



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

Pristina, 9 September 2013
Ref.no.:AGJ471/13

JUDGMENT

in

Case No. KO 108/13

Applicants

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

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

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicants

1. The Applicants are Albulena Haxhiu, Visar Ymeri, Albin Kurti, Glauk Konjufca, Rexhep Selimi, Afrim Kasolli, Afrim Hoti, Liburn Aliu, Albana Gashi, Emin Gërbeshi, Albana Fetoshi, Agim Kuleta and Aurora Bakalli, 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 Ms Albulena Haxhiu to represent them.

Challenged law

2. The Applicants challenge the Law, No. 04/L-209, on Amnesty, which was adopted by the Assembly on 11 July 2013.

Subject matter

3. The Applicants request the review of the constitutionality of the Law, No. 04/L-209, On Amnesty, which was adopted by the Assembly of the Republic of Kosovo (hereinafter: the “Assembly”) with Decision No. 04-V-646 of 11 July 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 19 July 2013, the Applicants submitted their Referral to the Court.
6. On 19 July 2013, the President of the Constitutional Court, by Decision No.GJR.KO.108/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No.KSH.KO.108/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 22 July 2013, the Court notified the President of the Assembly and the Government of the Referral and asked them to submit their comments with any documents that they would deem necessary in respect to the Referral.
8. On 22 July 2013, the President of the Republic of Kosovo was informed about the Referral submitted by the Applicants to the Court.
9. On 25 July 2013, the President of the Republic of Kosovo requested the Court clarification in respect to the Referral on the Law on Amnesty and in respect to her constitutional obligations, i.e. whether she could promulgate the Law on Amnesty and whether an interim measure would need to be imposed.
10. On the same day, the Court replied to the President of the Republic of Kosovo providing:

“[...]”

As to the Law on Amnesty we wish to inform you that this Law has not and cannot enter into force as long as the Constitutional Court of the Republic of Kosovo has not rendered its final decision.

We would also like to draw the attention to the fact that any attempt to publish the Law or to apply it is unconstitutional and such an act is null and void.

The Law on Amnesty has not and it cannot enter into force until the Constitutional Court renders its decision, and as a consequence the law in question cannot have legal consequences.

[...]”

11. On 29 July 2013, the Court received the following documents submitted by the President of the Assembly of the Republic of Kosovo:
 - a. The final report of the Committee for Legislation of 17 June 2013 with respect to the Law on Amnesty.
 - b. The transcript of the plenary session of the Assembly of 11 July 2013.
 - c. The minutes of the plenary session of the Assembly of 11 July 2013.
 - d. The electronic voting register.
 - e. The Decision of the Assembly of 11 July 2013 on Adopting Law no. 04/L-209 on Amnesty (Decision No. 04-V-646).
 - f. The Law No. 04/L-209 on Amnesty.
12. On 1 August 2013, the Applicants submitted additional information clarifying a number of points of their Referral.
13. On 13 August 2013, the Court informed the Assembly and the Government about the Applicants submission of additional information and asked them to submit their comments.
14. On 19 August 2013, the Government provided its comments to the Court in respect to the Applicants submission of 1 August 2013.
15. On 20 August 2013, the Government submitted to the Court their *“Comments regarding the referral of Ms. Albulena Haxhiu and 12 Members of the Assembly of the Republic of Kosovo KO 108/13 dated 19 July 2013.”*
16. On 21 August 2013, the Applicants were informed about the Government’s comments.
17. The Review Panel considered the Report prepared by the Judge Rapporteur, Judge Snezhana Botusharova, and made a recommendation to the full Court.
18. On 3 September 2013, the Court deliberated and voted on the Case.

Summary of facts

19. On 25 June 2013, the Government of the Republic of Kosovo decided to approve the Draft-Law on Amnesty and instructed the Secretary General of the Office of the Prime Minister to present the Draft-Law to the Assembly of Kosovo for review and adoption.
20. According to the Explanatory Memorandum of the Draft-Law, “[T]his law regulates the conditions and the procedure under which amnesty can be granted for persons who have been convicted of certain specified criminal offences, who are under prosecution for such criminal offences, or could be subject to prosecution for such criminal offences committed prior to June 20, 2013 within the territory which now constitutes the Republic of Kosovo.”
21. On 11 July 2013, pursuant to Article 65.1 of the Constitution of the Republic of Kosovo and Articles 58 and 84 of the Rules of Procedure of the Assembly, the Assembly of the Republic of Kosovo, by Decision No. 04-V-646, adopted Law No. 04/L-209, On Amnesty by 90 votes in favor, 17 against and one abstention and sent it to the President of the Republic of Kosovo for promulgation.
22. On 19 July 2013, pursuant to Articles 113.5 of the Constitution of the Republic of Kosovo and Articles 42 and 43 of the Law on the Constitutional Court, the Applicants submitted a Referral to this Court for the constitutional review of the Law on Amnesty, adopted by the Assembly of the Republic of Kosovo on 11 July 2013, challenging its substance and the procedure for its adoption.

Arguments presented by the Applicants

As to the substantial aspect of the Referral:

23. The Applicants submit that the aim of the Law on Amnesty is the amnesty of persons from criminal prosecution and of persons who have not completed their sentence prior to 20 June 2013. According to them, the Law “[...] includes the amnesty of persons who have committed a total of 67 (sixty-seven) criminal offences under the Criminal Code of the Republic of Kosovo, Criminal Code of Kosovo (UNMIK Regulation 2003/25 of 6 July 2003) and UNMIK Regulation No. 2004/19 amending the Provisional Criminal Code of Kosovo, Criminal Law of SAPK in conjunction with UNMIK Regulations No. 1999/24 and 2000/59 on the applicable law in Kosovo and all the criminal offences provided under the SFRY Criminal Code.” In the Applicants’ view, the Law on Amnesty has not provided a starting date, but has only provided a date for the amnesty of offences committed prior to that date.
24. The Applicants state that in the criminal law doctrine the main reasons for sanctioning criminal offences is to focus on the protection of social and individual integrity against harmful actions that may violate certain values and that precisely there lies the main foundation of the principle of legality in the criminal branch of every legal system.
25. Considering that the Law on Amnesty contains provisions by which persons having committed criminal offences which have caused harm to the injured

party in the criminal proceedings, are exempted from criminal prosecution and from complete execution of the punishment, the Applicants hold that amnesty for such persons violates the right of the injured party to make use of effective legal remedies regarding the exercise of their right to criminal prosecution and individual compensation.

26. In the Applicants' view, besides criminal offences against the state or the constitutional order and those related to violations of tax and customs obligations, Article 3 [Conditions on granting Amnesty from criminal prosecution and complete execution of the punishment] of the Law includes criminal offences which may have caused or may have attempted to cause harmful consequences for any citizen of the Republic of Kosovo or a foreign citizen.
27. The Applicants then enumerate the criminal offences of Article 3.1 of the Law, which have or may have harmed the interests of individuals:

[...]

1.1 Criminal offences foreseen in the Criminal Code of the Republic of Kosovo (Official Gazette of the Republic of Kosovo no. 19/13 2012), namely:

1.1.10 Destruction or damage to property (Article 333, paragraph 1);

1.1.11 Arson (article 334, paragraph 1);

1.1.13 Failure to report criminal offences or perpetrators (Article 386, only in relation to the failure to report the criminal offences or perpetrators listed under this Article);

1.1.14 Providing assistance to perpetrators after the commission of criminal offences (Art. 388, only in relation to providing assistance to perpetrators after the commission of the criminal offences listed under this Article);

1.1.15.1 Threat to a candidate (Article 211);

1.1.15.2 Preventing exercise of the right to vote (Article 212);

1.1.15.9 Endangering public traffic by dangerous acts or means (Article 380, paragraphs 1, 2, 5);

1.1.15.10 Falsifying documents (Article 398);

1.1.15.11 Special cases of falsifying documents (Article 399, subparagraphs 1.1 and 1.4 of paragraph 1);

1.1.15.12 Obstructing official persons in performing official duties (Article 409, paragraphs 1, 2 and 3);

- 1.1.15.13 *Attacking official persons performing official duties (Article 410, paragraph 1), except in cases when the commission of this criminal offence has resulted in grievous bodily harm or death; and*
- 1.1.16 *Participating in a crowd committing criminal offences and hooliganism (article 412), except in cases when the commission of this criminal offence has resulted in grievous bodily harm or death.*
- 1.2 *Criminal offences foreseen by the Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of 6 July 2003, Official Gazette 2003/25) and UNMIK Regulation no. 2004/19 amending the Provisional Criminal Code of Kosovo:*
- 1.2.5 *Damaging movable property (Article 260);*
- 1.2.7 *Failure to report a criminal offence or its perpetrator (Article 303), only in relation to the criminal offences for which amnesty is granted under this law;*
- 1.2.8 *Providing assistance to perpetrators after the commission of criminal offences (Article 305), only in relation to the criminal offences for which amnesty is granted under this law;*
- 1.2.9.6 *Endangering public traffic by dangerous acts or means (Article 299, paragraphs 1 and 2);*
- 1.2.9.7 *Falsifying documents (Article 348);*
- 1.2.9.8 *Obstructing official persons in performing official duties (Article 316);*
- 1.2.9.9 *Attacking official persons performing official duties (Article 317), except in cases when the commission of this criminal offence has resulted in grievous bodily harm or death;*
- 1.2.10 *Participating in a crowd committing a criminal offence (Article 320), except in cases when the commission of this criminal offence has resulted in bodily harm or death.*
- 1.3 *Criminal offences foreseen under the Criminal Law of SAPK, Official Gazette nr. 20/77 and UNMIK Regulations nos. 1999/24 and 2000/59 on the Applicable Law in Kosovo, as follows:*
- 1.3.1 *Damaging another person's object (Article 145);*
- 1.3.3 *Failure to report on a criminal act or a perpetrator (Article 173), only in relation to the criminal offences for which amnesty is granted under this Law;*

- 1.3.4 *Aiding a perpetrator after he has committed the criminal act (Article 174), only in relation to the criminal offences granted amnesty for under this Law;*
- 1.3.5.5 *Endangering the public traffic by a dangerous act or means (Article 167);*
- 1.3.5.6 *Falsifying documents (Article 203);*
- 1.3.5.7 *Falsifying official documents (Article 184);*
- 1.3.5.8 *Obstructing official persons in performing official duties (Article 183);*
- 1.3.5.9 *Attacking official persons performing official duties (Article 184, paragraphs 1, 2 and 4), except in cases when the commission of this criminal offence has resulted in grievous bodily harm or death;*
- 1.3.6 *Participation in a group that commits a criminal act (Article 200), except in cases when the commission of this criminal offence has resulted in serious bodily harm or death.*

[...]"

28. The Applicants further indicate that the main issue of the Referral is the violation of the subjective right to a legal remedy of the injured party to initiate criminal proceedings against the perpetrator of the criminal offence or attempted criminal offence for which amnesty is granted under Article 3 of the Law on Amnesty. In their view, the right to pursue legal remedies, as guaranteed by Article 32 [Right to Legal Remedies] of the Constitution, is, therefore, violated.
29. Moreover, under criminal law the injured party has the right to submit a motion for prosecution, while under the previous legislation – the Provisional Criminal Procedure Code- the institute of private prosecutor and subsidiary prosecutor in criminal proceedings existed. Based thereupon, the Applicants argue, Article 6, paragraph 3, of the Criminal Procedure Code No. 04/L-123 lays down the right of the injured party to file a motion with the state prosecutor to initiate criminal proceedings. Article 79, paragraph 3, of the Criminal Procedure Code, however, limits the prosecutor’s right to do so depending on the injured party’s motion for prosecution.
30. The Applicants hold that the motion for criminal prosecution is an important legal remedy the aim of which is to enable the injured party to protect his/her individual interests from a criminal aspect as well as from a civil aspect, when dealing with property claims related to material or moral damage caused by the criminal offence. In the Applicants’ view, the right to a motion for prosecution is undoubtedly protected by Article 31 [Right to a Fair Trial], paragraphs 1 and 2, of the Constitution, of which paragraph 1 guarantees to everyone “equal

protection of rights in the proceedings before courts, other state authorities and holders of public power.”

31. Granting amnesty to persons who have committed or are suspected of having committed one of the criminal offences specified in this Referral makes it impossible for the injured party to use the legal remedies through which he/she could protect his/her legal interests with respect to the possible harm caused by the criminal action. The Applicants, therefore, maintain that the guarantee of equal protection of rights as provided in Article 31.1 of the Constitution is impossible, since the injured party's right to use legal remedies is violated.
32. They further refer to Article 31.2 of the Constitution, *“Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”* In their opinion, Article 3 of the Law on Amnesty renders the constitutional guarantee of the right to a judicial hearing by an independent and impartial tribunal established by law impossible. Therefore, by granting amnesty to suspected or convicted persons for criminal offences mentioned in Article 3 of the Law and specified in this Referral, Article 31.2 is violated, since the conduct of criminal proceedings against such persons is made impossible.
33. As to Article 32 of the Constitution, providing that: *“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law,”* the Applicants argue that Article 8.1 of the Law on Amnesty stipulates that in every case where criminal reports have been filed, an investigation was initiated, or an indictment was filed, the competent prosecutor shall terminate all these proceedings in accordance with this law, thereby granting amnesty to the said persons.
34. In their opinion, by recognizing the prosecutor's authorization, the right of the injured party to use a legal remedy against the decision of the termination of the criminal proceedings is violated, contrary to Articles 31.1 and 32 of the Constitution which recognize the inviolable right of the parties to pursue legal remedies against judicial decisions that violate their rights and interests, in the manner provided by law.
35. The Applicants further allege that, besides Articles 31 and 32 of the Constitution, the adoption of the Law will also bring about a violation of Article 24 [Equality before the Law], paragraphs 1 and 2, of the Constitution. The impediment for the injured party to exercise the right to protect his/her legal interests as well as to file a motion for prosecution, including a property claim, constitutes inequality for all injured parties who have suffered harm from the commission of the criminal offences laid down in Article 3 of the Law on Amnesty.
36. The Applicants also consider that the inclusion of the criminal offences under Article 3 of the Law violates the provisions of Article 13 and 14 in conjunction with Article 6 of the European Convention on Human Rights and, particularly, quote Article 13: *“Everyone whose rights and freedoms as set forth in this*

Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." In their view, any right guaranteed by the Convention, including the right to a fair and impartial trial of Article 6, implies the right to an effective remedy before a state authority.

37. They maintain that, apart from Article 6 ECHR, also Article 1 of Protocol 1 to ECHR has been violated, when taking into consideration that the damage to property and the absolute right of the title holder to protect the property with lawful remedies are at stake. On the other hand, they consider that Article 6.1 ECHR guarantees to everyone the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal which shall decide on the nature of the matter, be it of criminal or civil nature. In their view, Articles 3 and 8.1 and 2 of the Law on Amnesty have violated the rights of parties who have been injured by criminal offences included in Article 3 of the Law, by denying them the right to have their matter heard before an independent and impartial tribunal.
38. The Applicants further allege a violation of Article 14 ECHR which reads: *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."* In their opinion, the realization of the rights provided under this Convention which includes Articles 6 and 13, must be secured without any discrimination on grounds of social status.
39. They also consider that the violation of the right of the injured party to a tribunal where his case could be heard constitutes a discrimination in comparison with other injured parties who have been harmed by other criminal offences which have not been included in Article 3 of the Law.
40. The Applicants then refer to some judgments of the European Court of Human Rights dealing with the meaning of Article 13 ECHR. In the case *Iatridis v. Greece*, some fundamental principles regarding this right have been included as follows: *"The Court notes that the application under Article 13 arises out and it has similar legal grounds to Article 1 of Protocol No. 1 to ECHR regarding the inviolability and inexhaustibility of legal remedies. However, there is a difference in the nature of Article 13 and Article 1 of Protocol No. 1: the former (Article 13) affords a procedural safeguard, which includes, but is not limited only to a legal remedy, whereas Article 1 of Protocol No. 1 includes the comprehensive obligation with regard to the freedom and right of ownership."*
41. The Applicants further refer to the case *Buyukdag v. Turkey*, in which the ECtHR held that: *"The requirement under Article 13 must be realizable and executable both in practice and in legal sanctioning, especially when the enjoyment of the right depends on actions or non-actions by the authorities of the responding state."*
42. Finally, the Applicants point to the case *Leander v. Sweden*, where the ECtHR has equally established some principles regarding the interpretation of the right

defined in Article 13 ECHR and underline in particular the principle that: *“Every person who shows that any of the rights under this Convention has been violated, must be recognized the right to an effective legal remedy to protect his subjective rights that derive from this Convention.”*

43. They consider that here the ECtHR goes further with respect to the recognition of the right to an effective legal remedy, when stating that the state authorities referred to in Article 13 ECHR need not to be a judicial authority but that the definition of these authorities has a wide institutional character.
44. In sum, the Applicants allege that the above provisions of Article 3 of the Law on Amnesty violate Articles 3.1 and 3.2 and 32 of the Constitution of Kosovo, as well as Articles 6, 13 and 14 of the European Convention on Human Rights.
45. In their additional clarifications submitted on 1 August 2013, the Applicants state, *inter alia*, that:

“[...]

In the provision of Article 5 of the Law on Amnesty, it was stated: „The granting of amnesty shall not affect the rights of third parties which are based upon a sentence or a judgment.“

By this provision is afforded a possibility that the third parties exercise their rights in other proceedings, which might be related to an existence of an binding relation or any other legal relation, which depends on the court decision, rendered in the criminal proceedings, such property-legal claim.

