office.

D. PROPOSED CONSTITUTIONAL AMENDMENT

8. On 24 August 2020, the President of Kosovo proposed an amendment to Article 162 of the Constitution (the "Proposed Amendment").⁵

¹ Kosovo, Constitutional Court, *Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433/DO-318*, KO 26/15, Judgment, 14 April 2015 (15 April 2015), para. 13.

² *Ibid.*, paras 1, 14.

³ *Ibid.*, para. 9.

⁴ *Ibid.*, para. 37.

⁵ KSC-CC-2020-11, F00001, A01 Proposal for Amendments to the Constitution (filed on the record on 21 September 2020).

II. REFERRAL

9. On 18 September 2020, the President of the Assembly of Kosovo conveyed the Proposed Amendment to the President of the Specialist Chambers pursuant to Articles 144(3) and 162(3) of the Constitution (the “Referral”).⁶

10. In particular, the President of the Assembly of Kosovo requested the President of the Specialist Chambers to assign the Referral for a review to the Specialist Chamber of the Constitutional Court as to whether the Proposed Amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.

11. On 22 September 2020, the President of the Specialist Chambers assigned the above Panel to decide on the Referral.⁷

III. NOTIFICATION AND REQUEST FOR INFORMATION

A. RELEVANT PROVISIONS

12. At the outset, the Panel notes that, pursuant to Article 162(3) of the Constitution and Article 49(2) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (the “Law”), this Chamber has exclusive jurisdiction over referrals made under Article 113 of the Constitution relating to the Specialist Chambers and Specialist Prosecutor’s Office. In this connection, the Panel observes that the Proposed Amendment concerns Article 162 of the Constitution on the Specialist Chambers and the Specialist Prosecutor’s Office.

13. Further, the Panel notes that, under Rule 15(2) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court, the Panel may request additional information or submissions, as deemed necessary, in relation to the Referral.

⁶ KSC-CC-2020-11, F00001, Letter from the President of the Assembly of Kosovo, public, 18 September 2020, with annex A01 (filed on the record on 21 September 2020).

⁷ KSC-CC-2020-11, F00002, Decision assigning a Constitutional Court Panel, public, 22 September 2020.

B. NOTIFICATION

14. In that light, and in view of the background to the Referral as to authorities that may have interest in these proceedings (see paragraphs 1, 4 and 8 above), the Panel finds it appropriate to notify the following authorities of the Referral with a possibility for them to file written submissions, should they wish so to do, on the admissibility and/or merits of the Referral: President of Kosovo; High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission; Prime Minister of Kosovo; and Head of EULEX Kosovo.

15. In addition, the Panel notes that, under Article 162(11) of the Constitution, the Ombudsperson of the Specialist Chambers has exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office. Also, Rule 28(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers provides that the Ombudsperson shall defend and protect the fundamental rights and freedoms enshrined in Chapter II of the Constitution of persons interacting with the Specialist Chambers and Specialist Prosecutor's Office. In view of that competence of the Ombudsperson, the Panel finds it appropriate to notify the Ombudsperson of the Referral with a possibility for them to file written submissions, should they wish so to do, on the admissibility and/or merits of the Referral.

C. REQUEST FOR INFORMATION

16. In addition, and for proper assessment of the Referral, the Chamber finds it appropriate to request the President of Kosovo to submit to the Panel information as to rationale for the Proposed Amendment to Article 162 of the Constitution, including a copy of any possible preparatory work or similar materials.

FOR THESE REASONS, THE CONSTITUTIONAL COURT PANEL

1. *Decides* to notify the following authorities of the Referral with a possibility for them to file, by 19 October 2020, written submissions, should they wish so to do, on the admissibility and/or merits of the Referral:

President of Kosovo;

High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission;

Prime Minister of Kosovo;

Ombudsperson of the Specialist Chambers; and

Head of the European Union Rule of Law Mission in Kosovo (EULEX Kosovo).

2. *Requests* the Registry of the Specialist Chambers to provide the above authorities with a copy of the Referral: KSC-CC-2020-11, F00001, Letter from the President of the Assembly of Kosovo, public, 18 September 2020, including its annex A01.

3. *Authorises* that the written submissions, if any, may be filed, in addition to English, the working language of the present proceedings,⁸ also in Albanian or Serbian; with official translation to be provided by the Registry of the Specialist Chambers into the official languages of the Specialist Chambers, namely, Albanian, Serbian and English, respectively.

4. *Directs* that the written submissions, if any, should not exceed 10 pages.

5. *Requests* the President of Kosovo to submit to the Panel, by 19 October 2020, information as to rationale for the Proposed Amendment to Article 162 of the Constitution, including a copy of any possible preparatory work or similar materials.

⁸ KSC-CC-2020-11, F00003, Decision on the Working Language, public, 24 September 2020.

A handwritten signature in blue ink, reading "Vidar Stensland". The signature is written in a cursive style with a large initial 'V'.

Judge Vidar Stensland
Presiding Judge

Done in English on Monday, 5 October 2020

At The Hague, the Netherlands