However, because of this we should take into account that this provision has to do with the category of persons against whom was conducted the proceedings and for the criminal matter it was decided on merits. Therefore, taking into consideration that by the provisions of Article 3 of the Law on Amnesty, the persons who committed criminal offences, provided by this law are amnestied from the criminal prosecution and complete execution of the punishment, where the provision of Article 5 of the Law on Amnesty, could be applied only for the category of persons, who are exempted from the complete execution of the punishment, because the rights of third persons depend on the rendered decision of the court.

On the contrary, the persons who have legal interest to exercise it in the court proceedings, could not exercise it against the persons who are exempted from the criminal prosecution, since, due to the fact that they are exempted from the criminal prosecution, the proceedings against this category (be that in the initial phase, or of the pre-criminal-investigation proceedings or in the phase after filing the indictment) are completely terminated, as it is provided in Article 8, paras. 1 and 2, of the Law on Amnesty.

On this occasion, it should be stressed that in Article 14 on the Contested Procedure is provided that: „ In the contentious procedure, regarding the existence of criminal act and criminal responsibility, the court is bound to

the effective judgment of the criminal court by which the defendant has been found guilty.”

By this provision it is clear that the third party, to exercise, for example the property-legal claim in the contested procedure, such a claim will be filed to the competent court, which in the contested procedure is related to the judgment by which is determined and found guilty, which is legal ground for existence the caused damage, be that material or moral.

Therefore, in the contested procedure, according to the property-legal claim, the court will only assess the height of damage, caused by the commission of the criminal offence, and the latter will not determine the guilt of the perpetrator, since this will be determined by the court in the criminal proceedings. From the content of this provision, it is clear that the court in the contested procedure depends on deciding on finding the person in capacity of defendant, guilty. Thus, the Court in any case will decide only after the defendant will be found guilty, according to the Judgment of the Court, which has decided in the criminal proceedings.

[...]”

As to the procedural aspect of the Referral

46. The Applicants allege that even though the first text of the Draft-Law on Amnesty was not voted in the session of 4 July 2013, the Government of Kosovo withdrew the text and presented a revised Draft-Law to the Assembly on the next day. This revised text was reviewed by the Legislative Committee on 8 July 2013. Thus, again Article 65.4 of the Rules of Procedure of the Assembly of Kosovo which requires that at least four working days before the meeting is convened all material for review must be provided was violated. In the Applicants' view, bearing in mind that draft-laws are the main subject of review in the meetings of the Assembly, it is senseless and in violation of the provisions of Article 65.4 of the Rules of Procedure that a meeting is convened without the requirements set forth in this provision having been met and that the agenda is introduced in violation of the time limits foreseen by this provision.
47. The Applicants further state that in the plenary session of 11 July 2013, that is before the minimum period of two working weeks had elapsed, the Presidency of the Assembly in the meeting of 8 July 2013 decided to present this Draft-Law without taking into consideration the review that is done by the Reporting Committee. On 11 July 2013, the Assembly, by voting for the request of the parliamentary group PDK for departure from the procedures, presented the Draft-Law on Amnesty at two readings within the same session, the first reading in the morning and the second one in the afternoon. After the voting in the first reading, the Assembly assigned the Legislation Committee to review the Draft-Law for the second reading.
48. In this connection, the Applicants refer to Article 57.3 of the Rules of Procedure, reading: *“Amendments to the Draft-Law may be introduced by a Member of the Assembly, parliamentary group, parliamentary committee and the government, within two working weeks from the approval in principle.*

Amendments shall be addressed to the functional-lead committee.” In the Applicants view, therefore, the deputies’ right to introduce amendments in the time limit provided by the Rules has been violated.

49. They further stress that departure should not be made from qualitative actions, but should always be understood as departure from formal procedures that have no impact on the quality of the decision for which such procedure is followed. In their view, by not presenting the Draft-Law to these permanent committees, Article 57.3 of the Rules of Procedure of the Assembly is violated.
50. The Applicants finally state that the Legislation Committee during the review of this Law, especially the Draft-Law, never reviewed the constitutionality and legality of the Draft-Law, which is now a ratified law. In this respect, they refer to item 3 of Annex 2 of the Rules of Procedure of the Assembly which specifies the scope of activities of the parliamentary committees, in particular, that they analyse and evaluate the conformity of acts adopted by the Assembly with the Constitution; and review the legality and constitutionality of draft laws.
51. They conclude that it can also clearly be seen from the transcripts of the Legislation Committee that the procedural requirements regarding the review procedure before the first reading of the Draft-Law on Amnesty have not been met. Therefore, the Draft-Law on Amnesty has been presented in violation of Article 65.4 of the Rules of Procedure of the Assembly. Moreover, due to the violation of the right to introduce amendments within the time limit provided by the Rules, the Draft-Law on Amnesty has been presented in violation of Article 57.3 of the Rules of Procedure of the Assembly.

Arguments presented by the Government

52. As to the Applicants additional information submitted to the Court on 01 August 2013, according to the Government the Court should “*declare the additional challenge filed by the single Member of the Parliament, on 1 of August 2013, inadmissible due to its lack of legal or procedural basis.*”
53. The Government considers that there exist “*[...] the right of the parties in the proceeding, under article 22.4 of the Law on Constitutional Court, to provide additional facts to the Court, but which subject to three cumulative and imperative conditions: firstly, that the referral be unclear or incomplete; secondly, that the Court itself, through the Judge Rapporteur, requests such information from the party; and thirdly, that the information required shall only be in the nature of "additional facts that are required to assess the admissibility or grounds for the claim".*” In this respect, the Government allege that the submission of the Applicants does not fall under this provision but must be considered as “*[...] an additional challenge, filed by her personally.*”, because “*[...] the original referral itself does not address the Constitutionality of article 5 of the Law on Amnesty.*”
54. Furthermore, the Government’s view is that “*[...] the letter of Ms. Haxhiu is a mere submission of her personally and as such, cannot be considered to be a part of the referral signed by the 13 members of the Parliament. If the Members of the Parliament meant to successfully challenge Article 5 of the*

Amnesty Law as they did challenge article 3 of the said Law, this challenge, would have been a part of their own referral.”

55. On 20 August 2013, the Government provided the Court with their comments in respect to Case KO 108/13 alleging that:
 - a. *“The Kosovo Law on Amnesty is in full compliance with International Law and the Constitution of Kosovo*
 - b. *The Law on Amnesty does not violate any fundamental rights guaranteed by the Constitution*
 - c. *Any alleged limitation of rights under Chapter II of the Constitution, is in agreement with Article 55 of the Constitution*
 - d. *The procedure for the adoption of the amnesty law was in accordance with the rules of procedure of the Assembly of Kosovo”*

56. The Government state that *“Amnesties are an acceptable and recognized legal instrument under international law [...]”, which “[...] has been used in other countries and has been evaluated by international tribunals.”* In this respect, *“The Government of the Republic of Kosovo was and still is in a situation not unique from other countries undergoing transition. After a harsh and gruelling war, the country has suffered a de facto severance of a part of its territory, which has kept its relations with the neighboring country dreadfully hostile. Indeed, as with many countries, examples of which are elaborated herein, this latest attempt for normalisation of relations between Kosovo and Serbia has started with the UN itself. On September 8, 2010 the General Assembly of the UN adopted a resolution “Welcom[ing] the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people” [UNGA Resolution A/64/L.65/Rev.1;p.2]. Thus, even the General Assembly of the United Nations sees the Dialogue process as necessary for peace, security and stability in the region. This Amnesty Law is an integral part of that process.”*

57. Furthermore, the Government considers that *“[...] the Law on Amnesty of Kosovo is a carefully crafted amnesty, which does not in any way include serious violent crimes against International Law and practice.”*

58. According to the Government *“In addition to the international law noted above, there is case law within the European Court of Human Rights (ECtHR), which addresses the compliance of Amnesty laws. The ECtHR, the practice of which is binding for this Honourable Court, has not so far assessed any Amnesty laws to be contrary to the ECHR. It has, however, adjudicated many cases in which Amnesty Laws have been regarded as legal and in compliance with international law [see Dujardin vs. France, Tarbuk vs. Croatia, Margus vs. Croatia].”*

59. As to whether the Law on Amnesty diminish any rights and freedoms under Chapter II of the Constitution, the Government provides that *“The referring party has explicitly indicated and based its entire argument of this referral on*

their allegation that the mere existence of Amnesty diminishes the rights under Chapter II of our Constitution. In the second paragraph, the referring party argues that [note: unofficial translation] "Given that the Law on Amnesty [...] contains provisions through which persons that have committed criminal offences that cause consequences and damage to people are exempted from criminal prosecution and execution of punishment, which in a procedural aspect may be a damaged party in a criminal procedure, it is considered that the exemption of persons from criminal prosecution and execution of sentence diminishes their disposable right to use legal remedies in relation to accomplishing their right to criminally prosecute and accomplishing their subjective rights in the capacity of a damaged party". Hence, based on this, it is clear that the opposing party's argument seeks refuge and legal basis on something that the Constitutional Court of the Republic of Kosovo has already decided to the contrary. This Court has decided that Amnesty as an institution, entailing what it is supposed to, is indeed in compliance with our Constitution."

60. As to whether Article 3 of the Law on Amnesty violates any rights under Chapter II of the Constitution and Articles 6 and 13 of ECHR, the Government expresses their view that *"The law has been carefully crafted not only to avoid giving amnesty to serious crimes or human rights violations, but to minimize any victim's inability to recover damages. This is shown by the Law on Amnesty in the exceptions to Amnesty in Article 4 and the safe harbour provision of Article 5. Those cases for which a victim has been identified will have either minimal harm or economic harms, which can be addressed in a civil venue. For instance, under Article 136 of the Law on Obligational Relationships, anyone who inflicts damage on another is liable. It does not require a criminal investigation to precede the civil case."*
61. As to whether Article 3 of the Law on Amnesty violates Article 14 and Protocol 12 of ECHR, the Government notes that *"Amnesty is not based upon any category, such as ethnicity, gender, or other constitutionally protected category. If the Law does result in a greater percentage of one gender or ethnic group being granted amnesty, it would simply be because those groups participated in those criminal acts or had those motivations at a higher rate. Such groups of people would, by their nature, not be in "analogous situations" or "relatively similar situations" with those who didn't commit those criminal acts or had those motivations. Even if this Court were to determine that the groups of people eligible for amnesty and those who were not eligible for amnesty were in analogous situations, there is an "objective and reasonable justification" for this difference in treatment, as the provision of this Amnesty was part of international negotiations for the withdrawal of Serbian institutions from the Republic of Kosovo."*
62. As to whether Article 5 of the Law on Amnesty violates victims' rights under the Constitution, the Government indicates that *"The language of Article 5 is a mere explanation for interpretation by the Courts in the future. For example, when a court, in applying amnesty issues a decision for granting amnesty under Article 8 of the Law, it should be clear to them that the decisions issued beforehand based on that criminal conviction should not be nullified, even though the person is liberated from criminal prosecution or execution of the*

sentence for that same criminal offense. However, this does not in any way, bar other victims in the future, whose perpetrators have not been sentenced, to pursue their rights in a civil procedure.” [...] “That is because the Law on Contentious Procedure is still valid and it provides all parties with a right to file for damages at any point in time.”

63. As to whether any alleged limitations of the rights under the Constitution is in accordance with Article 55 of the Constitution, the Government hold that *“[...] the Law on Amnesty has no intention to disrespect the essence of the rights guaranteed under Chapter II of the Constitution, or the conditions of Article 55 of the Constitution and that there is a clear and underlying connection between the intention of any potential limitation on one side and the purpose that it is being used for.”*
64. In respect to the procedure for adopting the Law, the Government state that the adoption of the law was done in accordance with the Rules of Procedure of the Assembly.
65. As to whether Article 65.4 of the Rules of Procedure of the Assembly was violated, the Government considers that *“Article 65, paragraph 4, of the RoP states “The Commission may invite representatives to meetings and civil society institutions.” and, therefore, “[...] there is no connection with this article and the application submitted by the Members of the Assembly.”*
66. As to whether Article 64.4 of the Rules of Procedure of the Assembly was violated, the Government hold that *“Upon the proposal of one of the members of the committee and the support of the majority of MPs (with only one vote against), the Commission has decided to amend the agenda to review and introduce the first point of the agenda- reviewing the Draft Amnesty Law in principle. After the review, the Commission, by majority vote, recommended the Assembly to adopt Draft Law on amnesty.”* Consequently, the Government alleges that the challenge to the four day period is unfounded.
67. As to the voting procedure, the Government considers that *“The proposal of one of the MPs to deviate from the RoP and to insert “the review on first reading of the Draft Law on Amnesty” was supported by a total of 84 deputies, 14 against and no abstentions. On the first reading, the Draft Law was approved by the Assembly with 91 votes for, 17 against and no abstentions. The entire procedure is in accordance with the Regulation and Article 65, paragraph 1, item 15 of the Constitution. Then, upon the proposal of the same MP, the second reading of the Draft Law was introduced as the first item on the agenda on the plenary session of the Assembly on 11.07.2013. Review on second reading or introduction as the first point of the agenda is also made in accordance with Article 84 of the Regulation and it is supported by the votes of 86 MPs, 14 against and no abstentions. The Assembly approved the Law on Amnesty with 90 votes for, 17 against and one abstention in accordance with the Regulation and Article 65, paragraph 1, item 15 of the Constitution.”*

Admissibility of the Referral

68. 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 as further specified in the Law and the Rules of Procedure.
69. 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."*
70. 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]**
71. In this connection, the Court observes that, when a law or an act is under review under Article 113.5 of the Constitution, the review procedure will be of a suspensive nature in 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.
72. This was affirmed in an analogous manner by the Court in its Judgment in Case KO 29/12 and KO 48/12 where it held that *"It is important to point out that the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. This is an ex-post jurisdiction of the Court as the guarantor of the Constitution to ensure the compliance of legislation with the highest legal act of the State i.e. the Constitution. In addition to this jurisdiction, the Court has also the so-called ex-ante jurisdiction for a prior review of the constitutionality of the proposed amendment. This jurisdiction is given to the Court, as the guardian of the Constitution, in order to ensure that any proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of this Constitution."* (See Case KO 29/12 and KO 48/12, Applicant President of the Assembly, Judgment of 20 July 2012).
73. The cases quoted above concern the jurisdiction of the Court to review the compatibility with the Constitution of proposed constitutional amendments under Article 113.9 of the Constitution, where the review is limited to compatibility with the provisions of Chapter II of the Constitution. In the

current referral under Article 113.5 of the Constitution the jurisdiction of the Court extends to a review of the compatibility of the contested law with all provisions of the Constitution.

74. In the present case, the Court notes that the Referral was made by 13 Deputies of the Assembly of Kosovo.
75. 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.

76. 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 have been mentioned.
77. As to the challenged law, the Court notes that the Applicants contest the Law No. 04/L-209, On Amnesty.
78. The Court, therefore, considers that the requirements of Article 42 of the Law are satisfied.
79. As to the time limit, the Court notes that the Law, No. 04/L-209, On Amnesty, was adopted by the Assembly on 11 July 2013 (Decision No. 04-V-646) and the Referral was made to the Court on 19 July 2013. In accordance with Rule 27 (1) (Calculation of Time Periods) of the Rules of Procedure “*A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows: (1) When a period is expressed in days, the period is to be calculated starting from the day an event takes place, but the day during which the event occurs shall not be counted as falling within the time period;*”. Therefore, the Referral has been submitted within the constitutionally prescribed period of eight days.
80. As to the Applicants’ submission of additional information on 1 August 2013, the Court considers that the letter of the Applicants on behalf of their representative Ms. Albulena Haxhiu is admissible. It contains further clarification from the Applicants on an issue they have already raised in their

referral. Finally it is the Court that decides on submitted evidence how to proceed with it.

81. Thus, the Court concludes that there are no grounds to declare the Referral, which raises important constitutional questions, inadmissible.

Comparative analysis of the situation

Socio-political context

82. In order to obtain a clear understanding of the purpose and scope of the Law on Amnesty, the Court refers to Article 1 [Purpose and the scope] of Chapter I. General Provisions of the Law providing:

“This law regulates the conditions and the procedure under which amnesty can be granted for persons who have been convicted of certain specified criminal offences, who are under prosecution for such criminal offences, or could be subject to prosecution for such criminal offences committed prior to 20 June 2013 within the territory which now constitutes the Republic of Kosovo.”

83. Although the Article summarily sets out the scope of the Law, the Article is silent on its purpose. However, the Explanatory Memorandum on the Draft Law on Amnesty when it was submitted by the Government to the Assembly for adoption, describes, in its Article 2 [Objectives and their correlation with the Government priorities], the purpose of the Law in the following terms:

“In order to create a legal infrastructure which aims to create a sustainable environment and in view of the rule of law and order, being guided by the principles of humanism, the low risk of persons granted amnesty and the protection of the public interest, the approval of this draft law will have a positive effect on attaining the purpose of punishment, and it will also impact positively on the resettlement and reintegration of persons convicted of certain categories of criminal offenses.”

84. The Court understands that, in order to consolidate the legal order of Kosovo and to ensure the extension of state authority to all parts of the Republic, it is necessary to incorporate those communities who have operated within the institutional frameworks of the Republic of Serbia on the territory of Kosovo. The amnesty can be seen to contribute to this consolidation by not penalizing persons who have operated within other institutional frameworks until now. As such, it is clearly intended to ease the transition of these communities into the framework of Kosovo’s public administration and security institutions.

85. The Court notes that the Law on Amnesty does not define the categories of persons and behaviours which give rise to amnesty, but limits itself to providing a catalogue of criminal offences for which amnesty will be granted. Furthermore, the time period during which amnesty shall be granted is defined as beginning approximately with the end of the war in 1999 and continuing until 20 June 2013. The question of the start date for the application of amnesty is discussed below under Article 2 of the Law on Amnesty. During this

somewhat extensive period of time the territory of Kosovo has been under the legal jurisdiction of a series of more or less different authorities culminating in the independent Republic of Kosovo. The Court notes that the lawfulness of these successive authorities is not in dispute, and the Law on Amnesty takes these successive authorities into account with its definitions of a succession of criminal codes and laws.

86. The Court is aware of the public and notorious fact that this Law has raised concerns in civil society and among certain sectors of the professional and business communities. These concerns relate, *inter alia*, to the substantial amount of destruction of private property which has affected all communities since the war, and for which comparatively few criminal prosecutions have been successfully concluded. In addition, there is a prevailing perception that a significant quantity of unlawful business activities has been in operation during the time period since the war with harmful consequences for the state budget and lawful business competition, and with a potentially negative impact on public health and well-being. There is some concern that the Law on Amnesty legitimizes a degree of impunity for such unlawful practices, irrespective of who has caused them.
87. To the extent that the amnesty is intended to contribute to a reconciliation between Kosovo's communities, the broad amnesty for destruction and arson of private properties may, in fact, undermine that objective. To the extent that the amnesty is intended to consolidate the rule of law and extend the administration of public authority, the broad amnesty for unlawful professional and business activities may, in practice, serve to undermine the legal order of Kosovo by effectively guaranteeing impunity for certain criminal activities. The Court considers that the Law on Amnesty, as written, could potentially have a negative impact on the legitimacy of public order in the whole of Kosovo. This could harm the objective "*to create a legal infrastructure which aims to create a sustainable environment and in view of the rule of law and order*", as defined in the Explanatory Memorandum.
88. When considering the Referral, the Court will, therefore, be mindful of the objectives laid down in the above Explanatory Memorandum, as well as of the social and political context of Kosovo today.

The principle of amnesty

89. As to the principle of amnesty, the Court refers to Article 65 of the Constitution setting out the competences of the Assembly of Kosovo, which, in its paragraph 15, provides: "*grants amnesty in accordance with respective law which shall be approved by two-thirds (2/3) of the votes of all members of the Assembly.*"
90. In the Court's view, since neither this constitutional provision nor any other legal provision contains any guidance to the Court as to the establishment of any principle as to the concept of amnesty laid down in Article 65.15 of the Constitution, the Court will turn to the relevant legislation in neighboring countries and internationally accepted standards in this area.

91. In this respect, the Court finds that amnesty can be defined as exempting perpetrators of violations of the law from being prosecuted.
92. However, amnesty laws must be distinguished from other forms of impunity, because of the political context in which they are introduced. The motives for introducing a law on amnesty are various, but generally speaking they are introduced for example during conflicts to end the violence, as part of peace agreements in order to promote reconciliation between the parties involved, etc. Amnesties cover, beside individuals who have already been convicted and are serving their sentence, also individuals who are being investigated or who are yet to be investigated. In order for the distinction to be made one has to look at the motives laying behind the introduction of a law on amnesty.
93. The scope of a law on amnesty varies both as to what acts can be amnestied, as to whom it applies, as well as to the time period covered. However, as a general principle, an amnesty by the Parliament must comply with certain fundamental principles of the rule of law, namely legality (including transparency), the prohibition of arbitrariness, non-discrimination and equality before the law.
94. As to the scope of the law on amnesty, meaning to whom it applies, generally speaking it can be applied to individuals or to a collective.
95. As to the acts to which a law on amnesty applies, meaning which crimes can be amnestied and which cannot, it is noted that there is a list of current crimes under international law such as gross violations of human rights, including genocide, war crimes, crimes against humanity, torture and disappearances, where states are obliged to prosecute the perpetrators. Amnestied crimes of a political nature include treason, sedition, subversion, rebellion, using false documents, forgery, anti-government propaganda, possessing illegal weapons, espionage, membership of banned political or religious organizations, desertion and defamation. Amnestied crimes of an economic nature are such as illegal trafficking etc.
96. Notwithstanding the fact that certain crimes can be amnestied, it is internationally accepted that the victims must have a right to equal and effective access to justice in order to be able to obtain adequate, effective and prompt reparation for the harm suffered and effective access to relevant information concerning the reparation mechanisms for such violations.
97. As to the time period, it can be said, in general, that time limits must reflect the objectives of the amnesty concerned.
98. However, as noted above, there is a bare minimum that amnesties cannot be granted for violations of the right to life and the right to liberty and security of the person, including the right to freedom from torture and other forms of ill-treatment. In this respect, the principle of justice requires that violations of the victim's rights must be remedied.
99. The Court notes that the European Court of Human Rights (ECtHR) has on occasion pronounced on the question of impunity for violations of the right to freedom from ill-treatment and the right to life. The Court recalls the judgment

in the case of *Eski v. Tukey* (Application 8354/04, Judgment of 05 September 2012) where, in relation to ill-treatment, the EctHR found that:

*“32. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. Such an investigation should be capable of leading to the identification and punishment of those responsible (see *Labita v. Italy* [GC], no. [26772/95](#), § 131, ECHR 2000-IV). According to the established case-law, this means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public’s confidence in, and support for, the rule of law and for preventing any appearance of the authorities’ tolerance of or collusion in unlawful acts (see *Okkalkı v. Turkey*, no. [52067/99](#), § 65, ECHR 2006-XII (extracts), and *Derman*, cited above, § 27).*

*33. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Bati and Others*, cited above, § 136).*

*34. The Court also recalls that when an agent of the State is accused of crimes that violate Article 3, any ensuing criminal proceedings and sentencing must not be time-barred and the granting of amnesty or pardon should not be permissible. It further reiterates that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance that he or she be suspended from duty during the investigation and trial, and should be dismissed if convicted (see, *mutatis mutandis*, *Abdulsamet Yaman v. Turkey*, no. [32446/96](#), § 55, 2 November 2004, and *Serdar Güzel v. Turkey*, no. [39414/06](#), § 42, 15 March 2011).*”

100. The Court also recalls the judgment of the ECtHR in *Sangariyeva and Others v. Russia* (Application no. 1839/04, Judgment of 01 December 2008), where it stated in reference to the right to life and the right to a remedy, that:

*“74. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).*

[...]

106. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. [38361/97](#), §§ 161-162, ECHR 2002-IV; and *Süheyla Aydın v. Turkey*, no. [25660/94](#), § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

107. It follows that in circumstances where, as here, the criminal investigation into the violent death was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.”

Constitutional and Legal Provisions on Amnesty

Albania

101. In respect of Albania, the Court notes that the Constitution of Albania in its Article 81.2 (ë) provides that a Law on Amnesty is approved by three-fifths of all members of the Assembly.

102. In this respect, the Court refers to the Decree No. 7338 of 20 November 1989 and Law 'On the Innocence and Amnesty of those formerly Convicted and Political Persecuted', No. 7516 (30 September 1991), amended by law No. 7660 (14 January 1993) and No. 7719 (8 June 1993).

103. The Decree No. 7338 of 20 November 1989 reads as follows:

[...]

Art 1. Those persons sentenced to deprivation of freedom for up to five-years and those who have been given suspended sentences are pardoned.

1. Exempted are those persons who have been found guilty of crimes against the state according to Arts 47-60 of the Penal Code; illicit appropriation of socialist property according to Arts 61-68 of the Penal Code; appropriation of private property according to Arts 101-102 of the Penal Code; as well as those persons who have been given uncommutable sentences for various repeated penal offences.

2. All of those persons sentenced who will have reached the age of 18 by 20 Nov 1989 are pardoned.

3. *Those persons sentenced to deprivation of freedom who will have reached the age of 60 by 20 Nov 1989 are pardoned.*

4. *All women sentenced to deprivation of freedom for up to 15 years, those who have received lesser sentences, and those who have been given conditional sentences are pardoned.*

[...]"

104. The Law 'On the Innocence and Amnesty of those formerly Convicted and Political Persecuted', No. 7516 (30 September 1991), amended by law No. 7660 (14 January 1993) and No. 7719 (8 June 1993) reads as follows:

"[...]

Article 1

All persons sentenced for agitation and propaganda against the state; fleeing the country; sabotage; creating or participating in political organizations; failing to report crimes against the state; slander and insults against the highest state and party organs; and violations of Decree 7,459 On the Respect and Protection of Monuments Connected With National History and State Symbols and of Decree 7,408 On Assemblies, Gatherings and Demonstrations of Citizens in Public Places, are innocent and are considered for moral, political and social purposes as not having been convicted.

Article 2

All Albanian citizens who fled Albania because of their political convictions or activities during the war or between the liberation and the date on which this law comes into effect, and who did not commit acts of terrorism or diversion that led to deaths or serious consequences, and all those who have illegally crossed the border, are innocent. All others are amnestied.

Exclusions:

Excluded persons convicted of terrorist acts that resulted in deaths or serious consequences. {Law No 7660 (14 Jan 1993)} Excludes those sentenced for organization or participation in uprisings, organization and participation in armed gangs, for hostile activity during the war, for organization and participation in a military conflict or coup d'état, for espionage, terror and diversion.

[...]"

Bosnia and Herzegovina

105. In respect of Bosnia and Herzegovina, the Court notes that its Constitution does not contain any provision in regard to amnesty or pardon. However, the Dayton

Peace Agreement in its Annex 7 - Agreement on Refugees and Displaced Persons, Article VI states:

“Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.”

106. As a result, both Entities of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, adopted laws on amnesty in July 1996. According to Article 1 of the Federation Amnesty Law: *“Shall completely relieve from criminal prosecution or completely relieve from the imposed sentence or the non-served part of the sentence all persons who in the period between 1 January 1991 and 22 December 1995 committed any of the criminal acts laid down in the appropriate Criminal Code (article 1).”* This amnesty includes almost anybody who committed a crime between 1 January 1991 and 22 December 1995, although certain very serious crimes, as stated in this Federation Amnesty Law, are exempted: *“Excludes ‘criminal acts against humanity and international law under chapter XVI of the adopted Criminal Code of the SFRJ, crimes defined under the Statute of the International Tribunal for the Former Yugoslavia’. Excludes acts of genocide, war crimes, and crimes against humanity, as well as acts of terrorism, acts against sexual freedom, prevention of return of refugees and displaced persons, violence in family, money laundering, and attacking a tax official on duty.”*

Croatia

107. In respect of Croatia, the Court notes that the Constitution of the Republic of Croatia grants competencies to the House of Representatives to grant amnesty for criminal offenses (Article 80 of the Constitution of Croatia).
108. In this respect, the Court refers to the Croatian Law on General Amnesty of 20 September 1996, No. 80/96, which reads as follows:

“[...]

Article 1

This Act grants general amnesty from criminal prosecution and proceedings against perpetrators of criminal acts committed during aggression, armed rebellion or armed conflicts, or related to aggression, armed rebellion or armed conflicts in the Republic of Croatia. The amnesty also relates to the execution of the final verdict passed against the perpetrators of criminal acts referred to in Paragraph 1 of this Article. The amnesty from criminal prosecution and proceedings relates to acts committed in the period from August 17, 1990 to August 23, 1996.

Article 2

Criminal prosecution shall not be undertaken and criminal proceedings shall not be initiated against the perpetrators of criminal acts referred to in Article 1 of this Act. If criminal prosecution has been undertaken it shall be stopped, and if criminal proceedings have been initiated, the proceedings shall be stopped ex officio by a court ruling. If the person to whom the amnesty from Paragraph 1 of this Article is related is deprived of liberty, the person shall be released by a court ruling.

Article 3

The amnesty for criminal acts referred to in Article 1 of this Act excludes perpetrators of the most serious violations of humanitarian law having the characteristics of war crimes, specifically the criminal act of genocide under Article 119, war crimes against the civilian population under Article 120, war crimes against the wounded and sick under Article 121, war crimes against prisoners of war under Article 122, organising groups and instigating the committing of genocide and war crimes under Article 123, unlawful killing and wounding of an enemy under Article 124, illegal seizure of possessions belonging to those killed and wounded on the battlefield under Article 125, use of prohibited combat means under Article 126, violation of parliamentarians under Article 127, cruel treatment of the wounded, sick, and prisoners of war under Article 128, unjustified delay of the repatriation of prisoners of war under Article 129, destruction of cultural and historical monuments under Article 130, instigation of war of aggression under Article 131, abuse of international symbols under Article 132, racial and other discrimination under Article 133, establishing slavery and the transport of enslaved persons under Article 134, international terrorism under Article 135, endangerment of persons under international protection under Article 136, taking of hostages under Article 137 of the Basic Criminal Code of the Republic of Croatia (Narodne Novine, No. 31/93 - revised text, 35/93, 108/95, 16/96, and 28/96), as well as the criminal act of terrorism regulated by provisions of international law. The Amnesty excludes the perpetrators of other criminal acts stipulated in the Basic Criminal Code of the Republic of Croatia (Narodne Novine, No. 31/93 - revised text 35/93., 108/95., 16/96., and 28/96.) and the Criminal Law of the Republic of Croatia (Narodne Novine, No. 32/93. - revised text, 38/93., 28/96. And 30/96) which were not committed during aggression, armed rebellion, or armed conflicts or are not related to aggression, armed rebellion, or armed conflicts in the Republic of Croatia.

The provisions of the Law on Criminal Proceedings (Narodne Novine No. 34/93 – revised text, 38/93, 25/94, 28/96) on repeating proceedings shall be applied for persons who by a final verdict are sentenced in absence for criminal acts from Paragraph 1 of the Article herein, whereby the deadline from Article 398, Paragraph 1, of that Law begins when the Act herein enters into effect.

[...]”

Greece

109. In respect of Greece, the Court notes that Article 47 of the Constitution provides that Amnesty may be granted only for political crimes, by statute passed by the Plenum of the Parliament with a majority of three-fifths of the total number of members. However, Article 47 also provides that amnesty for ordinary crimes may not be granted even by law.

Macedonia

110. In the Republic of Macedonia Article 68 of their Constitution provides that the Assembly of the Republic of Macedonia proclaims amnesties.
111. In this respect, the Court refers to the Macedonian Law on Amnesty of 7 March 2002 which reads as follows:

[...]

Article 1

This law exempts from prosecution, discontinues the criminal proceedings and fully exempts from execution of the sentence to imprisonment (hereinafter: amnesty), citizens of the Republic of Macedonia, persons with lawful residence, as well as persons that have property or family in the Republic of Macedonia (hereinafter: persons), for whom there is a reasonable doubt that they have prepared or committed criminal acts related to the conflict in the year 2001, conclusive of 26 September 2001.

The amnesty also applies to persons who have prepared or committed criminal acts related to the conflict in the year 2001 before the 1st of January 2001.

With the amnesty mentioned in paragraph 1 and 2 of this Article:

- persons for whom there is a reasonable doubt that they have prepared or committed criminal acts related to the conflict until 26th September 2002 are exempted from prosecution for criminal acts pursuant to the Criminal Code and other law of the Republic of Macedonia;*
- the criminal proceedings for criminal acts pursuant to the Criminal Code and other law of the Republic of Macedonia against persons for whom there is a reasonable doubt that they have prepared or committed criminal acts related to the conflict until 26 September 2001 are discontinued;*
- persons who have prepared or committed criminal acts related to the conflict until 26 September 2001, are fully exempted from the execution of the sentence to imprisonment for criminal acts pursuant to the Criminal Code and other law of the Republic of Macedonia; and*

- *It is determined that the convicting verdict be deleted and and that the legal consequences of the convicting verdict be repealed, conclusive of 26 September 2001.*

Exclusions:

The provisions of paragraphs 1, 2 and 3 of this Article do not apply to persons who have committed criminal acts related to and in connection with the conflict in the year 2001, which are under the jurisdiction of and for which the 1991 International Tribunal for Prosecution of Persons Responsible for Serious Violation of International Humanitarian Law in the Territory of Former Yugoslavia, will instigate proceedings.

[...]"

112. From the above-mentioned examples, the Court notes that different countries have chosen different methods of regulating the issue of amnesty both in their constitutions and respective laws. Some of the countries (Macedonia, Croatia) chose in their constitutions a very general formulation to grant this competence to their national parliaments, whilst Greece does specify which crimes cannot be amnestied in any circumstance, like ordinary crimes. On the other hand, the Albanian constitution contains a general formulation, but adds that amnesty laws cannot be subject to a referendum.
113. Amnesty laws of some other countries specifically cover political or conflict-related crimes, by referring to the factual context without referring to specifically prescribed offenses. For example, a Liberia 1993 amnesty covers "*all persons and parties involved in the Liberian civil conflict,*" whereas an Angola 1994 amnesty encompasses "*illegal acts committed. . . in the context of the current conflict,*" and an Albania 1997 "*crimes connected to the popular revolt.*"
114. Another approach, which is more common and more reliable, involves both to refer to a specific context or event and to expressly limit the application to particular types of offenses. For example, in some cases, an exhaustive list of specific crimes of an inherently political nature is given without any reference to a person's motivation. Thus, a Brazil 1979 amnesty includes military desertion and a series of other inherently political crimes without reference to any motivation. In other cases, specific political crimes are listed but in a non-exhaustive fashion. The France 1962 amnesty covers infractions committed in the context of operations for the maintenance of order and directed against the Algerian insurrection, provided they were committed before March 20, 1962. The Greece 1974 amnesty covers a variety of specific crimes, such as sedition and treason, which are punishable under the Criminal Code and Military Code, together with "other acts having to do with the situation of 21 April 1967 which were intended to overthrow the status quo."
115. However, there are cases where the amnesty laws expressed explicitly that the political motivation element is required to grant amnesty for a criminal act. For example, a Romania 1990 amnesty covers political offenses defined as "*deeds that had as their purpose (a) protest against dictatorship, the cult of personality, terror or the abuse of power by the authorities; (b) the respect of*

fundamental human rights and freedoms, exercising political, economic, social and cultural rights, or abolishing of discriminatory practices; (c) the satisfaction of democratic claims.” The South Africa 1995 amnesty covers acts, omissions, and offenses “*associated with political objectives and committed in the course of conflicts in the past,*” and then it provides a long list of related criteria. That list includes, importantly, a proportionality requirement between the (political) act and the political objective. In other cases, by contrast, the requirement of a political motivation is expressed in more simple terms. For example, the Guatemala 1996 amnesty simply provides that, for state actors, the crime must have had a political and not a personal motive. The Philippines 2000 amnesty covers crimes committed “*in pursuit of political beliefs,*” and it expressly excludes crimes committed “*for personal ends.*”

116. In view of the above references, the Court is of the opinion that, in general, amnesty can be granted for a variety of reasons. Although it appears that amnesty is usually granted for offenses which are considered political or connected to a particular conflict, amnesty for economic or ordinary crimes are also not uncommon. However, what must be inherent in all laws on amnesty is clarity and transparency. Not only the amnestied perpetrators have the right to know how the relevant law on amnesty will be applied to them, also the victims of such perpetrators are entitled to know in what manner they will be compensated for any damage inflicted upon them and through which efficient and effective legal mechanism.
117. The Court notes that paragraph 1 of Article 2 [Amnesty] of the Law on Amnesty provides that, “*All perpetrators of offenses listed in Article 3 that were committed before 20 June 2013 shall be granted a complete exemption from criminal prosecution or from the execution of punishment for such offenses, in accordance with the terms and conditions of Article 3 of this law.*”
118. In the Court’s opinion, this can only mean that perpetrators of criminal offenses mentioned by the Law will no longer be punished for having committed such an offense, but will continue to be accountable for the damage they have caused or for the fulfillment of obligations they have omitted. The intention of the legislator to ensure that the results of criminal acts would not be affected by the amnesty for the criminal offence itself can be understood with reference to Article 9 [Finality of Confiscation] of the Law on Amnesty, which stipulates that,
- “Regardless of the application of amnesty under this law to any criminal offence, if an object has been confiscated in accordance with the law during the criminal proceedings based in whole or in part on that criminal offence, the person receiving amnesty does not have a right to the return of that confiscated object.”*
119. In the Court’s understanding, for example, taxpayers who fall under the ambit of Article 3 of the Law should not expect that they do no longer need to pay the taxes due to the state of Kosovo until 20 June 2013. On the contrary, Article 2 of the Law can only be understood to mean that, though tax evaders are no longer penalized, they are not amnestied from rectifying their omissions in tax

payments. If not, this would create an unjustified inequality amongst taxpayers. The same is true for crimes for personal gain/greed.

120. In the same spirit, the perpetrators of amnestied offenses having caused damage to third parties should remain accountable for paying compensation to the victims who should have an efficient and effective legal remedy to satisfy their rights.
121. Moreover, also in cases where the perpetrators of, for instance, falsified documents have been amnestied, but where the Law is silent on the way in which the products of the amnestied crimes could be annihilated, a mechanism should be available, whereby the products of amnestied crimes can be identified and taken out of circulation or be destroyed. If not, these products risk to continue to be used as evidence, thereby compromising the legal foundations of Kosovo as a state governed by the rule of law.
122. Mindful of these considerations and the objectives of the Law mentioned above, the Court will now review the constitutionality of Law No. 04/L-209, On Amnesty, adopted by the Assembly on 11 July 2013.

Merits of the Referral

123. The Court notes that the Applicants allege that Law No. 04/L-209, On Amnesty, is in violation of the Constitution as regards its substance and the procedure followed for adopting the law.

As to the substance of the contested Law

124. The Applicants maintain with respect to the amnestied crimes under the Law on Amnesty that they are in violation of Article 31, paragraphs 1 and 2, Article 32, and Article 24, paragraphs 1 and 2, of the Constitution, as well as Article 6, paragraph 1, in conjunction with Articles 13 and 14 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The Applicants also allege that some of the amnestied crimes are in violation of Article 1 of the First Protocol to the ECHR.
125. Article 31 [Right to Fair and Impartial Trial] of the Constitution provides, in its paragraphs 1 and 2, that:
 - “1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
 - 2. Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”*
126. Article 32 [Right to Legal Remedies] of the Constitution provides that:

“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.”

127. Article 24 [Equality Before the Law] of the Constitution, in its paragraphs 1 and 2, provides that:

“1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.

2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relations to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.”

128. Article 6, paragraph 1, of the ECHR provides, in its relevant first sentence, that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]”

129. Article 13 of the ECHR provides that:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

130. Article 14 of the ECHR provides that:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

131. Article 1 of the First Protocol to the ECHR provides that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.”

132. However, the Court will first make some preliminary observations as to the generally established principles in respect to amnesty.

133. As a first preliminary observation, the Court recalls Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution which provides:

“1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.

2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.

3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.

4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.

5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.”

134. In this respect, the Court notes that, as it stated in Case KO 131/12 (see Case KO 131/12, Applicant Dr. Shaip Muja and 11 Deputies of the Assembly of the Republic of Kosovo, Judgment of 15 April 2013), a law when limiting fundamental rights and freedoms must fulfill the conditions as prescribed by the abovementioned Article.

135. As a second preliminary observation, the Court recalls the case of *Centro Europa 7 S.R.L. and di Stefano v. Italy* (Application no. 38433/09, Judgment of 7 June 2012) whereby the ECtHR held that,

“141. [...] a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able -if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. The level of precision required of domestic legislation -which cannot in any case provide for every eventuality -depends on a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed.”

Amnesty and the Rule of Law – General Observations

136. The Court notes that the Applicants’ allegations concern primarily the right of victims of the amnestied crimes to have access to a court to seek reparation for

the damage they may have suffered as a result of these crimes. This is fundamentally an argument concerning a violation of the rights to a fair hearing guaranteed by Article 31 of the Constitution and Article 6(1) of the ECHR.

137. As noted above, the right to a legal remedy, as provided in Article 32 of the Constitution and Article 13 of the ECHR, requires that the damage suffered by an individual can be attributed to the state and/or its agents. Any crimes which rise to the level of serious violations of the right to life or freedom from ill-treatment are excluded from amnesty by Article 4 of the Law. Therefore, the Court finds that the right to a legal remedy does not apply to the criminal offences foreseen in the Law on Amnesty, and this argument must be dismissed as manifestly ill-founded. For the same reasons, the arguments related to discrimination in conjunction with the right to a remedy, as guaranteed by Article 24 of the Constitution and Article 14 of the ECHR must also be rejected as manifestly ill-founded.

138. Regarding the right to access to a court, the Court notes the ECtHR judgment in *Ashingdane v. United Kingdom* (Application 8225/78, Judgment of 28 May 1985), where the ECtHR stated that:

“57. [...] Certainly, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access “by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals” (see the above-mentioned Golder judgment, p. 19, para. 38, quoting the “Belgian Linguistic” judgment of 23 July 1968, Series A no. 6, p. 32, para. 5). [...]

Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. [...]

Furthermore, a limitation will not be compatible with Article 6 para. 1 (art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.”

139. The question arises whether the amnesty foreseen by the Law on Amnesty would restrict or reduce the access left to individuals for access to a court to such an extent that the very essence of the right is impaired.

140. The Court recalls the judgment of the ECtHR in the case of *Tarbuk v. Croatia* (Application no. 31360/10, Judgment of 29 April 2013), where the ECtHR found in relation to amnesties that:

“50. [...] Moreover, the Convention organs have already held that, even in such fundamental areas of the protection of human rights as the right to life, the State is justified in enacting, in the context of its criminal policy, any amnesty laws it might consider necessary, with the proviso, however, that a balance is maintained between the legitimate interests of the State and the interests of individual members of the public (see Dujardin and

Others v. France, no. 16734/90, Commission decision of 2 September 1991, Decisions and Reports 72, p. 236).”

141. The Court notes that individuals suffering damage due to the amnestied crimes could, in principle, have access to either a motion for prosecution, or private prosecution, or subsidiary prosecution of the crime (depending on which criminal law was in force at the time of the crime and in certain cases), or to a civil action in damages against the perpetrator. The Court notes, in this regard, that Article 5 of the Law on Amnesty stipulates that, *“The granting of amnesty shall not affect the rights of third parties which are based upon a sentence or judgment.”*
142. Furthermore, the Court notes that in those cases where a private prosecution has been initiated prior to the entry into force of the Law on Amnesty, and have not yet reached a conclusion, these private prosecutions may continue.
143. What remains is the question whether individuals claiming to have suffered damage as a result of a criminal offence which has benefitted from an amnesty remain enabled to bring a civil suit in damages before the civil courts.
144. The Court recalls Article 136 [Basis for Liability] of the Law on Obligational Relationships (Law no. 04/L-077, Official Gazette of the Republic of Kosovo no. 16/19, of June 2012) which stipulates that,

“(1) Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former.”
145. This general provision grants to victims of damage access to civil proceedings for harm caused by the perpetrators of crimes foreseen to be amnestied by the Law on Amnesty. The relationship between possible civil proceedings for damages, where the damage is the result of a criminal offence, and criminal proceedings against the perpetrator is regulated in the Law on Contested Procedure (Law no. 03/L-006), which stipulates in Article 14 that,

“In the contentious procedure, regarding the existence of a criminal act and criminal responsibility, the court is bound to the effective judgment of the criminal court by which the defendant has been found guilty.”
146. In this regard, the Court makes the following observations:
 - 1) The Law on Amnesty stipulates in Article 5 that where someone has already been convicted but is now amnestied, the amnesty will not affect the rights of third parties (i.e. victims).
 - 2) Article 14 of the Law on Contested Proceedings states that the civil court is bound by the decision of the criminal courts *“regarding the existence of criminal act and criminal responsibility”*. A victim taking civil proceedings for damages is not asking the court to make any findings of criminal responsibility or of criminal acts.

3) Article 14 also says that the *"court is bound to the effective judgment of the criminal court by which the defendant has been found guilty."* However, after the Amnesty there is no judgment of any court on criminal responsibility whatsoever, so there is no judgment for the civil court to take into account or be bound by.

147. Therefore, the Court observes that in cases where a defendant has previously been found guilty of a criminal offence, the operation of Article 5 of the Law on Amnesty would ensure that the rights of individuals who claim damages as a result of that offence would retain their rights to seek compensation in civil proceedings.
148. However, in cases where no criminal prosecution has been completed, and there is no determination by a criminal court of guilt or innocence, the effect of the amnesty would imply that there will never be a determination of guilt.
149. In the absence of any determination of criminal responsibility, the question arises whether the right to a determination by a court of civil liability for damages can be exercised effectively. The European Court of Human Rights has frequently stated that, *"[...] the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; [...]"* (See *Artico v Italy*, Application no. 6694/74, Judgment of 13 May 1980, para. 33).
150. In the light of the stipulation in Article 14 of the Law on Contested Procedure, and the lack of convincing arguments to the contrary, the Court considers that the rights of victims of a criminal offence to practical and effective access to a civil court for a claim of compensation for damages may not be assured where there has been no previous criminal trial. The Court finds that the possibilities for civil compensation may not guarantee a prospect of successful civil proceedings without a criminal trial and a final judgment.
151. Therefore, the Court concludes that, in certain classes of criminal offences foreseen to benefit from amnesty, where damage may have been caused to individuals, the relevant provisions of the Law on Amnesty would effectively block those individuals from practical and effective access to court for a determination of their claim to compensation for damages, in violation of their rights under Article 31 of the Constitution and Article 6 ECHR.
152. The Court notes, in addition, that the Applicants allege a violation of the right to the peaceful enjoyment of property under Article 1 First Protocol ECHR as a result of the amnesty of certain criminal offences foreseen by the Law on Amnesty.
153. The Court notes that the fundamental right to the peaceful enjoyment of property concerns interferences with this right by the state or its agents. The criminal offences in question concern damage to property caused by private individuals in the context of the commission of criminal offences. However, the fact of the Law on Amnesty itself providing amnesty for crimes against private property, and the subsequent decisions by prosecution and judicial authorities

to grant amnesty on the basis of this Law, bring the interference with the right to property within the scope of the state's responsibilities.

154. Therefore, the Court concludes that, in certain classes of criminal offences foreseen to benefit from amnesty, where damage to property has been caused to individuals, these provisions of the Law on Amnesty effectively violate the right to the peaceful enjoyment of one's possessions as protected by Article 1 First Protocol of the ECHR.

Assessment per Article of the Law on Amnesty

155. The Court will now deal in turn with each of the articles of the Law on Amnesty and each of the proposed amnestied crimes.

I. Article 1 (Purpose and Scope)

“The [Law on Amnesty] regulates the conditions and the procedure under which amnesty can be granted for persons who have been convicted of certain specified criminal offences, who are under prosecution for such criminal offences, or could be subject to prosecution for such criminal offences committed prior to June 20, 2013 within the territory which now constitutes the Republic of Kosovo.”

156. In this respect, the Court refers to Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, which provides that: *“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by the Constitution, are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over provisions of laws and other acts of public institutions:*

1) Universal Declaration of Human Rights; [...]”

157. Article 8 of the Universal Declaration of Human Rights proclaims: *“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”*

158. In this respect, the Court refers to the established principles and practice of the United Nations in relation to amnesties, as summarized in the United Nations Publication *“Rule of Law Tools for Post-Conflict States - Amnesties”* (New York and Geneva, 2009, HR/PUB/09/1), taking together established amnesties, bodies of principles and case-law of international courts. This summary of principles states, at page 11, that amnesties are not allowed if they:

- a. Prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations;*
- b. Interfere with victims' right to an effective remedy, including reparation;*
or

c. Restrict victims' and societies' right to know the truth about violations of human rights and humanitarian law.

159. The Court notes, in this regard, that the Law on Amnesty provides, in its Article 4, for certain criminal offences that will not benefit from amnesty. This Article provides that:

"1. Amnesty from any criminal offence within this law will not apply for:

1.1. Acts against international actors and international security forces in Kosovo. Members of international security forces are always under the jurisdiction of the sending state.

1.2. Acts that constitute serious violations of international humanitarian law, including those offences provided in Chapter XV of the Criminal Code of the Republic of Kosovo, Chapter XIV of the Provisional Criminal Code of Kosovo and Chapter XVI of the Criminal Code of the SFRY 1976.

1.3. Criminal offence that resulted in serious bodily harm or death."

160. The Court considers that the scope of the Law on Amnesty, as defined in its Article 1, clearly comes within the ambit of international norms regarding amnesties, and secures limitations to the criminal offences foreseen for amnesties such that the Law remains within the bounds of these norms.

II. Article 2 of the Law on Amnesty provides:

"1. All perpetrators of offenses listed in Article 3 that were committed before 20 June 2013 shall be granted a complete exemption from criminal prosecution or from the execution of punishment for such offenses, in accordance with the terms and conditions of Article 3 of this law.

2. Amnesty may be provided under this law only in accordance with the procedures set in Chapter III of this law."

161. In this respect, the Court notes that, as stated above, an adopted law must be formulated with sufficient precision to enable the citizen to regulate his conduct meaning that he must be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Furthermore, a law must be formulated sufficiently clearly in order for the citizens to foresee their rights and responsibilities, including the period of time during which the law will be in effect.

162. As to the determination of the period of time, concerning which the Law on Amnesty will apply, the Court refers to Article 2, paragraph 1, of the Law on Amnesty which establishes that the crimes (mentioned in Article 3 of the Law on Amnesty) committed until 20 June 2013 will be amnestied.

163. This Article does not contain any explicit provision as to the starting date as of which crimes would be amnestied. However, the Court notes the series of criminal codes for which amnesties are to apply. These are mentioned in sequence in the Law on Amnesty and include specifically the following codes:

- a. Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY), Official Gazette SFRY no. 44 of 8 October 1976;
- b. Criminal Law of the Socialist Autonomous Province of Kosovo (SAPK), Official Gazette no. 20/77;
- c. UNMIK Regulations 1999/24 and 2000/59 On the Law Applicable in Kosovo, which define that the Criminal Code of SFRY of 1976 and the Criminal Law of SAPK of 1977 are the applicable criminal law in Kosovo with entry into force on 10 June 1999;
- d. UNMIK Regulation 2003/25 On a Provisional Criminal Code of Kosovo, which entered into force on 6 April 2004; and
- e. Criminal Code of the Republic of Kosovo, Official Gazette no. 19/13 2012, which entered into force on 1 January 2013.

164. In the Court's view, given the specific mention of these criminal codes and laws, it is sufficiently clear that the legislator intended the Law on Amnesty to apply only during the period of applicability of these enumerated codes. Therefore, it can be readily interpreted that the starting date of the Law on Amnesty is implicitly understood to be 10 June 1999. This conclusion is all the more apparent when taking into consideration that the criminal legislation that applied in the territory of Kosovo immediately prior 10 June 1999 is not mentioned in the Law on Amnesty.

165. To the extent that the Amnesty may be considered to apply to criminal offences committed during the 1970s and 1980s, when the Criminal Code of SFRY and the Criminal Law of SAPK were originally applicable, the Court notes that such criminal offences would have benefitted from a period of prescription except in certain cases of very serious crimes which the Law on Amnesty does not foresee to benefit from amnesty.

166. Therefore, the Court finds that the period of applicability contained in Article 2, paragraph 1, of the Law on Amnesty is sufficiently clearly defined to comply with the requirements of legal certainty in accordance with the principle of the rule of law.

III. Article 3 (Conditions on granting Amnesty from criminal prosecution and complete execution of the punishment)

"1. The perpetrators of the following criminal offences are completely exempted from criminal prosecution or execution of punishment for those criminal offences:

1.1 Criminal offences foreseen with the Criminal Code of the Republic of Kosovo (Official Gazette of the Republic of Kosovo no. 19/13 2012);"

167. Article 438 (Continuation of criminal sanctions) of the current Criminal Code of Kosovo provides that *"All criminal sanctions for acts still criminalized by this*

Code and imposed by final judgments before the entry into force of this Code shall continue with the same duration or to the same extent.”

168. Furthermore, Article 439 (Repeal of legal and sub-legal acts) of the current Criminal Code of Kosovo foresees that *“Provisions in UNMIK Regulations and the Criminal Code of the Republic of Kosovo UNMIK REG 2003/25 covering matters addressed in the Criminal Code of Kosovo shall cease to have effect upon the entry into force of this Code.”*

1.1.1 Assault on the Constitutional order of the Republic of Kosovo (article 121), except in cases when committing this criminal offence has resulted in another criminal offence for which amnesty is not granted.

“Article 121 (Assault on constitutional order of the Republic of Kosovo)

1. Whoever attempts, by the use of violence or threat of violence, to change the established constitutional order of the Republic of Kosovo or to overthrow the highest institutions of the Republic of Kosovo shall be punished by imprisonment of not less than five (5) years.

2. Whoever by use of violence or threat of violence attempts to obstruct the establishment of the constitutional order of the Republic of Kosovo or by the use of violence or threat of violence implements foreign legal order in any part of the Republic of Kosovo, shall be punished by imprisonment of not less than five (5) years.

3. Whoever attempts, by use of violence or threat of violence, to endanger the independence of Kosovo, its sovereignty and territorial integrity, its territorial entirety or its democracy, shall be punished by imprisonment of not less than ten (10) years.”

169. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.2 Armed rebellion (article 122);

“Article 122 (Armed rebellion)

1. Whoever takes part in an armed rebellion that is aimed against the constitutional order, security or territorial integrity of the Republic of Kosovo, shall be punished by imprisonment of not less than five (5) years.

2. An organizer of an armed rebellion described in paragraph 1. of this Article shall be punished by imprisonment of not less than ten (10) years imprisonment.”

170. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of

access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.3 Endangering territorial integrity of the Republic of Kosovo (article 125)

“Article 125 (Endangering the territorial integrity of the Republic of Kosovo)

Whoever by the use of violence or threat of violence attempts to detach a part of the territory of the Republic of Kosovo or to join a part of the territory to another state, shall be punished by imprisonment of not less than five (5) years.”

171. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.4 Endangering the constitutional order by destroying or damaging public installations and facilities (article 129);

“Article 129 (Endangering the constitutional order by destroying or damaging public installations and facilities)

Whoever with the aim of endangering of the constitutional order or security of the Republic of Kosovo, incinerates or in any other way destroys or damages an industrial, agricultural site, or any other economic site, traffic system, telecommunication links, equipment for public use of water, heating, gas or energy, dams, depots, or any other building of importance for security, supply of citizens, economy or functioning of public services, shall be punished by imprisonment of not less than three (3) years.”

172. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.5 Espionage (article 131)

“Article 131 (Espionage)

1. Whoever communicates, hands over a State secret or makes a State secret accessible to a foreign country, foreign organization or to the person serving them shall be punished from imprisonment of five (5) to twelve (12) years.

2. Whoever creates an intelligence service in the Republic of Kosovo for a foreign State, country or organization or directs such service shall be punished by imprisonment of not less than ten (10) years.

3. *Whoever enters a foreign intelligence service, collects data for them or in any other way supports the work of such service shall be punished by imprisonment at least five (5) years.*

4. *Whoever collects classified data or documents with the aim of communicating and handing them over to a foreign State, country, foreign organization or to the person serving them, shall be punished by imprisonment of three (3) to ten (10) years.*

5. *If the commission of the criminal offense in paragraph 1, 2, 3. or 4 of this Article caused severe consequences for the security, economic or military power of the Republic of Kosovo, the perpetrator shall punished by imprisonment of at least ten (10) years.*

6. *If the criminal offense listed in paragraph 1, 2, 3 or 4 of this Article is committed during the time of war, imminent danger of war, armed conflict or the revealing of a state secret concerns the security of the Republic of Kosovo, the perpetrator shall be punished by imprisonment of not less than ten (10) years.*

7. *For the purposes of this Article, "State secret" means the military, economic, or official information, data or documents that by law or other provisions or decisions of a competent body and issued pursuant to the law that are pronounced as classified information."*

173. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.6 Alliance for anti-constitutional actions (article 134);

"Article 134 (Alliance for anti-constitutional actions)

1. *Whoever forms a group or any other alliance of persons for the commission of any criminal offense in Articles 121-134 of this Code shall be punished with the punishment prescribed for that offense.*

2. *Whoever participates in or becomes a member of the group or alliance from paragraph 1 of this Article shall be punished by imprisonment from one (1) to five (5) years.*

3. *A member of the group or alliance, who reports the group before the commission of the criminal offense from paragraph 1 of this Article shall be punished up to three (3) years of imprisonment or the punishment may be waived."*

174. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.7 Unauthorized border or boundary crossing (article 146, paragraphs 1, 2, 3.1 and 3.3);

“Article 146, paragraphs 1, 2, 3.1 and 3.3, (Unauthorized border or boundary crossings)

1. Whoever crosses a border or boundary of the Republic of Kosovo at any location other than at an authorized border or boundary crossing point shall be punished by a fine of two hundred fifty (250) EUR or by imprisonment of up to six (6) months.

2. When the offense provided for in paragraph 1. of this Article is committed by a perpetrator who is accompanied by a child or another person, the perpetrator shall be punished by a fine of up to two thousand five hundred (2,500) EUR or by imprisonment of up to one (1) year.

3. When the offense provided for in paragraph 1 of this Article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of six (6) months to three (3) years:

3.1. the perpetrator was previously convicted of a criminal offense provided for in this Article;

3.3. the crossing is undertaken between the hours of 8:00 in the evening to 6:00 in the morning during the period from 1 April to 30 September, or between the hours of 6:00 in the evening to 6:00 in the morning during the period from 1 October to 31 March;”

175. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.8 Inciting national, racial, religious or ethnic hatred, discord or intolerance (article 147)

“Article 147 (Inciting national, racial, religious or ethnic hatred, discord or intolerance)

1. Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in the Republic of Kosovo in a manner which is likely to disturb public order shall be punished by a fine or by imprisonment of up to five (5) years.

2. Whoever commits the offense provided for in paragraph 1 of this Article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence, or other grave consequences by the commission of such offense shall be punished by imprisonment from one (1) to eight (8) years.

3. *Whoever commits the offense provided for in paragraph 1 of this Article by means of coercion, jeopardizing safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves shall be punished by imprisonment of one (1) to eight (8) years.*

4. *Whoever commits the offense provided for in paragraph 3 of this Article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence or other grave consequences by the commission of such offense shall be punished by imprisonment of two (2) to ten (10) years.”*

176. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.9 Unlawful exercise of medical or pharmaceutical activity (article 262, paragraph 1);

“Article 262, paragraph 1, (Unlawful exercise of medical or pharmaceutical activity)

1. *Whoever, without possessing professional qualifications or legal authorization, carries out medical treatment, pharmaceutical services or engages in some other medical activity for which specific qualifications are required by law shall be punished by a fine or by imprisonment of up to one (1) year.”*

177. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.10 Destruction or damage to property (article 333, paragraph 1);

“Article 333, paragraph 1, (Destruction or damage to property)

1. *Whoever destroys, damages, or renders unusable the property of another person under circumstances other than as provided in Article 334 of this Code shall be punished by imprisonment of up to one (1) year.”*

178. In this respect, the Court refers to Article 46 [Protection of Property] of the Constitution which reads as follows:

“...

1. The right to own property is guaranteed.

2. Use of property is regulated by law in accordance with the public interest.

3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

5. Intellectual property is protected by law.

...”

179. Furthermore, Article 1 (Protection of property) of the First Protocol to the European Convention on Human Rights and Fundamental Freedoms provides that *“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*
180. In this respect, the Court notes that property is a fundamental human right guaranteed both under the Constitution and ECHR and other international instruments and that natural and legal persons cannot be deprived of property arbitrarily and property without just satisfaction.
181. The formulation of the Article in question clearly indicates that the amnestied crime concerns the property of another. In this respect, the Applicants allege that victims of this amnestied crime will be denied access to a court to protect their fundamental human right as granted by the Constitution and the ECHR.
182. As to the right to a remedy, including reparation, the Court notes that States are generally required to provide effective remedies to victims of gross violations of human rights and serious violations of humanitarian law, including reparation. In this respect, the Court notes that any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility to seek redress from the perpetrator.
183. Moreover, the Court notes that the right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction.
184. Furthermore, the Court fails to see how this amnestied crime would correspond with the purpose of the Law on Amnesty as set out above under the social-political context analysis.

185. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR. But also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.1.11 Arson (article 334, paragraph 1)

“Article 334, paragraph 1, (Arson)

1. Whoever starts a fire or causes an explosion with the purpose of damaging or destroying the property of another person shall be punished by imprisonment of six (6) months to three (3) years.”

186. This amnestied crime also specifies that it concerns damage of the property of another person. Therefore, the Court fails to see how this amnestied crime corresponds with the objectives of the Law on Amnesty.

187. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR, but also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.1.12 Unauthorized ownership, control or possession of weapons (article 374)

“Article 374 (Unauthorized ownership, control or possession of weapons)

1. Whoever owns controls or possesses a weapon in violation of the applicable law relating to such weapon shall be punished by a fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.

2. When the offense provided for in paragraph 1 of this Article involves more than four (4) weapons, or more than four hundred (400) bullets, the perpetrator shall be punished by imprisonment of two (2) to ten (10) years.

3. The weapon owned, controlled or possessed in violation of this Article shall be confiscated.”

188. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.13 Failure to report criminal offences or perpetrators (article 386, only in relation to the failure to report the criminal offences or perpetrators listed under this Article. [The Albanian and Serbian versions of the Law clearly indicate that this provision only applies for failure to report criminal offences that are granted amnesty under this Article]);

“Article 386 (Failure to report criminal offenses or perpetrators)

1. Whoever, having knowledge of the identity of the perpetrator of one or more of the following criminal offenses, fails to report such fact shall be punished by a fine or by imprisonment of up to three (3) years:

1.1. aggravated murder;

1.2. murder;

1.3. assault with grievous bodily injury;

1.4. any offense in violation of Chapter XIV-Criminal Offenses against the Constitutional Order and Security of Republic of the Republic of Kosovo;

1.5. any offense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law;

1.6. any offense in violation of Chapter XX-Criminal Offenses against Sexual Integrity;

1.7. any offense in violation of Chapter XXXIV-Criminal Offenses against Official Duty;

1.8. any offense in violation of Chapter XXIII-Narcotics Offenses;

1.9. any offense in violation of Chapter XXX-Weapons Offenses.

2. An official person or a responsible person who fails to report a criminal offense he or she has discovered in the exercise of his or her duties shall be punished as provided for in paragraph 1 of this Article, if such offense is punishable by imprisonment of at least three (3) years.

3. Except for offenses involving child abuse and domestic violence, a person is not criminally liable under this Article if he or she is related to the perpetrator of the criminal offense as the parent, child, spouse, sibling, adoptive parent or adopted child or person with whom the perpetrator lives in an extra-marital communion.”

189. The Court notes that this Article amnesties persons for failure to report a crime in respect to crimes which are granted amnesty under the Law on Amnesty. That indicates that failure to report the more serious crimes listed in Article 386 do not benefit from amnesty (see Article 386 (1) 1.1), murder (see Article 386 (1) 1.2), assault with grievous bodily injury (see Article 386 (1) 1.3) and any offense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law (see Article 386 (1) 1.5).

190. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.14. Providing assistance to perpetrators after the commission of criminal offenses (article 388, only in relation to providing assistance to perpetrators after the commission of the criminal offences listed under this Article. [The Albanian and Serbian versions of the Law clearly indicate that this provision only applies for failure to report criminal offences that are granted amnesty under this Article])

“Article 388 (Providing assistance to perpetrators after the commission of criminal offenses)

1. Whoever harbors the perpetrator of any offense other than as provided in paragraph 2 of this Article or aids him or her to elude discovery or arrest by concealing instruments, evidence or in any other way or whoever harbors a convicted person or takes steps towards frustrating the arrest, execution of a punishment or an order for mandatory treatment shall be punished by a fine or by imprisonment of up to one (1) year.

2. When the offense provided for in paragraph 1 of this Article relates to one or more of the following criminal offenses the perpetrator shall be punished by imprisonment of six (6) months to five (5) years:

2.1. aggravated murder;

2.2. murder;

2.3. assault with grievous bodily injury;

2.4. any offense in violation of Chapter XIV-Criminal Offenses against the Constitutional Order and Security of Republic of the Republic of Kosovo;

2.5. any offense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law;

2.6. any offense in violation of Chapter XX-Criminal Offenses against Sexual Integrity;

2.7. any offense in violation of Chapter XXXIV-Official Corruption and Criminal Offenses against Official Duty;

2.8. any offense in violation of Chapter XXIII-Narcotics Offenses;

2.9. any offense in violation of Chapter XXX-Weapons Offenses.

3. When the offense provided for in paragraph 1 of this Article relates to a criminal offense punishable by lifelong imprisonment, the perpetrator shall be punished by imprisonment of one (1) to ten (10) years.

4. The punishment provided for in paragraph 1 of this Article may not be more severe, neither in manner nor in degree, than the punishment prescribed for the criminal offense committed by the perpetrator who was given assistance.

5. Except for offenses involving child abuse and domestic violence, a person is not criminally liable under this Article if he or she is related to the perpetrator of the criminal offense as the parent, child, spouse, sibling, adoptive parent or adopted child or person with whom the perpetrator lives in an extra-marital communion.”

191. The Court notes that this Article, similarly to the previous one, amnesties persons for providing assistance to perpetrators of crimes which are granted amnesty under the Law on Amnesty. That indicates that providing assistance to perpetrators of the more serious crimes listed in Article 388 do not benefit from amnesty (see Article 388 (2) 2.1), murder (see Article 388 (2) 2.2), assault with grievous bodily injury (see Article 388 (2) 2.3) and any offense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law (see Article 388 (2) 2.5).
192. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15. Call for resistance (article 411), except in cases when commission of this criminal offense has resulted in commission of another criminal offense for which amnesty is not granted under this law. The perpetrators of the following criminal offenses committed with the aim of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution or execution of punishment:

“Article 411 (Call to resistance)

- 1. Whoever calls upon others to resist against or disobey lawful decisions or measures issued by a competent authority or an official shall be punished by imprisonment of up to three (3) years.*
- 2. If the offense provided for in paragraph 1 of this Article results in a severe hindrance or the impossibility of implementing a lawful decision, measure or official action, the perpetrator shall be punished by imprisonment of six (6) months to five (5) years.”*

193. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.1 Threat to a candidate (article 211);

“Article 211 (Threat to the candidate)

- 1. Whoever unlawfully forces any candidate to withdraw his or her candidacy shall be punished by a fine or imprisonment up to one (1) year.*
- 2. Whoever unlawfully prevents or obstructs any candidate from exercising any activity during an election campaign, shall be punished by a fine or imprisonment up to one (1) year.*
- 3. Whoever commits the offense set forth in paragraph 1. or 2. of this Article by the use of force or serious threat shall be punished by imprisonment of six (6) months to three (3) years.”*

194. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.2 Preventing exercise of the right to vote (article 212)

“Article 212 (Preventing exercise of the right to vote)

1. Whoever, in the exercise of duties entrusted to him or her related to elections, unlawfully, and with the intent to prevent another person from exercising his or her right to vote, fails to record such person in a voter registration list or removes such person from the voter registration list shall be punished by imprisonment of one (1) to three (3) years.

2. Whoever, during the voting or the referendum unlawfully prevents, obstructs, hinders or influences the free decision of a voter or in any other manner prevents another person from exercising his or her right to vote shall be punished by imprisonment up to one (1) year.

3. Whoever commits the offense from paragraphs 1 and 2 of this Article by the use of force or serious threat shall be punished by imprisonment of one (1) to five (5) years.”

195. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.3 Misuse of economic authorizations (article 290, subparagraphs 1.1, 1.2, 1.3 and 1.4 of paragraph 1);

“Article 290 (Misuse of economic authorizations)

1. Whoever while engaging in an economic activity commits one of the following acts with the intent to obtain an unlawful material benefit for oneself or any other person shall be punished by a fine and imprisonment of six (6) months to five (5) years:

1.1. creates or holds illicit funds in the Republic of Kosovo or in any other jurisdiction;

1.2. through the compilation of documents with false content, false balance sheets, false evaluations, inventories or any other false representations or through the concealment of evidence falsely represents the flow of assets or the results of the economic activity and in this way misleads the managing bodies within the business organization in decision making on management activities;

1.3. fails to meet tax obligations or other fiscal obligations as determined by law;

1.4. uses means at his or her disposal contrary to their foreseen purpose;”

196. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.4 Prohibited trade (article 305)

“Article 305 (Prohibited trade)

1. Whoever, without authorization, sells, buys or trades goods, objects or services shall be punished by imprisonment of three (3) months to three (3) years.

2. When the perpetrator of the offense provided for in paragraph 1 of this Article has organized a network of sellers or brokers or has acquired a profit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by imprisonment of one (1) to eight (8) years.

3. The goods and objects from the prohibited trade shall be confiscated.”

197. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.5 Tax evasion (article 313)

“Article 313 (Tax evasion)

1. Whoever, with the intent that he or she or another person conceal or evade, partially or entirely, the payment of taxes, tariffs or contributions required by the law, provides false information or omits information regarding his or her income, property, economic wealth or other relevant facts for the assessment of such obligations shall be punished by a fine and by imprisonment of up to three (3) years.

2. When the obligation provided for in paragraph 1 of this Article exceeds the sum of fifteen (15,000) EUR, the perpetrator shall be punished by a fine and imprisonment of six (6) months to five (5) years.

3. When the obligation provided for in paragraph 1 of this Article exceeds the sum of fifty thousand (50,000) EUR, the perpetrator shall be punished by a fine and by imprisonment of one (1) to eight (8) years.”

198. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.6 Smuggling of goods (article 317, paragraphs 1 and 2)

“Article 317 (Smuggling of goods)

1. Whoever, while crossing the border carries goods and avoids customs control, or whoever while avoiding customs control, carries the goods and crosses the border, shall be punished by a fine or by imprisonment of up to three (3) years.

2. Whoever, without a proper license, avoids the customs control and crosses the border carrying goods, the export or import of which is prohibited, limited or requires a special license issued by the competent authorities, shall be punished by imprisonment of six (6) months to five (5) years.”

199. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.7 Avoiding payment of mandatory custom fees (article 318)

“Article 318 (Avoiding payment of mandatory customs fees)

1. Whoever, with the intent to enable himself or another person to avoid payment of the customs tax fee or other fees or customs obligations payable for the import or export of goods, or if a false document is presented to customs about the origin, value, quantity, quality, type and other characteristics of the goods, shall be punished by a fine or imprisonment of up to three (3) years.

2. If the avoided payment for the offense in paragraph 1 of this Article exceeds fifteen thousand (15,000) EUR, the perpetrator shall be punished by a fine and imprisonment of up to five (5) years.

3. If the avoided payment for the offense in paragraph 1 of this Article exceeds thirty thousand (30,000) EUR, the perpetrator shall be punished by a fine and by imprisonment from one (1) to eight (8) years.

4. The goods that were not accurately declared or the value of the payment avoided, whichever is greater, shall be confiscated.”

200. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.8 Destroying, damaging or removing public installations (article 366, paragraphs 1 and 2)

“Article 366 (Destroying, damaging or removing public installations)

1. Whoever destroys, damages or removes installations or equipment for electricity, gas, water, heating, communications, sewage, environmental protection, pipelines, underwater cables, dams or other similar equipment and in this way causes a disturbance to the supply of services to the population or to the economy shall be punished by imprisonment of up to five (5) years.

2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.”

201. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.9 Endangering public traffic by dangerous acts or means (article 380, paragraphs 1, 2 and 5)

“Article 380 (Endangering public traffic by dangerous acts or means)

1. Whoever destroys, removes or damages installations, equipment, signs or signals designed for traffic safety, or gives erroneous signs or signals or places obstacles on public roads or in any other manner endangers human life or physical safety shall be punished by imprisonment of up to three (3) years.

2. When the offense provided for in paragraph 1 of this Article results in light bodily harm to a person or considerable damage to property, the perpetrator shall be punished by a fine or by imprisonment of six (6) months to five (5) years.

5. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or imprisonment of up to one (1) year.”

202. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.10 Falsifying documents (article 398)

“Article 398 (Falsifying documents)

1. Whoever draws up a false document, alters a genuine document with the intent to use such document as genuine or knowingly uses a false or altered document as genuine shall be punished by a fine or by imprisonment of up to three (3) years.

2. When the offense provided for in paragraph 1 of this Article is committed in relation to a public document, will, bill of exchange, public or official registry or some other registry kept in accordance with the law the perpetrator shall be punished by a fine or by imprisonment of up to five (5) years.”

203. As to this amnestied crime, the Court considers that it is difficult to see how it can come within the ambit of the objectives of the Law on Amnesty. As mentioned above, the amnestied crime should have a link with the objectives of the amnesty, i.e. to end a conflict or to promote reconciliation between the parties involved, being part of a peace agreement. To amnesty perpetrators in the way envisaged by this Article does not meet such requirements.
204. In this respect, the Court recalls that the constitutional order of the Republic of Kosovo is based amongst others on the principle of the rule of law, which entails also the aspect of legal certainty. Legal certainty should guarantee the stability of a legal system, meaning that the individuals should enjoy the guaranties which the legal system offers in protecting their rights.
205. The Court considers that, in a rule of law system, natural and legal persons should be able to rely on public documents such as documents on property rights and to challenge the genuineness of a document which would restrict their rights. Otherwise the principle of legal certainty would be undermined, since individuals can no longer be sure that such documents have not been falsified.
206. Thus, victims of such crimes would be hindered to have access to justice, since they would have to prove in civil proceedings that the documents are not genuine, whereas the judge would have to take into account that the perpetrator and the crime have benefitted from an amnesty.
207. Moreover, the perpetrators who fall under the ambit of this Article have a duty to bring forth the products of the crime. If not, this would jeopardize the above mentioned principles and do harm to Kosovo as a state governed by the rule of law.
208. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.1.15.11 Special cases of falsifying documents (article 399, subparagraphs 1.1 and 1.4 of paragraph 1)

“Article 399 (Special cases of falsifying documents)

1. A person shall be deemed to have committed the offense of falsifying documents and shall be punished a fine or by imprisonment of up to three (3) years, if such person:

1.1 without authorization completes a letter, blank form, or any other item which has already been signed by another person and fills in a statement that creates a legal relationship;

1.4 issues a document and claims by signing the document that he or she has a position, title or rank, although he or she does not, and such act has a substantial influence on the value of the document; or

209. The Court considers that the same reasoning as in the abovementioned crime under Article 398 of the Criminal Code applies also for this amnestied crime.

210. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.1.15.12 Obstructing official persons in performing official duties (article 409, paragraphs 1, 2 and 3)

“Article 409 (Obstructing official persons in performing official duties)

1. Whoever, by force or serious threat, obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three (3) months to three (3) years.

2. Whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by a fine or by imprisonment of up to three (3) years.

3. The leader or organizer of the group which commits the offense provided for in paragraph 2 of this Article shall be punished by imprisonment of one (1) to five (5) years.”

211. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.13 Attacking official persons performing official duties (article 410, paragraph 1) except in cases when commission o this criminal offense has resulted in grievous bodily harm or death

“Article 410 (Attacking official persons performing official duties)

1. Whoever attacks or seriously threatens to attack an official person, judge, prosecutor or a person who assists in performing official duties related to public security or the security of the Republic of Kosovo or maintaining public order shall be punished by imprisonment of three (3) months to three (3) years.”

212. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14 Criminal provisions under the Customs and Excise Code of Kosovo, as follows:

1.1.15.14.1 Impeding movement of a Custom Vehicle (Article 296)

“Article 296 (Impeding movement of a Customs Vehicle)

Whoever, except for sufficient cause, impedes in any way in any vehicle, boat or aircraft which is used by customs officers in the performance of the official duty shall be punished by a fine or by imprisonment of up to three years.”

213. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.2 Making an Untrue Declaration (Article 297)

“Article 297 (Making an Untrue Declaration)

(1) Whoever, makes or signs, or causes to be made or signed, or delivers or causes to be delivered to a customs officer, any declaration, notice, certificate or other document which is untrue in any material particular, shall be punished by a fine or by imprisonment of up to three years.

(2) Whoever makes any statement in answer to any question put to him by a customs officer, being a statement made for a Customs purpose, which is untrue in any material particular, shall be punished by a fine or by imprisonment of up to one year.”

214. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.3 Fraudulent Evasion of Import Duty and Excise Tax (Article 298)

“Article 298 (Fraudulent Evasion of Import Duty and Excise Tax)

(1) Whoever is in any way knowingly concerned in any fraudulent evasion of import duty or excise tax chargeable on any goods shall be punished by:

1) where the amount of import duty or excise tax evaded does not exceed 15,000 EUR, by a fine and imprisonment of three months to three years; and

2) where the amount of import duty or excise tax evaded exceeds 15,000 EUR, by a fine and imprisonment of six months to five years.

(2) Any attempt to commit the criminal offence provided for in paragraph 1 of the present article shall also be punishable.”

215. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.4 Fraudulent Evasion of Prohibitions and Restrictions on Goods (Article 299)

“Article 299 (Fraudulent Evasion of Prohibitions and Restrictions on Goods)

(1) Whoever is in any way knowingly concerned in any fraudulent evasion of any prohibition or restriction for the time being in force shall be punished by a fine or by imprisonment of three months to five years.

(2) An attempt to commit the criminal offence provided for in paragraph 1 of the present article shall also be punishable.”

216. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.15.14.5 Criminal Offences in relation to Excise Products (Article 300)

“Article 300 (Criminal Offences in relation to Excise Products)

(1) Whoever in violation of the applicable law relating to excise tax and customs, imports or exports or is in possession of or transports unmarked products, shall be punishable by a fine of up to five times the amount of the excise tax not accounted for or paid if does not exceed 25,000 EUR, or by imprisonment of up to seven years if the excise tax not accounted for or paid exceeds 25,000 EUR.

(2) With punishment from paragraph 1 of this Article, to be punished also whoever in violation of the applicable law relating to excise tax and customs, imports or exports or is in possession of or transports unmarked products.

(3) Whoever permits premises under his or her control or possession to be used for the sale of, or any other dealing in, unmarked products, shall be punished by a fine of 5,000 EUR or by imprisonment of up to three years.”

217. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.1.16 Participating in a crowd committing criminal offense and hooliganism (article 412), except in cases when commission of this criminal offense has resulted in grievous bodily harm or death.

“Article 412 (Participating in a crowd committing a criminal offense and hooliganism)

1. Whoever participates in an assembled crowd of more than eight persons which by collective action deprives another person of his or her life, inflicts a grievous bodily injury on another person, causes a general danger, causes damages of twenty thousand (20,000) EUR or more to property or commits other offenses of grave violence, punishable by imprisonment of at least five (5) years or attempts to commit such offenses, shall be punished by imprisonment of six (6) months to five (5) years.

2. The organizer of the crowd referred to in paragraph 1 of this Article shall be punished by imprisonment of two (2) to ten (10) years.”

218. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

Criminal offences foreseen by Criminal Code of Kosovo (UNMIK Regulation No. 2003/25 OF 6 July 2003, Official Gazette 2003/25) and the UNMIK Regulation No. 2004/19 amending the Provisional Criminal Code of Kosovo, as follows:

219. Article 353 of the Provisional Criminal Code of Kosovo provided that *“All criminal sanctions for acts still criminalized by the present Code and imposed by final judgments before the entry into force of the present Code shall continue with the same duration or to the same extent.”*

220. Furthermore, Article 354 of the Provisional Criminal Code of Kosovo provided that *“(1) Provisions in UNMIK Regulations and Administrative Directions covering matters addressed in the present Code shall cease to have effect upon the entry into force of the present Code unless otherwise expressly determined in the present Code or in an UNMIK Regulation. 2) Provisions in the applicable Criminal Codes shall cease to have effect upon the entry into force of the present Code.”*

1.2.1 Attack against Constitutional Order of Kosovo (article 108)

“Article 108 (Assault on Legal Order of Kosovo)

Whoever attempts, by use of violence or threat, to change the established legal order of Kosovo in the legislative, executive or judicial fields or to overthrow a public entity shall be punished by imprisonment of at least five years.”

221. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.2 Unauthorized border or boundary crossing (article 114, paragraphs 1 and 2, paragraph 3.1, 3.3 and paragraph 4)

“Article 114 (Unauthorised Border or Boundary Crossings)

(1) Whoever crosses a border or boundary of Kosovo at any location other than at an authorised order or boundary crossing point shall be punished by a fine of 250 EUR or by imprisonment of up to three months.

(2) When the offence provided for in paragraph 1 of the present Article while the perpetrator is accompanied by a child or another person, the perpetrator shall be punished by a fine of up to 2.500 EUR or by imprisonment of up to one year.

(3) When the offence provided for in paragraph 1 of the present article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of up to two years:

1) The perpetrator was previously convicted of a criminal offence provided for in the present article;

3) The crossing is undertaken between the hours of 8:00 in the evening to 6:00 in the morning during the period from 1 April to 30 September, or between the hours of 6:00 in the evening to 6:00 in the morning during the period from 1 October to 31 March; or

(4) A person is not criminally liable under the present article for crossing at an unauthorized border or boundary crossing point if the crossing occurred at a checkpoint that was temporarily established by COMKFOR.”

222. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.3 Inciting national, racial, religious or ethnic hatred, discord or intolerance (article 115)

“Article 115 (Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance)

(1) Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in Kosovo in a manner which is likely to disturb public order shall be punished by a fine or by imprisonment of up to five years.

(2) Whoever commits the offence provided for in paragraph 1 of the present article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence, or other grave consequences by the commission of such offence shall be punished by imprisonment up to eight years.

(3) Whoever commits the offence provided for in paragraph 1 by means of coercion, jeopardizing of safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves shall be punished by imprisonment of one to eight years.

(4) Whoever commits the offence provided for in paragraph 3 of the present article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence or other grave consequences by the commission of such offence shall be punished by imprisonment of one to ten years.”

223. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.4 Unlawful exercise of medical activity (article 221, paragraph 1)

“Article 221 (Unlawful Exercise of Medical Activity)

(1) Whoever, without possessing professional qualifications or legal authorisation, carries out medical treatment or engages in some other medical activity for which specific qualifications are required by law shall be punished by a fine or by imprisonment of up to one year.”

224. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.5 Damaging movable property (article 260)

“Article 260 (Damage to Movable Property)

(1) Whoever damages, annihilates or renders unusable the movable property of another person shall be punished by a fine or by imprisonment of up to six months.

(2) When the offence provided for in paragraph 1 of the present article is motivated by bias relating to ethnicity, nationality, race, religion, gender, sexual orientation or language, the perpetrator shall be punished by a fine or by imprisonment of up to one year.”

225. In this respect, the Court refers to Article 46 [Protection of Property] of the Constitution which reads as follows:

“ ...

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.
5. Intellectual property is protected by law.

...”

226. Furthermore, Article 1 (Protection of property) of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms provides that “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

227. In this respect, the Court notes that property is a fundamental human right guaranteed both under the Constitution and ECHR and other international instruments and that natural and legal persons cannot be deprived of property arbitrarily and property without just satisfaction.

228. The formulation of the Article in question clearly indicates that the amnestied crime concerns the property of another person. In this respect, the Applicants allege that victims of this amnestied crime will be denied access to a court to protect their fundamental human right as granted by the Constitution and the ECHR.

229. As to the right to a remedy, including reparation, the Court notes that States are generally required to provide effective remedies to victims of gross violations of human rights and serious violations of humanitarian law, including reparation. In this respect, the Court notes that any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying

a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.

230. Moreover, the Court notes that the right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction.
231. Furthermore, the Court fails to see how this amnestied crime would correspond with the purpose of the Law on Amnesty as set out above under the social-political context analysis.
232. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR. But also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.2.6 Unauthorized ownership, control or possession of weapons (article 328, paragraph 2); and ownership, control or possession or use of weapons if he or she is not the holder of a valid weapon authorization card (Article 8.6 UNMIK Regulation no. 2001/7 of the date 21 February 2001, Official Gazette 2001/7)

“Article 328 (Unauthorised Ownership, Control, Possession or Use of Weapons)

(2) Whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorisation Card for that weapon shall be punished by a fine of up to 7.500 EUR or by imprisonment of one to eight years.

Section 8 (Offences and Penalties)

8.6 Any person committing an offence under sections 8.2 and 8.4 above shall be liable upon conviction to imprisonment for a term not exceeding 8 years or a fine of up to 15,000 DM or both. Any WAC issued to that person shall be automatically revoked.”

233. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.7 Failure to report a criminal offence or its perpetrator (article 303, only in relation to the criminal offences, granted amnesty for under this law)

“Article 303 (Failure to Report Preparation of Criminal Offences)

(1) Whoever, having knowledge about the preparation of the commission of a criminal offence punishable by imprisonment of least five years, fails to

report the fact at the time when the commission of the offence may still be averted and the offence is committed or attempted shall be punished by a fine or by imprisonment of up to one year.

(2) Whoever fails to report the preparation of the commission of a criminal offence punishable by long-term imprisonment shall be punished by imprisonment of three months to three years.

(3) A person is not criminally liable under paragraph 1 of the present article if he or she is related to the perpetrator of the criminal offence as the spouse, extra-marital partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner.”

234. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.8 Providing assistance to perpetrators after the commission of criminal offences (article 305, only in relation to criminal offences granted amnesty for under this law)

“Article 305 (Providing Assistance to Perpetrators after the Commission of Criminal Offences)

(1) Whoever harbors the perpetrator of a criminal offence prosecuted ex officio or aids him or her to elude discovery by concealing instruments, evidence or in any other way or whoever harbors a convicted person or takes steps towards frustrating the execution of a punishment or an order for mandatory treatment shall be punished by imprisonment of up to one year.

(2) Whoever assists the perpetrator of a criminal offence punishable by imprisonment of more than five years shall be punished by imprisonment of six months to five years.

(3) Whoever assists the perpetrator of a criminal offence punishable by long-term imprisonment shall be punished by imprisonment of one to ten years.

(4) The punishment provided for in paragraph 1 of the present article may not be more severe, neither in manner nor in degree, than the punishment prescribed for the criminal offence committed by the person who has been given assistance.

(5) A person is not criminally liable under the present article if he or she is related to the perpetrator of the criminal offence as the spouse, extra-marital partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner.”

235. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9 Call for resistance (article 319) except in cases when commission of this criminal offense has resulted in commission of another criminal offense for which amnesty is not granted under this law. The perpetrators of the following criminal offenses below committed with the purpose of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution and execution of punishment:

“Article 319 (Call to Resistance)

Whoever calls upon others to prevent, by use of force or serious threat, the execution of lawful decisions or measures issued by a competent authority or an official while carrying out an official activity shall be punished by imprisonment for a term not exceeding three years.”

236. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.1 Misuse of economic authorizations (article 236, paragraph 1, subparagraphs 1.1, 1.2, 1.3 and 1.4)

“Article 236 (Misuse of Economic Authorisations)

(1) A responsible person within a business organization or legal person which engages in an economic activity shall be punished by imprisonment of six months to five years if he or she commits one of the following acts with the intent to obtain an unlawful material benefit for the business organization or legal person where he or she is employed or for another business organization or legal person:

- 1) Creates or holds illicit funds in Kosovo or in any other jurisdiction;*
- 2) Through the compilation of documents with a false content, false balance sheets, false evaluations, inventories or any other false representations or through the concealment of evidence falsely represents the flow of assets or the results of the economic activity and in this way misleads the managing bodies within the business organization or legal person to err in decision-making on management activities;*
- 3) Fails to meet tax obligations or other fiscal obligations as determined by law in Kosovo;*
- 4) Uses means at his or her disposal contrary to their foreseen purpose;”*

237. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of

access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.2 Prohibited trade (article 246)

“Article 246 (Prohibited Trade)

(1) Whoever, without authorisation, sells, buys or trades goods or objects whose distribution is prohibited or restricted shall be punished by imprisonment of three months to three years.

(2) When the perpetrator of the offence provided for in paragraph 1 of the present article has organized a network of sellers or brokers or has acquired a profit exceeding 15.000 EUR, the perpetrator shall be punished by imprisonment of six months to five years.

(3) Goods and objects from prohibited trade shall be confiscated.”

238. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.3 Tax evasion (article 249)

“Article 249 (Tax Evasion)

(1) Whoever, with the intent that he or she or another person evade, partially or entirely, the payment of taxes, tariffs or contributions provided for by the law, provides false information or omits information regarding his or her income, economic wealth or other relevant facts for the assessment of such obligations shall be punished by a fine and by imprisonment of up to three years.

(2) When the obligation provided for in paragraph 1 of the present article whose payment has been evaded exceeds the sum of 15.000 EUR, the perpetrator shall be punished by a fine and by imprisonment of six months to five years.”

239. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.4 Smuggling of goods (article 273)

“Article 273 (Smuggling of Goods)

(1) Whoever, without authorisation or license, trades or otherwise transports goods into or out of Kosovo shall be punished by a fine or by imprisonment of up to three years.

(2) The smuggled goods shall be confiscated.”

240. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.5 Destroying, damaging or removing public installations (article 292, paragraphs 1 and 2)

“Article 292 (Destroying, Damaging or Removing Public Installations)

(1) Whoever destroys, damages or removes installations or equipment for electricity, gas, water, heating, telecommunications, sewage, environmental protection or pipelines, underwater cables, dams or other similar equipment and in this way causes disturbance to the supply of services to the population or to the economy shall be punished by imprisonment of up to five years.

(2) When the offence provided for in paragraph 1 of the present article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one year.”

241. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.6 Endangering public traffic by dangerous acts or means (article 299 paragraphs 1 and 2)

“Article 299 (Endangering Public Traffic by Dangerous Acts or Means)

(1) Whoever destroys, removes or seriously damages installations, equipment, signs or signals designed for traffic safety, or gives erroneous signs or signals, places obstacles on public roads or in any other manner endangers traffic and thereby endangers human life or physical safety or property on a large-scale shall be punished by imprisonment of up to three years.

(2) When the offence provided for in paragraph 1 of the present article is committed by negligence, the perpetrator shall be punished by imprisonment of up to one year.”

242. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.7 Falsifying official documents (article 348)

“Article 348 (Falsifying Official Documents)

(1) An official person or a responsible person who, in an official or business document, official register or file, enters false information or fails to enter essential information or with his or her signature or official stamp certifies an official or business document, official register or file which contains false data or enables the compilation of such document, register or file with false contents shall be punished by imprisonment of three months to three years.

(2) An official person or a responsible person who uses a false official or business document, official register or file as if it were true in his or her duty or business activity or who destroys, hides, damages or in any other way renders unusable the official or business document, official register or file shall be punished as provided for in paragraph 1 of the present article.”

243. As to this amnestied crime, the Court considers that it is difficult to see how it can come within the ambit of the objectives of the Law on Amnesty. As mentioned above, the amnestied crime should have a link with the objectives of the amnesty, i.e. to end a conflict or to promote reconciliation between the parties involved, being part of a peace agreement. To amnesty perpetrators in the way envisaged by this Article does not meet such requirements.
244. In this respect, the Court recalls that the constitutional order of the Republic of Kosovo is based amongst others on the principle of the rule of law, which entails also the aspect of legal certainty. Legal certainty should guarantee the stability of a legal system, meaning that the individuals should enjoy the guaranties which the legal system offers in protecting their rights.
245. The Court considers that, in a rule of law system, natural and legal persons should be able to rely on public documents such as documents on property rights and to challenge the genuineness of such documents. Otherwise the principle of legal certainty would be undermined, since individuals can no longer be sure that such documents have not been falsified.
246. Thus, victims of such crimes would be hindered to have access to justice, since they would have to prove in civil proceedings that the documents are not genuine, whereas the judge would have to take into account that the crime has benefitted from an amnesty.
247. Moreover, the perpetrators who fall under the ambit of this Article have a duty to bring forth the products of the crime. If not, this would jeopardize the above mentioned principles and do harm to Kosovo as a state governed by the rule of law.
248. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.2.9.8 Obstructing official persons in performing official duties (article 316)

“Article 316 (Obstructing Official Persons in Performing Official Duties)

(1) Whoever, by force or threat of immediate use of force, obstructs an official person in performing official duties falling within the scope of his or her authorisations or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three months to three years.

(2) When the offence provided for in paragraph 1 of the present article involves insulting or abusing an official person or a threat to use a weapon or results in light bodily injury, the perpetrator shall be punished by imprisonment of six months to three years.

(3) When the offence provided for in paragraph 1 or 2 of the present article is committed against an official person performing his or her duties of maintaining public security, the security of Kosovo or public order or apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty, the perpetrator shall be punished by imprisonment of three months to five years.

(4) An attempt of the offence provided for in paragraph 1 or 2 of the present article shall be punishable.

(5) When the perpetrator of the offence provided for in paragraphs 1 to 3 of the present article is provoked by the unlawful or the brutal action of the official person, the court may waive the punishment.”

249. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.9.9 Attacking official persons performing official duties (article 317), except in cases when commission of this criminal offense has resulted in grievous bodily harm or death.

“Article 317 (Attacking Official Persons Performing Official Duties)

(1) Whoever attacks or seriously threatens to attack an official person or a person who assists in performing official duties related to public security or the security of Kosovo or maintaining public order shall be punished by imprisonment of three months to three years.

(2) When the offence provided for in paragraph 1 of the present article results in light bodily injury to the official person or his or her assistant or involves a threat to use a weapon, the perpetrator shall be punished by imprisonment of six months to five years.

(3) When the offence provided for in paragraph 1 of the present article, results in serious bodily injury to the official person or his or her assistant, the perpetrator shall be punished by imprisonment of one to ten years.

(4) When the perpetrator of the offence provided for in paragraph 1, 2 or 3 of the present article is provoked by the unlawful or brutal action of the official person or his or her assistant, the court may waive the punishment.”

250. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.2.10 Participating in a crowd committing a criminal offence (article 320), except in cases when commission of this criminal offense has resulted in serious bodily harm or death.

“Article 320 (Participating in a Crowd Committing a Criminal Offence)

(1) Whoever participates in an assembled crowd which by collective action deprives another person of his or her life, inflicts a grievous bodily harm on another person, causes a general danger, damages a property on a large scale or commits other offences of grave violence, or attempts to commit such offences, shall be punished by imprisonment of three months to five years.

(2) The organizer of the crowd referred to in paragraph 1 of the present Article shall be punished by imprisonment of one to ten years.”

251. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3 Criminal offences foreseen with the Criminal Law of SAPK, Official Gazette no. 20/77 and the UNMIK Regulations No. 1999/24 and 2000/59 on the Law Applicable in Kosovo, as follows:

1.3.1 Damaging another person’s object (article 145)

“Article 145 (Damaging another person’s object)

(1) Whoever damages, destroys or makes another person’s object unusable shall be fined or punished with up to three years of imprisonment.

(2) If the damage exceeds the amount of 30,000 dinars, the perpetrator shall be punished with six months to five years of imprisonment.

(3) If the act from Para 1 of this Article is committed against private property, the proceedings shall be undertaken by private prosecution.”

252. In this respect, the Court refers to Article 46 [Protection of Property] of the Constitution which reads as follows:

“ ...

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.
5. Intellectual property is protected by law.

...”

253. Furthermore, Article 1 (Protection of property) of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms provides that “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

254. In this respect, the Court notes that property is a fundamental human right guaranteed both under the Constitution and ECHR and other international instruments and that natural and legal persons cannot be deprived of property arbitrarily and property without just satisfaction.

255. The formulation of the Article in question clearly indicates that the amnestied crime concerns the property of another person. In this respect, the Applicants allege that victims of this amnestied crime will be denied access to a court to protect their fundamental human right as granted by the Constitution and the ECHR.

256. As to the right to a remedy, including reparation, the Court notes that States are generally required to provide effective remedies to victims of gross violations of human rights and serious violations of humanitarian law, including reparation. In this respect, the Court notes that any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying

a duty on the part of the State to make reparation and the possibility to seek redress from the perpetrator.

257. Moreover, the Court notes that the right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction.
258. Furthermore, the Court fails to see how this amnestied crime would correspond with the purpose of the Law on Amnesty as set out above under the social-political context analysis.
259. The proposed amnestied crime amounts clearly to a restriction of the right to property and access to justice. The Court, therefore, concludes that this amnestied crime is incompatible with Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 to the ECHR. But also Art 31 [Right to Fair and Impartial Trial] of the Constitution and Art. 6 [Right to fair trial] ECHR.

1.3.2 Unlawful possession of weapons or explosive substances (article 199, paragraph 1);

“Article 199 (Unlawful possession of weapons or explosive substances)

(1) Whoever without an authorization manufactures, sells, procures or exchanges firearms, ammunition or explosive substances or who without an authorization possesses firearms, ammunition or explosive substances which procurement is forbidden to citizens, shall be punished with up to three years of imprisonment.”

260. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.3 Failure to report on a criminal act or a perpetrator (article 173, only in relation to the criminal offences granted amnesty for under this law);

“Article 173 (Failure to report on a criminal act or a perpetrator)

(1) Whoever knows a perpetrator of a criminal act for which the penalty may be pronounced or who knows that such an act has been committed but fails to report it although the timely identification of the perpetrator of a criminal act depends on such a report shall be punished with up to three years of imprisonment.

(2) An official person or a responsible person who consciously fails to report a criminal act about which he has learned during the performance of his duty, if for that act five years of imprisonment or a more severe penalty can be pronounced and if this act is prosecuted ex officio, shall be punished with the penalty from Para 1 of this Article.

(3) For the criminal act from Para 1 of this Article, the following persons shall not be punished: the perpetrator's spouse, the person with whom the perpetrator lives in common law marriage, his direct relative by blood, brother or sister, the adopter or the adoptee or the perpetrator's defense attorney, physician or a confessor. If any of the persons referred to in this paragraph, except for the defense attorney, physician or a confessor of the perpetrator are not to be punished for failing to report a criminal act or the perpetrator from Para 1 of this Article, his spouse or a person with whom he lives in a common law marriage shall not be punished either."

261. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.4 Aiding a perpetrator after he has committed the criminal act (article 174, only in relation to the criminal offences granted amnesty for under this law);

"Article 174 (Aiding a perpetrator after he has committed the criminal act)

(1) Whoever harbors a perpetrator of a criminal act for which the prosecution is undertaken ex officio or by concealing the tools, traces, objects or in any other way helps him not to be found or any person who harbors a convicted person or undertakes other actions intended to prevent the enforcement of the imposed penalty, security measure or correctional measures of referral to an educational facility or an educational-corrective institution shall be punished with up to one year of imprisonment.

(2) Whoever aids a perpetrator of a criminal act for which the penalty of over five years of imprisonment is prescribed shall be punished with three months to three years of imprisonment.

(3) Whoever aids the perpetrator of a criminal act for which a death penalty is prescribed, shall be punished with ten years of imprisonment.

(4) The penalty for the act from Para 1 of this Article may not be more severe by type or by length than the penalty stipulated for the criminal act committed by the person to whom the aid was given.

(5) For the criminal act from Para 1 to 3 of this Article, the following persons shall not be punished: the perpetrator's spouse, the person with whom the perpetrator lives in common law marriage, his direct relative by blood, brother or sister, the adopter or the adoptee. If any of the persons referred to in this paragraph is not to be punished for the criminal acts from Para 1 to 3 of this Article, his spouse or a person with whom he lives in a common law marriage shall not be punished either for aiding a perpetrator of a criminal act from Para 1 to 3 of this Article."

262. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of

access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5 Inciting resistance (article 186) except in cases when commission of this criminal offense has resulted in commission of another criminal for which amnesty is not granted under this criminal offenses bellow committed with the purpose of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution and execution of punishment:

“Article 186 (Incitement to resistance)

(1) Whoever incites other people to resistance or disobedience to comply with legal decisions or measures of the government agencies or towards an official person in execution of his official duty shall be punished with up to three years of imprisonment.

(2) If the act from Para 1 of this Article resulted in the failure to enforce a legal decision or the measures of government agencies or in considerable difficulties in its enforcement or if the act is committed by the leader of the group, the perpetrator shall be punished with one to five years of imprisonment.”

263. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.1 Abuse of authorisations in economy (article 108 paragraphs 1, 2, 3, 4, and 5);

“Article 108 (Abuse of authorization in economy)

(1) A responsible person in the organization of associated labor that performs business operations or any other legal entity that performs such operations with the intention of acquiring unlawful material gain for the organization of associated labor or a legal entity in which he is employed, or for another organization or another legal entity:

1) creates or holds illegal funds in the country or abroad;

2) falsely presents the situation, money flow and the business results by producing documents with untrue content, false balance sheets, evaluations or through the inventory, or with other false presentation or concealment of the facts, thereby misleading the management authorities in the organization of associated labor or any other legal entity while making management policy decisions;

3) puts an organization of associated labor or a legal entity into a more favorable position when obtaining funds or other benefits that would not have been recognized pursuant to the effective regulations;

4) withholds the funds belonging to the community while performing tasks pertaining to the social community;

5) utilizes the funds at his disposal contrary to their purpose;”

264. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.2 Prohibited trade (article 116);

“Article 116 (Illicit trade)

(1) Whoever, without a trade license, procures the products or any other goods in large quantities or value intended for sale, or who is involved in trade to a larger extent or in mediation in trade or in representing domestic organizations of associated labor in the exchange of goods and services without authorization, shall be fined or punished with up to three years of imprisonment.

(2) Whoever is involved in the sale of goods which production he unauthorizedly organized shall be punished with the same penalty.

(3) Whoever sells, buys or exchanges the products or goods, the trade of which is prohibited or limited, shall be punished with three months to five years of imprisonment.

(4) If the perpetrator of the act from Para 1 to 3 of this Article has organized the middleman or mediator network or if it has resulted in material gain exceeding 30,000 dinars, he shall be punished with one to eight years of imprisonment.

(5) The products and goods of illicit trade shall be seized.”

265. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.3 Tax evasion (article 123);

“Article 123 (Tax evasion)

(1) Whoever, with the intention to make it possible for himself or for another person to evade, in full or in part, the payment of tax, contributions, social security or any other stipulated contributions, provides false information on his legally earned income, on matters or other facts relevant to determining these obligations or who with the same intention in the case of obligatory tax report fails to report his legally earned income or a matter or any other fact relevant for determining these obligations, and if the amount of the obligation, which payment is evaded, exceeds 10,000 dinars, shall be fined and punished with up to three years of imprisonment.

(2) If the evaded amount from Para 1 of this Article exceeds 50,000 dinars, the perpetrator shall be fined and punished with one to ten years of imprisonment.”

266. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.4 Destruction or damage of communal infrastructure devices (article 158);

“Article 158 (Destruction or damage of communal infrastructure devices)

(1) Whoever destroys, damages, alters, renders unusable, or removes devices of communal infrastructure, the water, heat, gas or power devices or the communication system installations, thereby causing considerable destruction of life of citizens, shall be punished with six months to five years of imprisonment.

(2) If the act from Para 1 of this Article is committed out of negligence, the perpetrator shall be punished with up to three years of imprisonment.”

267. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.5 Endangering the public traffic by a dangerous act or means (article 167);

“Article 167 (Endangering the public traffic by a dangerous act or means)

(1) Whoever by destroying, removing or inflicting major damage on traffic installations, equipments, signs or signal installations serving the purpose of traffic safety or who by giving inadequate signs or signals, placing obstacles on the traffic lines or in any other way endangers public traffic to such an extent that it endangers human life or body or the sizeable property shall be punished with up to three years of imprisonment.

(2) If the act from Para 1 of this Article is committed out of negligence, the perpetrator shall be punished with up to one year of imprisonment.”

268. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.6 Falsifying documents (article 203);

“Article 203 (Forging a document)

(1) Whoever makes a forged document or modifies a proper document with the intention to use it as a proper one, or who uses a forged or modified document as a proper one or procures it for the purpose of using it, shall be punished with up to three years of imprisonment.

(2) An attempt shall be punished.

(3) If the act from Para 1 of this Article is committed on an official document, a will, a bill of exchange, a cheque, a public or an official register, or any other book, which is to be kept under the law, the perpetrator shall be punished with three months to five years of imprisonment.”

269. As to this amnestied crime, the Court considers that it is difficult to see how it can come within the ambit of the objectives of the Law on Amnesty. As mentioned above, the amnestied crime should have a link with the objectives of the amnesty, i.e. to end a conflict or to promote reconciliation between the parties involved, being part of a peace agreement. To amnesty perpetrators in the way envisaged by this Article does not meet such requirements.
270. In this respect, the Court recalls that the constitutional order of the Republic of Kosovo is based amongst others on the principle of the rule of law, which entails also the aspect of legal certainty. Legal certainty should guarantee the stability of a legal system, meaning that the individuals should enjoy the guaranties which the legal system offers in protecting their rights.
271. The Court considers that, in a rule of law system, natural and legal persons should be able to rely on public documents such as documents on property rights and to challenge the genuineness of a document which would restrict their rights. Otherwise the principle of legal certainty would be undermined, since individuals can no longer be sure that such documents have not been falsified.
272. Thus, victims of such crimes would be hindered to have access to justice, since they would have to prove in civil proceedings that the documents are not genuine, whereas the judge would have to take into account that the crime has benefitted from an amnesty.
273. Moreover, the perpetrators who fall under the ambit of this Article have a duty to bring forth the products of the crime. If not, this would jeopardize the above mentioned principles and do harm to Kosovo as a state of the rule of law.
274. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.3.5.7 Falsifying official documents (article 184);

“Article 184 (Attack on an official person while executing security duties)

(1) Whoever attacks or seriously threatens to attack an official person while executing duties pertaining to public or state security or to the duties of maintaining public order, or another person who is aiding him in executing these duties, shall be punished with up to three years of imprisonment.

(2) If the perpetrator of the act from Para 1 of this Article inflicts a light bodily injury on an official person or on another person who is aiding him, or threatens to use a weapon, he shall be punished with three months to five years of imprisonment.

(3) If the perpetrator of the act from Para 1 of this Article inflicts a serious bodily injury on official person or on another person who is aiding him, he shall be punished with one to ten years of imprisonment.

(4) If the perpetrator of the act from Para 1 to 3 of this Article was provoked into action by unlawful or brutal conduct of the official person or by another person who is aiding him, he shall be fined or punished with up to six months of imprisonment, but may also be exempted from penalty.”

275. The Court notes that the amnestied crime under 1.3.5.7 of the Law on Amnesty refers to Article 184 (Falsifying official documents). However, when looking at the mentioned Article in the relevant Criminal Code, the Court notes that Article 184 refers to “*Attack on an official person while executing security duties*”. The proper reference to the forging of an official document should, therefore, be to Article 216.

276. Article 216 of the Criminal Code in question reads as follows:

“Article 216 Forging an official document

(1) An official person who enters untrue information or fails to enter an important information in an official document, register or a document¹ or by his signature or the official seal certifies an official document, register or a document with untrue contents, or who by his signature or the official seal enables issuing of an official document, register or a document with untrue contents shall be punished with three months to five years of imprisonment.

(2) An official person who, while performing official duty, uses an untrue official document, register or a document as true, or who destroys, conceals or damages to a large extent or in any other way renders unusable an official document, register or a document shall be punished with the penalty from Para 1 of this Article.

(3) A responsible person in the organization of associated labor or another self-management organization or association or in the self-management body, who commits the act from Para 1 and 2 of this Article, shall be punished with the penalty as stipulated for this act.”

277. The Court assumes that the correct reference intended by the Law on Amnesty is indeed to Article 216 of the Criminal Law of SAPK of 1977, because Article 184 is mentioned under 1.3.5.9.
278. As to the forging an official document, the Court considers that the same reasoning as in the abovementioned crime under Article 203 of the Criminal Law of SAPK applies also for this amnestied crime.
279. The Court, therefore, concludes that this amnestied crime is incompatible with the Constitution and the principles enshrined therein.

1.3.5.8 Obstructing official persons in performing official duties (article 183);

“Article 183 (Prevention of an official person from executing his official duties)

(1) Whoever by force or by threat to directly use force prevents an official person from executing his official duty that he has undertaken within the scope of his authorities, or in the same manner forces him to execute an official duty, shall be punished with up to three years of imprisonment.

(2) If the perpetrator, while committing the crime from Para 1 of this Article, insults or abuses official person or inflicts a light bodily injury on him, or threatens to use a weapon, shall be punished with three months to three years of imprisonment.

(3) Whoever commits the act from Para 1 and 2 of this Article against an official person while he is executing duties pertaining to public or state security or to the duties of maintaining public order, capturing of perpetrator of a criminal act, or guarding a person deprived of freedom, shall be punished with three months to five years of imprisonment.

(4) An attempt from Para 1 and 2 of this Article shall be punished.

(5) If the perpetrator of the act from Para 1 to 3 of this Article was provoked into action by unlawful or brutal conduct of the official person, he shall be fined or punished with up to six months of imprisonment, but may also be exempted from penalty.”

280. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.5.9 Attacking official persons performing official duties (article 184 paragraphs 1, 2 and 4); except in cases when commission of this criminal offense has resulted in grievous bodily harm or death.

“Article 184 (Attack on an official person while executing security duties)

(1) Whoever attacks or seriously threatens to attack an official person while executing duties pertaining to public or state security or to the duties of maintaining public order, or another person who is aiding him in executing these duties, shall be punished with up to three years of imprisonment.

(2) If the perpetrator of the act from Para 1 of this Article inflicts a light bodily injury on an official person or on another person who is aiding him, or threatens to use a weapon, he shall be punished with three months to five years of imprisonment.

(4) If the perpetrator of the act from Para 1 to 3 of this Article was provoked into action by unlawful or brutal conduct of the official person or by another person who is aiding him, he shall be fined or punished with up to six months of imprisonment, but may also be exempted from penalty.”

281. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.3.6 Participation in a group that commits a criminal act (article 200, except in cases when commission of this criminal offense has resulted in serious bodily harm or death.

“Article 200 (Participation in a group that commits a criminal act)

(1) Whoever participates in a group that through joint action takes another person’s life or inflicts serious bodily injury on that person, commits arson, considerably damages property, or commits other grave violence, or who attempts to commit such acts, shall be punished for mere participation with three months to five years of imprisonment.

(2) The leader of the group that commits the act from Para 1 of this Article shall be punished with one to ten years of imprisonment.”

282. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.4. Criminal offences foreseen with the Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette SFRY No. 44 of October 8, 1976:

1.4.1 Endangering territorial integrity (article 116);

“Article 116 (Endangering the territorial integrity)

(1) Whoever commits an act aimed at detaching a part of the territory of the SFRY by force or in any other unconstitutional way, or at joining of a

part of the territory with another country, shall be punished by imprisonment for not less than five years.

(2) Whoever commits an act aimed at changing borders between the republics and autonomous provinces by force or in any other unconstitutional way, shall be punished by imprisonment for not less than one year.”

283. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.4.2 Espionage (article 129);

“Article 129 (Imparting a state secret)

(1) Anybody who without authority imparts, passes on or renders accessible information or documents constituting a state secret to an unauthorized person not entitled to receive such documents, shall be punished by imprisonment for not less than one year.

(2) If an act referred to in Paragraph 1 of this Article has been committed during a state of war or imminent war danger, or if it has led to the endangerment of the security, economic or military power of the SFRY, the offender shall be punished by imprisonment for not less than three years or by imprisonment for a term of 20 years.

(3) If an act referred to in Paragraph 1 of this Article has been committed by negligence, the offender shall be punished by imprisonment for a term exceeding six months but not exceeding five years.

(4) The term state secret shall be understood to be information or documents whose disclosure has produced or might have produced detrimental consequences for political, economic or military interests of the country.”

284. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

1.4.3 Inciting national, racial or religious hatred, discord or hostility (article 134).

“Article 134 (Inciting national, racial or religious hatred, discord or hostility)

(1) Whoever by means of propaganda or in some other way incites or fans national, racial or religious hatred or discord between peoples and

nationalities living in the SFRY, shall be punished by imprisonment for a term exceeding one year but not exceeding 10 years.

(2) Whoever, by insulting citizens or in some other way, incites national, racial or religious hostility, shall be punished by imprisonment for a term exceeding three months but not exceeding three years.

(3) If an act referred to in Paragraphs 1 and 2 of this Article has been committed systematically or by taking advantage of one's position or office, as part of a group, or if disorder, violence or other grave consequences resulted from these acts, the offender shall for an act referred to in Paragraph 1 be punished by imprisonment for not less than one year and for an act referred to in Paragraph 2 by imprisonment for a term exceeding six months but not exceeding five years."

285. The Court considers that this amnestied crime is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

IV. Article 4 (Exceptions from Amnesty)

"1. Amnesty from any criminal offense within this law will not apply for:

1.1. Acts against international actors and international security forces in Kosovo. Members of the international security forces are always under the jurisdiction of the sending state.

1.2 Acts that constitute serious violations of international humanitarian law, including those offenses provided in chapter XV of the Criminal Code of the Republic of Kosovo, Chapter XIV of the Provisional Criminal Code of Kosovo and Chapter XVI of the Criminal Code of the SFRY 1976.

1.3 criminal offense that resulted in serious bodily harm or death."

286. The Court considers that this Article of the Law on Amnesty is in accordance with the established general principles of international law in respect of those crimes which can never be amnestied.

V. Article 5 (Rights of third parties)

"The granting of amnesty shall not affect the rights of third parties which are based upon a sentence or a judgment."

287. As to this Article, the Court bears in mind that amnesty under the Law on Amnesty can also be granted for persons who are serving a sentence for having committed a crime covered by the Law on Amnesty, who are under prosecution for such crimes, or who could be subject to prosecution for such criminal offences (see paragraphs 141, 146-151).

VI. Article 6 (Notifications on the condition of the convicted person covered by amnesty who is serving his punishment of imprisonment)

“1. Kosovo Correctional Service has the obligation to inform in a written form the court of first instance that has sentenced the convicted persons, who are serving a punishment of imprisonment covered by an amnesty, within (seventy two) 72 hours from the day this law comes into force.

2. Information should include information about the start and end dates of their execution of the punishment of imprisonment.

3. The court ex officio, seven (7) days from receiving the above mentioned information, shall issue a decision for granting amnesty, whereas for the convicted persons who have not started the execution of their punishment, the court shall decide for granting amnesty five (5) days from the day the request was received.

4. If a convicted person is serving his punishment in another country, it shall be notified through the Ministry of Justice.”

288. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

VII. Article 7 (Decision for granting Amnesty from execution of the punishment)

“1. The decision for granting amnesty shall be rendered, with EULEX assistance, by the first instance court, respectively the court that has subject matter and territorial jurisdiction to adjudicate the respective issue that is addressed to it:

1.1 ex officio; or

1.2 requested by the convicted person, the perpetrator, the State Prosecutor or the persons who according to Criminal Procedure Code may appeal the judicial decision.

2. The Court renders a decision where it determines the part of the punishment that shall be waived, unless otherwise provided by this law.”

289. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

VIII. Article 8 (Decision on granting amnesty from criminal prosecution)

“1. Where a criminal report has been filed, an investigation initiated, or an indictment filed, the competent prosecutor shall render a decision to grant amnesty from criminal prosecution in accordance with this law.

2. Within 30 days from the entry into force of this law, the competent prosecutor shall take a decision ex officio in accordance with the Criminal Procedure Code of the Republic of Kosovo to dismiss the criminal reports or terminate the investigation for the criminal offences provided in this law.

3. Within 60 days of the entry into force of this law, any final convictions for which amnesty applies under Article 3 of this law shall be erased from the criminal records in accordance with relevant applicable law.”

290. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

IX. Article 9 (Finality of Confiscations)

“Regardless of the application of amnesty under this law to any criminal offence, if a object has been confiscated in accordance with the law during the criminal proceedings based in whole or in part on that criminal offence, the person receiving amnesty does not have a right to the return of that confiscated object.”

291. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

X. Article 10 (Appeals against decisions for granting Amnesty)

“1. Against a decision granting amnesty an appeal may be initiated in the Court of Appeals within (7) seven days from the day the decision was rendered. The Court of Appeals shall render a decision for the appeal (3) three days from the day that it received the request for appeal.

2. An appeal shall cease the execution of a decision.

3. If a convicted person due to amnesty will be completely exempted from the execution of the punishment of imprisonment, the court shall render a decision waiving the punishment of the convict, and the same shall be sent immediately to the Kosovo Correctional Service.”

292. The Court considers that this procedural provision related to the amnesty of a criminal offense is of a nature that does not affect the fundamental rights of

injured parties and does not estoppel the right of access to court to determine civil liabilities. For this reason the Court concludes that this provision is compatible with the Constitution.

XI. Article 11 (Subsidiary Application)

“For implementation of amnesty mutatis mutandis provisions of Criminal Procedure Code Nr. 04/L- 123 shall apply, unless provided differently with this law.”

XII. Article 12 (Entry into force)

“This Law shall enter into force fifteen (15) days following its publication in the Official Gazette of the Republic of Kosovo.”

As to the procedure for adopting the contested Law

293. The Applicants complain that the procedure for adopting the contested law is in violation of:

- a. Article 65, paragraph 4, of the Rules of Procedure of the Assembly of the Republic of Kosovo, because *“[...] the meeting was convened without the requirements set forth in this provision having been met and that the agenda was introduced in violation of the time limits foreseen by this provision.”*; and
- b. Article 57, paragraph 3, of the Rules of Procedure of the Assembly of the Republic of Kosovo, because *“[...] the deputies’ right to introduce amendments in the time limit provided by the Rules has been violated.”*

294. In this respect, the Court notes that on 28 May 2013, the Government, pursuant to its competences under Article 92.4 of the Constitution, proposed to the Assembly a Draft Law on Amnesty.

295. In this connection, pursuant to the amendment of Article 65.15 of the Constitution (Published in the Official Gazette on 26 March 2013) the Assembly *“gives amnesty by the respective Law, which shall be approved by two-thirds (2/3) of the votes of all deputies of the Assembly”*.

296. In the present case, the Assembly voted and adopted the Law on Amnesty with 90 votes in favour, 17 against and 1 abstention.

297. As to the Applicants’ allegations that the Rules of Procedure of the Assembly have been violated, the Court refers to its Case KO 29/11 where it held that *“[...] 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). To review the Law on Amnesty for compliance with the Rules of Procedure of the Assembly is a matter of legality and not of constitutionality and, falls, therefore, outside the Court’s jurisdiction.

298. In these circumstances, the Court concludes that the procedure for adopting the contested law was done in accordance with the provisions of Article 65.15 of the Constitution.

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 3 September 2013

DECIDES

- I. UNANIMOUSLY TO DECLARE the Referral admissible;
- II. UNANIMOUSLY TO DECLARE that the procedure followed for the adoption of the Law on Amnesty, No. 04/L-209, is compatible with the Constitution of the Republic of Kosovo;
- III. BY MAJORITY TO DECLARE that the Law, No. 04/L-209, On Amnesty as to its substance is compatible with the Constitution with the exception of the following articles which are declared null and void: 1.1.10 (Destruction or damage to property), 1.1.11 (Arson), 1.1.15.10 (Falsifying documents), 1.1.15.11 (Special cases of falsifying documents), 1.2.5 (Damaging movable property), 1.2.9.7 (Falsifying official documents), 1.3.1 (Damaging another person's object), 1.3.5.6 (Falsifying documents) and 1.3.5.7 (Falsifying official documents);

concerning the following criminal offences:

- of the Criminal Code of the Republic of Kosovo (Official Gazette of the Republic of Kosovo no. 19/13, 2012) articles: 333 (1), 334 (1), 398, and 399 (1) 1.1, 1.4;
 - of the Provisional Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of the date of 6 July 2003, Official Gazette no. 2003/25, and UNMIK Regulation no. 2004/19 amending the Provisional Criminal Code of Kosovo) articles: 260 and 348;
 - of the Criminal Law of SAPK (Official Gazette no. 20/77, and the UNMIK Regulations 1999/24 and 2000/59 On the Law Applicable in Kosovo) articles: 145, 203, and 216.
- IV. TO DECLARE that pursuant to Article 43 of the Law, the adopted Law, No. 04/L-209, on Amnesty by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities contained in this Judgment;

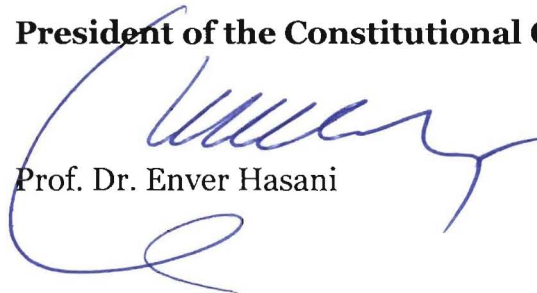
- V. TO NOTIFY this Judgment to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;
- VI. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20(4) of the Law;
- VII. TO DECLARE this Judgment effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani