



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

Pristina, 23 December 2015  
Ref. No.:AGJ877/15

## JUDGMENT

in

Case No. KO130/15

Applicant

**The President of the Republic of Kosovo**

**Concerning the assessment of the compatibility of the principles contained in the document entitled “*Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*” with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and,  
Bekim Sejdiu, Judge

#### **Applicant**

1. The referral was submitted by the President of the Republic of Kosovo, Her Excellency Atifete Jahjaga (hereinafter: the “Applicant”).

## **Subject matter**

2. The Referral contains a request for the assessment of the compatibility of the principles contained in the document entitled "*Association/Community of Serb municipalities in Kosovo – general principles/main elements*" (hereinafter: the "Principles") with the spirit of the Constitution, Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

3. Specifically, the Applicant requests that the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") responds to the following question:

*"Taking into consideration that the Principles of Association regulate the creation and functioning of the Association of the municipalities with Serb majority in Kosovo, are these principles and elements compatible with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo?"*

4. In addition, the Applicant requests from the Court to impose an interim measure, such that, "*each activity and effect produced by the Principles of Association is suspended, [the Applicant] requests that the Court places a temporary measure on the issue raised until the final decision [of the Court]*".

## **Legal basis**

5. The Referral is based on Article 84(9) in conjunction with Article 112.1 of the Constitution, Article 16.2 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56(a) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

6. On 31 October 2015 the Applicant submitted the Referral to the Court.
7. On 02 November 2015 the President of the Court, by Decision GJR. KO130/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH. KO130/15, the President of the Court appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 03 November 2015 the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit copies of the text of the document entitled "*Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*" in the official languages of the Republic of Kosovo.

9. On 04 November 2015 the Applicant submitted the text of the document entitled "*Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*" in the official languages of the Republic of Kosovo, and including an initialed copy in the English language.
10. On 05 November 2015 the Court submitted a copy of the Referral to the President of the Assembly of Kosovo with the explicit request for it to be submitted to all Deputies of the Assembly, and invited the Deputies to submit their comments on the Referral by 19 November 2015. The Court did not receive any comments.
11. On 05 November 2015 the Court submitted a copy of the Referral to the Prime Minister of the Government of the Republic of Kosovo, and to the Ombudsperson, and invited them to submit their comments on the Referral by 19 November 2015. The Court did not receive any comments.
12. On 10 November 2015 after having heard the Judge Rapporteur and having discussed the request for an interim measure submitted by the Applicant, the Court decided to grant the Request for Interim Measures until 12 January 2016 (See KO130/15, Decision on Interim Measure of 10 November 2015).
13. On 13 November 2015 in accordance with Rule 53 of the Rules of Procedure and the Practice Direction No. 01/2012 on Guidelines and Procedures for the Submission of *Amicus Curiae* Briefs, the Court invited Mr. Dastid Pallaska and Mr. Kushtrim Istefi to prepare by 26 November 2015, in writing, *Amicus Curiae* Briefs.
14. On 13 November and 16 November 2015 respectively, Mr. Kushtrim Istrefi and Mr. Dastid Pallaska informed the Court of the receipt of the letter and also notified the Court that they would prepare and submit the *Amicus Curiae* briefs within the deadline requested by the Court.
15. On 16 November 2015 the Court sent a letter to the Prime Minister requesting him to provide the Court with the following information:
 

*"Within the Referral the Constitutional Court has received copies of the "General Principles/Main Elements of the Association/Community of Serb majority municipalities" in three languages. You are kindly requested to inform the Court, which of these language versions is original and authentic. Specifically, is the English version the authentic version? Or are the Albanian and Serbian version equally authentic? Or are all three versions equally authentic?"*
16. On 19 November 2015 the Court received the following response submitted by the Prime Minister:
 

"..."

  - *General principles/main elements of the Association/Community of Serb majority municipalities were signed by the parties in the English language.*

- *The delegation of the Republic of Kosovo, during the entire preparatory and consultative work and during all the time of the discussions and negotiations in Brussels, regarding the agreed principles used the Albanian language, considering it as authentic and original language, with respect to the implementation of these principles in practice.*
  - *The text and all included and agreed terms by the parties in the “General principles/main elements of the Association/Community of Serb majority municipalities”, during the entire negotiation process and before the agreement, were continuously translated into Albanian language, the latter were assessed, compared and were based on the meaning of the same notions from the Constitution and the laws of the Republic of Kosovo.*
  - *For the delegation of the Republic of Kosovo, as original and authentic language version during the entire process of negotiations, was considered and accepted the version of principles translated into Albanian language, as the first official language in the Republic of Kosovo.”*
17. On 26 November 2015 the Court received the *Amicus Curiae* brief submitted by Mr. Kushtrim Istrefi. On the same date the Court granted to Mr. Dastid Pallaska an extension of the deadline until 1 December 2015 for the submission of his *Amicus Curiae* brief.
  18. On 01 December 2015 the Court received the *Amicus Curiae* brief submitted by Mr. Dastid Pallaska.
  19. On 03 December 2015, the Court sent both *Amicus Curiae* briefs for comments to the Applicant and invited the Applicant to submit comments on the briefs by 9 December 2015. The Court did not receive any comments.
  20. On 18 December 2015, the Court received a letter from the Parliamentary Group Lista Srpska, notifying the Court that they will submit their comments on the referral by 21 December 2015.
  21. On the same date, the Court informed the Parliamentary Group Lista Srpska, that the deadline for submitting comments expired on 19 November 2015 and as there was no request for extension of the deadline, thus the Court will not consider their comments.
  22. On 21 December 2015, the Court deliberated and decided on the case.

### **Invitation for Submission of *Amicus Curiae* Briefs**

23. In its invitation for the Submission of *Amicus Curiae* briefs addressed to Mr. Pallaska and Mr. Istrefi, the Court asked their respective opinions on the subject matter of this Referral, as well to receive a response to a number of specific questions, namely:

1. *“The Referral has been submitted on the basis of the competence of the President of the Republic of Kosovo to refer constitutional questions to the Constitutional Court under Article 84 (9) of the Constitution. What is the meaning and scope of the term ‘constitutional question’ contained in this provision according to Kosovo constitutional theory and practice? Please, provide an opinion based on your expertise and a constitutional comparative perspective.*
2. *Based on the “General Principles/Main Elements of the Association/Community of Serb majority municipalities” (hereinafter: the “General Principles”) according to your opinion, does the Association/Community comply with the Constitution of the Republic of Kosovo? Specifically,*
  - a. *What is the legal nature of an association of municipalities?*
  - b. *Related to associations of municipalities, what is usually normatively regulated and to what extent?*
  - c. *What is the status of the employees in the administration of such Associations?*

*Please, provide your opinion based on your expertise and constitutional comparative perspective.*

3. *Based on the “General Principles” more precisely the part regulating the relations of the Association/Community with central authorities, according to your opinion, are such arrangements in compliance with the Constitution of the Republic of Kosovo?*
4. *According to your opinion, do the “General Principles” grant this Association/Community executive competencies? What is an executive competence vis-à-vis an association of municipalities?*
5. *What would be your comment on the procedures set out in the “General Principles/Main Elements of the Association/Community of Serb majority municipalities” to implement these principles into the statute through a government decree?”*

## **Amicus Curiae Briefs**

### **Amicus Curiae submitted by Mr. Kushtrim Istrefi**

24. On 26 November 2015 Mr. Kushtrim Istrefi (hereinafter: Istrefi *Amicus Curiae*) has submitted his *Amicus Curiae* Brief, providing answers to the questions that were raised by the Court in the invitation of 13 November 2015.
25. Istrefi *Amicus Curiae*, in his brief, initially identifies the constitutional question in the present case, by referring to the Court's case-law, namely Case No. KO80/10 and Case No. KO97/10, where the Court declared itself competent to interpret constitutional provisions upon the request of President of the

Republic and Acting President of the Republic, respectively. Namely the Court noted that,

*“In accordance with Article 112.1 of the Constitution, “the Constitutional Court is the final authority for the interpretation of the Constitution” and because of that there is no other body from whom the Applicant may seek an answer to these constitutional questions. The Court is of the opinion that the questions raised by the Applicant are “constitutional questions” that are contemplated by Article 84 (9) and that the questions raised are fit to be addressed by the Court.”*

26. Further, *Istrefi Amicus Curiae*, upon an analysis and comparison of the present case with previous cases submitted by the President of the Republic, concluded that:

*“This form of review, known as abstract review allows “a court ... to examine the actions of the legislative and executive bodies of government before or after promulgation and to determine if these actions are in accordance with the country’s constitution”. There are practices of abstract review even in the absence of an actual case of controversy.*

*The present Referral may therefore be seen as a request for review of the compatibility of the General Principles with the Constitution as a whole”*

27. In addition, *Istrefi Amicus Curiae* provides an analysis concerning legal issues concerning associations of municipalities, concentrating on the right of municipalities to form or join associations and the issue of inter-municipal cooperation.
28. In this respect, *Istrefi Amicus Curiae* reviewed legal provisions of Law No. 03/L-040 on Local Self-Government of Kosovo, which regulate the issue of associations of municipalities, providing that they “*may offer to its members a number of services, including training, capacity building, technical assistance as well as research on municipal competencies and policy recommendation in accordance with law.*”
29. In this connection, *Istrefi Amicus Curiae* took as an example “*the National Association of Municipalities in the Republic of Bulgaria is entitled to “[represent and defend] the interests of its members before the National Assembly, the President of the Republic of Bulgaria, the Council of Ministers, the ministries and central government agencies, whose activities have a bearing on local government”*. However, according to the *Istrefi Amicus Curiae*, “*Such representation role of these types of associations does not however extend to the right to establish units of self-government authorized to perform public functions.*”
30. In addition, *Istrefi Amicus Curiae* states that “*The activities of the association of municipalities do not therefore reduce or substitute the constitutional and legal arrangements of cooperation and supervision of municipalities by central authority.*”

31. With regard to the issue of inter-municipal cooperation, *Istrefi Amicus Curiae* refers to the European Charter of Local Self-Government, which in its article 10.1 provides that “[l]ocal authorities shall be entitled, in exercising their powers, to cooperate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest”.
32. In this connection *Istrefi Amicus Curiae* is of the opinion that “inter -municipal cooperation has “operational and coordination tasks... Operational tasks refer to the joint production of public services... Coordination tasks refer to the regulation of externalities of local policies and to an allocation of resources and costs that is rational from a supra-local perspective”.
33. Further in his brief, *Istrefi Amicus Curiae* refers to the Belgian Constitution, which in its Article 162.4 “... provides for the possibility of local authorities, if they so desired, to jointly exercise public functions in certain areas of common interest. On this basis, Belgium municipalities have set up an entity called *Intercommunale* to perform certain public services in the areas including but not limited to waste collection, distribution of water and gas. This form of inter-municipal cooperation can be extended to other areas of public service if not limited by the Constitution or law.” In this manner, “inter-municipal cooperation may exercise certain executive functions.” However it “does not extend to creation of a new self-government unit exercising public functions independently and without the control of its members.”
34. In conclusion, *Istrefi Amicus Curiae* states that “A body established for the purpose of inter-municipal cooperation is founded by and operates for municipalities. Hence, municipalities delegate their competencies and resources to this body. Furthermore, municipalities cannot delegate competences, which by Constitution or law are to be exercised only by democratically elected bodies of the municipalities.” In addition, “... because inter-municipal bodies are formed to perform certain municipal functions or services, the central government continues to monitor and review the work of such bodies through the laws and principles of local self-government.”
35. Further in his brief, *Istrefi Amicus Curiae*, provides his opinion with regard to the provision that are compatible with the Constitution.
36. In this respect, it is stated in his brief that the Constitution recognizes the right of inter-municipality cooperation and it is guaranteed by Article 123.3 of the Constitution, which in addition to this “... provides for respect and implementation of the European Charter of Local Self-Government.”.
37. Furthermore, *Istrefi Amicus Curiae* refers to Article 123.4, which provides that: “Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.”
38. In this connection, *Istrefi Amicus Curiae* states that “Through the form of inter-municipal cooperation, the Association/Community may perform at

*least the functions under paragraphs a, g, h, i, j, k, l, m of Article 4 of the General Principles."*

39. However, he points out that *"This does not mean that an inter-municipal body can exercise control over those areas in a form of a distinct unit of self-government. As outlined above, the right to inter-municipal cooperation does not include a permanent transfer or loss of municipality competences."*
40. Istrefi *Amicus Curiae* continues his brief by providing his opinion with regard to the provisions that are incompatible with the Constitution.
41. In this respect, Istrefi *Amicus Curiae* states that certain *"provisions of the General Principles, in their explicit or ambiguous wording, raise constitutional concerns and part of them are not in harmony with, inter alia, Article 12, Chapter X, Article 113 and the spirit of the Kosovo Constitution."*
42. In this connection, Istrefi *Amicus Curiae* is of the opinion that the term "legal entity" of "distinct character" provided in Point 2 could also imply recognition of a distinct unit of self-government empowered to exercise public functions. Therefore *"Such a distinct and higher form of self-government exceeds the limits of the concept of inter-municipal association or cooperation under the Kosovo Constitution."*
43. Further, Istrefi *Amicus Curiae* provides that Points 2 and 15 of the General Principles can be incompatible with Article 124.4 and 12.2 of the Constitution, since according to these constitutional provisions *"... only a law can govern the matters of inter-municipal cooperation."*
44. In addition, Istrefi *Amicus Curiae* expresses his remarks with regard to the terminology used in point 4 of the General Principles, especially the phrase "exercise full overview, according to him is unclear, cannot be found in legal literature, or jurisprudence, and it *"does not appear in the database of the European Court of Human Rights, Court of Justice of the European Union or in any other legal text available on Internet."*
45. Istrefi *Amicus Curiae* continues his brief by providing that Point 8 of the General Principles *"... places the Association/Community in a horizontal level of cooperation with the central government. This in turn resembles a form of confederation where territorial units cooperate on a horizontal level based on mutual cooperation and information sharing. No form of local self-government or even regional self-government recognizes such horizontal relationship with central authorities."* Therefore, according to his opinion, this can be incompatible with Article 93.6 which grants the mandate to the Government of Kosovo *"... to guide and oversee the work of administration bodies."*
46. Further, Istrefi *Amicus Curiae* explains that Point 11 of the General Principles is in contradiction with Article 113 of the Constitution, which regulates the issue of authorized parties for submitting referrals to the Constitutional Court. In this direction, in his opinion *"The Association/Community as a body exercising*



*public functions neither qualifies as an individual to initiate cases before the Constitutional Court pursuant to 113.7 of the Constitution.”*

47. In addition, *Istrefi Amicus Curiae* points out that inability to leave the Association/Community, as set out in Point 17 of the General Principles, may “raise a constitutional concern of a regional selfgovernment in that certain municipalities may have a pre-determined belonging to such an edifice.”
48. Finally, *Istrefi Amicus Curiae* concludes his brief by stating that “the constitutional review of the General Principles should not amount to indirect review of the First Agreement on the Normalization of Relations”, despite the fact that certain provisions of the General Principle may not be identical, but they are related. In this direction, according to him “... the Constitutional Court should be mindful that the review of the General Principles may amount to indirect review of the Agreement. This in turn may lead to violation by Kosovo of its ratified treaty obligations.”
49. *Istrefi Amicus Curiae* ends his brief by pointing out differences between the First Agreement and the General Principles. In this direction he states that “Unlike the General Principles, the Agreement does not define the Association/Community as a “legal entity” of a “distinct character”; does not provide for its establishment by a decree of the Government; and does not specify its resources, budget, administration and competences contained in the General Principles. Instead, it provides that the competences of the Association shall be exercised in accordance with the European Charter of Local Self-Government and that the structures of the Association/Community shall be established on the same basis as the existing statute of the Association of Kosovo Municipalities.”

#### ***Amicus Curiae submitted by Mr. Dastid Pallaska***

50. On 1 December 2015, Mr. Dastid Pallaska (hereinafter: *Pallaska Amicus Curiae*) has submitted his *Amicus Curiae* Brief, providing answers to the questions that were raised by the Court in the invitation of 13 November 2015.
51. *Pallaska Amicus Curiae*, in his brief, initially discusses the admissibility of the referral, by analysing constitutional provisions, which according to him are applicable in this case, namely Article 84, paragraph 9, Article 112 and Article 113, paragraphs 2 and/or 3 of the Constitution.
52. In this respect, *Pallaska Amicus Curiae* is of the opinion that “... the President does not have a broad and unlimited authority to refer matters before the Court, as it is argued in the Referral. The limits of the authority of the President to refer questions/ matters to the Court [...] should be assessed based on the purpose of constitutional action initiated by the President.”
53. According to *Pallaska Amicus Curiae*, Article 84, paragraph 9 of the Constitution grants the President the possibility to raise constitutional issues of two types, namely “ (i) constitutional action aimed at challenging a particular legal and/ or an actual act in terms of its compatibility with the Constitution; and (ii) constitutional action aimed at clarifying or seeking an interpretation

*of a particular constitutional provision that is closely associated to the exercise of the constitutionally mandated competences of the President."*

54. Following this distinction, Pallaska Amicus Curiae presents arguments, which according to him make Article 113, paragraph 2 and 3 of the Constitution applicable in the present referral, but not Article 112 of the Constitution.
55. Pallaska Amicus Curiae is of the opinion that *"... in order to submit a referral under Article 113, paragraphs 2 and/or 3, of the Constitution, the President is only required to pose a question on whether the challenged act is compatible with the Constitution. Indeed, according to Article 29 of the Law on the Constitutional Court, a referral submitted under Article 113, paragraph 2, of the Constitution needs only to (i) specify whether the question on compatibility applies to the act as a whole or a part of it; and (ii) to identify the provisions of the Constitution with which the challenged act may be incompatible. Consequently, it can be deduced that the President - even when acting pursuant to Article 113, paragraph 2 and/or 3, of the Constitution - can challenge an act solely by posing a question on the compatibility of the challenged act with the Constitution and by identifying the constitutional provisions with which the challenged act may not be compatible with."*
56. On the other hand, according to Pallaska Amicus Curiae, Article 112 of the Constitution becomes relevant when the President raises constitutional questions before the Court *"...with the aim of ensuring that the actions of the President, in the exercise of [his/her] constitutionally mandated powers, are compatible, and in line, with the Constitution. By seeking guidance on "constitutional questions" under the aforementioned constitutional provisions, the President is not only able to prevent any violation of the Constitution during the exercise of [his/her] powers but also to demonstrate that any unwitting violation of the Constitution does not amount to a "serious violation," within the meaning of Article 113, paragraph 6, of the Constitution."*
57. Further, Pallaska Amicus Curiae defines the constitutional question in the present referral, by referring to the Court's case law, more precisely Judgment in KO103/14, *"... in which the Court assessed the compatibility of Article 84, paragraph 14, with Article 95 of the Constitution. In this case, the Court held that since the referral has raised constitutional questions with respect to two particular constitutional provisions (Article 84, paragraph 14, and Article 95 of the Constitution) the questions submitted by the President "are of constitutional nature"*.
58. However, Pallaska Amicus Curiae states that Case KO103/14 is only taken as an example, where the test for the definition of the constitutional question has been established, but *"...cannot serve as a precedent for the Referral as, in the present case, the President has not sought an "interpretation" of the Constitution, as it did in Referral KO 103/ 14, but has requested an assessment of the compatibility of the General Principles, as a specific and standalone act, with the Constitution. On the basis of the above, it can be deduced that the Referral cannot be declared as admissible pursuant to Article 84, paragraph 9, in relation to Article 82 and Article 112 of the Constitution."*

59. Further, *Pallaska Amicus Curiae* elaborates on the merits of the referral by underlining that *"the right of the municipalities to have inter-municipal and cross-border cooperation, in accordance with the law, is guaranteed under Article 124, paragraph 4, of the Constitution. Having said this, such an inter-municipal and cross-border cooperation is based on the common interests of the municipalities that are related to their powers mandated by Constitution and the law."*
60. In addition, he also refers to the provisions of the European Charter of Local Self-Government, more precisely its Article 10, paragraph 1, which stipulates that *"[L]ocal authorities shall be entitled, in exercising their powers, to cooperate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest"*.
61. However, *Pallaska Amicus Curiae*, is of the opinion that the category of ethnicity, as it is evident from the very title of the General Principles, cannot be within municipalities' common interest *"... due to the fact that "ethnicity" does not fall within the realm of municipal power or function on the basis of which municipalities can seek inter-municipal and cross-border cooperation according to Article 124, paragraph 4, of the Constitution, and Article 10, paragraph 1, of the European Charter of Local Self-Government"*. Therefore, according to *Pallaska Amicus Curiae*, *"... the use of the phrase "Serbian majority municipalities" in the title and the text of the General Principles should be declared as incompatible with Article 3, paragraph 1, and Article 124, paragraph 4, of the Constitution as well as Article 10, paragraph 1, of the European Charter of Local Self-Government"*.
62. Notwithstanding the above, *Pallaska Amicus Curiae* maintains that the Constitution and the relevant applicable law, namely the Law on Local Self-Government *"... offers sufficient basis for the establishment of an association of municipalities that have a set of competences that distinguish them from the other municipalities"*, by providing an analysis how specific legal provisions provide possibilities of establishing and regulating such an association.
63. Further, *Pallaska Amicus Curiae* provides an analysis of *"Executive character of the powers and competences of the Association/Community"*, by raising potential issues which may be faced in the implementation of the General Principles.
64. In this respect, it is stated in his brief that *"The Association/ Community's delivery of public functions and services, as provided for under Article 4 of the General Principles, represents a direct violation of Article 123 of the Constitution, which provides that '(2) Local self-government is exercised by representative bodies elected through general, equal, free, direct and secret ballot elections'."*
65. In addition, *Pallaska Amicus Curiae* states that *"Article 4 of the General Principles is incompatible with Article 124, paragraph 1, of the Constitution as it establishes the Association/Community as an additional unit of local self-government, above the municipalities. It should also be noted that the*

*establishment of the complaints office, under Article 7, paragraph (f), of the General Principles exceeds the scope of review that central authorities can exercise over municipal acts, acting in their domain, provided for under Article 124, paragraph 7, of the Constitution”.*

66. Another issue that Pallaska Amicus Curiae raises is the “*non-recognition of the right to municipalities to leave the Association/Community*”, which according to him it “... *represent a violation of Article 44 of the Constitution, as it is implemented by Article 3, paragraph 2, of the Law on the Freedom of Association. Furthermore, the failure of the General Principles to explicitly give its members the right to leave the Association/ Community suggests that this organization is a mandatory executive body and, as such, represents an additional layer of self-government in Kosovo, above the municipalities*”.
67. In addition, Pallaska Amicus Curiae is of the opinion that the delegation of additional functions to the Association/Community by the central authorities, as stipulated in Article 5 of the General Principles, which provides that the Association/Community will “*exercise other additional competences as may be delegated by the central authorities*”, is in violation of Articles 123 and 124 of the Constitution.
68. Furthermore, Pallaska Amicus Curiae considers that granting the right to undertake legal initiative and have standing before the Court, as it is foreseen in Section 10 and Section 11 of the General Principles, respectively, raises constitutional issues. In his opinion “... *as it can be attested, Article 79 of the Constitution does not recognize the Association/ Community as one of the parties that can undertake a legislative initiative. Consequently, it can be concluded that Section 10 of the General Principles does not only represent a direct violation of Article 79 of the Constitution but its application would, in effect, require an amendment to the Constitution*”. While, with regard to standing before the Court, he states that “... *the Constitution, in general, and Article 113 of the Constitution, specifically, does not recognize the Association/Community as an authorized party to bring constitutional/legal action before the Court. Consequently, it is clear that Section 11 of the General Principles is not only incompatible with the Constitution but also its application would, in effect, require an amendment to the Constitution*”.
69. Pallaska Amicus Curiae in his brief also states that the possibility for the Association/Community to own companies and provide local services may have constitutional and legal implications. Namely, in his opinion “... *the fact that the General Principles seek to transfer or share certain core municipal functions of the municipalities with the Association/ Community proves – better than any other argument – that the Association/ Community represents an organization with executive powers that is an additional unit of local self-government, above the municipalities. Consequently, it can be concluded that the Association/Community will diminish the constitutionally mandated powers and competences of the municipalities that will join it. As such, the provisions of the General Principles specified above, are not compatible with, and represent a violation of, Articles 44, 79, 113, 123 and 124 of the Constitution*”.

70. In addition, *Pallaska Amicus Curiae* provides an analysis on the “*Scope of work of the governing instruments of the Association of municipalities under the Kosovo law*” concentrating on the Law of Local Self-Government and its provision regulating the competences and functions that they provide for such associations and comparing the General Principles of the Association/Municipality with the objectives and competences of the existing Association of Kosovo Municipalities.
71. In this respect, *Pallaska Amicus Curiae* is of the opinion that “... *the Association/Community that is envisaged to be established under the General Principles is an additional unit of self-government, which is empowered not only to exercise supervision over the municipalities in the exercise of their constitutionally mandated powers but may also offer public functions and services to the residents of the municipalities that have joined it. Consequently, it is clear that the Article 4 and Article 7, paragraph (f), of the Association are not compatible with Articles 123 and 124 of the Constitution*”.
72. In the following part of his brief, *Pallaska Amicus Curiae* provides an analysis of the status of the employees of the Association/Community, where he considers that “*The executive character of the Association is also confirmed by the fact that Article 6, paragraph (e), of the General Principles provides that the employment status of the personnel of the Association/ Community shall be in accordance with, inter alia, the Law on Civil Service. In this respect, it should be noted that the “civil service” is a constitutional category mandated by Article 101 of the Constitution... This means that, according to Article 101 of the Constitution, “civil service” is an executive/administrative arm of the Government of the Republic of Kosovo through which the Government exercises “the executive power in compliance with the Constitution and the law,” as it is provided under Article 92, paragraph 2, of the Constitution.*”
73. Consequently, according to *Pallaska Amicus Curiae*, granting that status of civil servants to the employees of the Association/Community is in contradiction with 101 of the Constitution and it violates relevant legal provisions of the Law on Civil Service.
74. Further, *Pallaska Amicus Curiae* analyses the relations of the Association/Community with the central authorities, focusing on Section 8 of the General Principles, where is provided that “*the Association/Community will work with central authorities on the basis of mutual cooperation and information sharing*”.
75. In this respect, *Pallaska Amicus Curiae* is of the opinion that “*The wording of the aforementioned provision of the General Principles suggests that the Association/ Community has horizontal relations with the central authorities, including the Government of Kosovo. As a result of this, the wording used under Article 8 of the General Principles leaves the impression that the Association/Community is an organization that is equal in standing to the central authorities of Kosovo.*” As such, he affirms that “*This form of representation of a community is not foreseen under the Constitution. Consequently, Sections 8 and 9 of the General Principles are not compatible with the Constitution*”.

76. Finally, Pallaska *Amicus Curiae* includes in his brief his remarks with regard to the establishing of the Association/Community, where, according to him, the General/Principles foresee a procedure of constitutional assessment before the Constitutional Court, which is similar to the procedure of preventive control of the constitutional amendments.
77. Pallaska *Amicus Curiae* concludes his brief by raising concerns with regards to the ambiguous language which is used in the text of the General Principles, especially with regard to Albanian and Serbian language versions of the word “*constituent assembly*”, which according to him, are not reconciled with each other and as such are inaccurate and misleading.

### Summary of facts

78. On 19 April 2013 the Prime Ministers of the Republic of Kosovo and the Republic of Serbia signed the “First Agreement on the Principles that Regulate the Normalization of the Relations between the Republic of Kosovo and the Republic of Serbia” (hereinafter: the “First Agreement”).
79. On 22 April 2013, during an extra-ordinary session requested by the Prime Minister, the Assembly approved Resolution no. 04-R-10, on Giving Consent to the Signing of the First Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia (Published on the Webpage of the Assembly). According to this Resolution:
  - a. “*the Assembly of Kosovo grants consent and supports signing of the first agreement for normalization of relations between the Republic of Kosovo and the Republic of Serbia [...];*
  - b. [...] *the Assembly of Kosovo supports the promises contained in this agreement [...]*”
80. On 28 May 2013 the Government adopted Decision No. 01/132 “*Approving the Draft Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement.*” Furthermore, in accordance with this Decision, the Government proceeded the Draft Law on Ratification for review and adoption by the Assembly.
81. On 27 June 2013 the Assembly held a plenary session where Law No. 04/L-199, on Ratification was voted upon and adopted. Of the Deputies present, 84 voted in favour, 3 were against and one Deputy abstained. On the same day the Law on Ratification was sent for promulgation to the President of the Republic of Kosovo.
82. On 12 September 2013 by Decree No. DL-050-2013, the President of the Republic of Kosovo promulgated the Law on Ratification.
83. The First Agreement contained, *inter alia*, the following provisions:

1. *“There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.*
  2. *The Association/Community will be created by Statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).*
  3. *The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities, e.g. President, Vice-President, Assembly, Council.*
  4. *In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Association/Community collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.*
  5. *The Association/Community will exercise other additional competences as may be delegated by the central authorities.*
  6. *The Association/Community shall have a representative role to the central authorities and will have a seat in the communities consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.”*
84. In the Referral is stated that on 25 August 2015 the Prime Minister of the Republic of Kosovo agreed on the document entitled *“Association/Community of Serb majority municipalities in Kosovo – general principles/main elements”*.

### **Applicant’s request**

85. The Applicant requests the Court to respond to the following question:

*“Taking into consideration that the Principles of Association regulate the creation and functioning of the Association of the municipalities with Serb majority in Kosovo, are these principles and elements compatible with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo?”*

86. The Applicant argues that,

*“The Principles of Association, in the format of a legal act approved by the Prime Minister of the Republic of Kosovo, handles issues which fall under the scope of issues which touch upon the spirit of the Constitution and issues specified in Article 3.1, Chapters II and III, as in the understanding of the notion of the multi-ethnic nature, of basic rights and freedoms, rights of communities and their members, as well as the nature of institutions stemming from the Constitution. Therefore, implementation of the obligations of the Principles of Association produces a legal effect in the constitutional system of the Republic of Kosovo. As per the commitment of*

*the Principles of Association, it is clear that this issue constitutes the *ratione materiae*, as the issue raised falls under the scope of constitutional issues, also as reflected in [Judgments] taken by the Constitutional Court in cases No. KO80/10 and No. KO103/14. Characteristic of the criteria of “constitutional issues”, already determined in the above-mentioned cases, is that the issue falls under the scope of activity of the Constitution of the Republic of Kosovo, both in letter and in spirit.*

*The Principles of Association is a document signed by the Prime Minister and represents the dedication of the Government to create a new legal entity which produces legal effects in the constitutional order of the Republic of Kosovo. The Principles of Association stem from the “First International Agreement on Principles which Regulate the Normalization of Relations [...]”, ratified by the [Assembly] of the Republic of Kosovo by Law No. 04/L-199, on Ratification of the First International Agreement which Regulates the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia [...].*

[...]

*From the constitutional authority of the [Applicant] as head of state derives the right to refer constitutional issues in accordance with Article 113, paragraphs 2 and 3 (jurisdiction and authorized parties) of the Constitution. The reason for this lies in the fact that there are legal acts and conditions which are considered “constitutional issues” but cannot be formally submitted to the Constitutional Court, as they are not in the format of a law, decree, regulation or a municipal statute (as per Article 113, paragraph 2 of the Constitution). Such is also the case with the “Principles of Association”, which is not an international agreement but an applicable legislation deriving from an international agreement. The “First International Agreement” is not executable per se and requires additional legislation for [its] implementation.*

[...]

*The Principles of Association is an intermediary legal act, which stems from the “First International Agreement”, adds additional elements in the process of creating the legal entity itself (the Association/Community), and precedes the founding act (Decree of the Government of Kosovo on Establishment, as per Article 2 of the Principles of Association), hence having a conditioning effect on the founding act. Taking into consideration these facts, the need arises for a constitutional assessment of the Principles of Association itself and its compliance with the Constitution.”*

### **Admissibility of the Referral**

87. In order for the Court to be able to adjudicate the Applicant’s Referral, it is necessary to first examine whether the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure, have been fulfilled.



88. Article 84(9) of the Constitution [Competencies of the President] provides that:

*“The President of the Republic of Kosovo:*

*(9) may refer constitutional questions to the Constitutional Court;”*

89. In general, the authority of the President of the Republic under Article 84 (9) of the Constitution to refer constitutional questions to the Court must be understood in conjunction with the provisions of the Constitution regarding the jurisdiction of the Court contained in Article 113 [Jurisdiction and Authorized Parties] of the Constitution.

90. In this respect, Article 113.2 of the Constitution provides that,

*“[...] the President of the Republic of Kosovo [...] [is] authorized to refer the following matters to the Constitutional Court:*

*(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;*

*(2) the compatibility with the Constitution of municipal statutes.”*

91. In the present Referral, the Applicant requests the Court to assess whether the principles and elements contained in the document entitled “Association/Community of Serb majority municipalities in Kosovo – general principles/main elements” (the Principles) are compatible with the Constitution.

92. The Applicant claims that this document is either “a legal act approved by the Prime Minister of Kosovo” or, alternatively, is “a document signed by the Prime Minister”.

93. The Court notes that the document was drafted in three languages of which the English-language version has been initialed.

94. In response to the Court’s request, the Prime Minister stated that the English-language version of the document was “signed”, but that the Prime Minister considers that the Albanian-language version is the original and authentic version of the document.

95. The Court notes that this document (hereinafter: the Principles) is neither a law, nor a decree of the President or Prime Minister, nor a regulation of the Government, within the meaning of Article 113.2, under (1) of the Constitution. Furthermore, it is also not a municipal statute, within the meaning of Article 113.2, under (2) of the Constitution.

96. Therefore the Principles do not come within the scope of the jurisdiction of the Constitutional Court as provided by Article 113.2 of the Constitution. Accordingly, the Court cannot review the Principles as a legal act enlisted under Article 113.2 of the Constitution.

97. In this regard, the Court recalls that it has case law where it has been called upon by the President of the Republic to interpret the meaning of specific provisions of the Constitution. This was done to provide guidance to the President in the execution of her tasks (see, e.g., Case no. KO103/14, *the President of the Republic of Kosovo: Concerning the assessment of the compatibility of Article 84(14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo*, Judgment of 1 July 2014).
98. The Court notes that the President of the Republic submitted a Referral to the Court seeking an interpretation of the meaning of provisions of the Constitution. The Court has determined that such questions are of a constitutional nature and come within the scope of constitutional questions, within the meaning of Article 84(9) of the Constitution (see, Judgment in the above Case KO103/14, paragraphs 26 and 27).
99. In such cases, the jurisdiction of the Court stems from Article 112 of the Constitution. Article 112, paragraph 1, provides that,
- “1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.”*
100. To the extent that the scope of the Applicant’s present Referral encompasses a request for the Court to interpret specific provisions of the Constitution in assessing the constitutionality or the compatibility of the Principles, the Court has jurisdiction to deal with the referral. Thus, the Court is the final authority to provide an interpretation within the meaning of Article 112.1 of the Constitution.
101. When an issue is raised by an authorized party who considers that it constitutes a “constitutional question” this is a matter for the Court to decide. The Court itself decides whether the raised issue is a “constitutional question” and decides this on a case-by-case basis. Not every issue claiming to raise a constitutional question may be such a matter *per se*.
102. In this respect, the Court recalls its jurisprudence when it was asked to provide an interpretation based on Article 112.1 of the Constitution. Namely, in Referral KO97/10 the Court considered a question raised under Article 84 (9) which required an interpretation based on Article 112.1 of possible actions of the Acting President of the Republic.
103. In the above-mentioned case, the Court held that *“In accordance with Article 112.1 of the Constitution, “the Constitutional Court is the final authority for the interpretation of the Constitution” and because of that there is no other body from whom the Applicant may seek an answer to the constitutional questions. The Court is of the opinion that the questions are “constitutional questions” that are contemplated by Article 84 (9) and the questions raised are fit to be addressed by the Court.”* (See Case No. KO 97/10, *In the matter of the Referral submitted by Acting President of the Republic of Kosovo, Dr. Jakup Krasniqi, concerning the holding of the office of Acting President and at the same time*

*the position of Secretary General of the Democratic Party of Kosovo, Judgment, 22 December 2010, §14).*

104. The Court considers that the questions raised in the present Referral are of utmost importance and relevant to the constitutional order of Kosovo. Moreover, there is no other institution in the Republic of Kosovo whereto the Applicant could address them. Consequently, the Court concludes that Article 112.1 provides the appropriate constitutional basis for the assessment of the Principles for compatibility with relevant constitutional provisions.

### **Scope of the referral**

105. The Applicant argues, *inter alia*, that the “Principles” constitute an intermediary document for the implementation of the provisions of the First Agreement. The Applicant claims that the Principles will have legal effects in the constitutional order of the Republic of Kosovo through the subsequent legal acts that are adopted on the basis of the Principles. Furthermore, the Applicant submits that these legal effects will encompass the nature of the institutions stemming from the Constitution.

106. The Court recalls its decision in Case no. KO98/11 (*The Government of the Republic of Kosovo, Concerning the immunities of the Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and the Members of the Government of the Republic of Kosovo*, Judgment of 20 September 2011), paragraphs 44 and 46, where the Court found that,

*“44. The Republic of Kosovo is defined by the Constitution as a democratic Republic based on the separation of powers and the checks and balances among them. The separation of powers is one of the bases that guarantees the democratic functioning of a state. [...]”*

*“46. The questions [raised in the referral] are of a constitutional nature as they are linked to the form of governance of the state. They concern the mechanisms of the exercise of the division of power in the Republic of Kosovo.”*

107. In an analogous fashion, the Court considers that the legal effects on the institutions, envisaged by the First Agreement, relate to the form of governance of the state, *inter alia*, in its division into central and local self-government. Moreover, the legal consequences related to the implementation of this part of the First Agreement have an impact on the constitutional order of the Republic of Kosovo. As such, the manner in which the First Agreement is implemented has implications for the democratic functioning of the state.
108. Consequently, the Court finds that the questions submitted by the Applicant are of a constitutional nature. They aim at ensuring that the establishment of the Association/Community of Serb majority municipalities, is consistent with the letter and spirit of the Constitution.
109. Therefore, the Court finds that the Applicant is an authorized party to submit the referral within the meaning of Article 84 (9) of the Constitution.

Furthermore, the Court finds that it has jurisdiction to consider the referral as the final authority for the interpretation of the Constitution under article 112.1 of the Constitution.

110. Based on the above, the Court considers that there are no grounds to declare the referral inadmissible.

### **Merits of the referral**

111. The Court first will take into account which is the legal basis for the elaboration of the Principles and the establishment of the Association/Community.

112. The Court reiterates that the First Agreement in point 1 provides for the establishment of an Association/Community, namely "*There will be an Association/Community of Serb majority municipalities in Kosovo*". Further the Court recalls Article 19 [Applicability of International Law], paragraph 1 of the Constitution which states that:

*"International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo [...]"*

113. The First Agreement was ratified as an international agreement on 27 June 2013 by the Republic of Kosovo through its Assembly and published in the Official Gazette of the Republic of Kosovo. Thus, this international agreement becoming part of the internal legal system required for its implementation the establishment of the above Association/Community. Therefore, the establishment of the Association/Community is in compliance with the constitutional requirement and thus is part of constitutional order of the Republic of Kosovo. Moreover, point 2 of the First Agreement foresees the Association to "*be created by Statute*".
114. The Referral is about the Principles upon which the Association/Community will be established as foreseen by point 1 of the First Agreement (see Principle #1 of the Principles).
115. According to the scope of the Referral, the question to be answered by the Court is whether the Principles are in compliance with the spirit of the Constitution and its Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members]. The Court notes that the Principles foreseen for the establishment of the Association/Community are related to and intertwined with other constitutional provisions which the Court will take into account in its assessment.
116. The Court will review the Principles chapter by chapter for compliance of each chapter with the Constitution and of specific provisions of each chapter that are related to constitutional provisions. In this way the assessment of the Principles will be done in accordance with constitutional standards. The Court's reasoning and the conclusions shall serve as a basis for the elaboration of the legal act and the Statute.

117. The Court's understanding is that "[...] *the Kosovo Government will adopt a decree directly applicable, which will be reviewed by the Constitutional Court*" (see Principle #2). Hereafter, following Principle #21, the Statute will be prepared by a different body but will be endorsed by a legal act of the Government. Moreover, any amendment to the Statute will be endorsed by a legal act of the Government and will be reviewed by the Constitutional Court. Therefore, the Court concludes that the legal act of the Government may incorporate the Statute and this overall act will be submitted for review by the Court, i.e. the legal act and the Statute (hereinafter: the legal act and the Statute).
118. The Court notes that the Statute that will be elaborated shall be based on the framework laid out in the chapters of the Principles.
119. The Constitutional Court reiterates that it is the authority that interprets the Constitution and reviews the compliance of laws with the Constitution when seized. The Court is not a legislative body, nor a legal norms drafting body and in this case it is for the Government while preparing the legal act for the implementation of the First Agreement related to the Association/Community to make it in compliance with the letter and spirit of the Constitution *inter alia*, the respective constitutional provisions.

### **Legal framework**

120. The chapter on Legal framework provides that,

*"(1) The Association/Community of Serb majority municipalities in Kosovo is established as an Association/Community of municipalities as foreseen by the First Agreement, the Law on Ratification of the First Agreement and Kosovo law.*

*(2) On the basis of the First Agreement which recognizes its distinct character, the Kosovo Government will adopt a decree directly applicable, which will be reviewed by the Constitutional Court. The Community/Association [sic] will be a legal entity defined by its Statute, which will comprise at least the elements set out below.*

*(3) The Statute will be adopted by a constituent assembly composed of the voted members of the assemblies of the participating municipalities."*

121. Regarding the chapter on Legal framework of the Principles, the Court notes that these refer to the legal sources of the Association/Community, and describe that the establishment of the Association/Community will be performed through a Decree of the Kosovo Government which is to be reviewed by the Court.
122. Regarding the adoption of further legal acts by the Government, the Court recalls Article 93 [Competencies of the Government] of the Constitution, which provides, *inter alia*, that,

*“The Government has the following competencies:*

*[...]*

*(4) makes decisions and issues legal acts or regulations necessary for the implementation of laws;*

*[...]”*

123. Regarding the review of legal acts of the Government of Kosovo for compliance with the Constitution, the Court recalls Article 113.2 [Jurisdiction and Authorized Parties] of the Constitution, which provides that,

*“2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:*

*(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime minister, and of regulations of the Government;*

*[...]”*

124. The Court finds that when the chapter on Legal framework of the Principles is elaborated into a legal act of the Government of Kosovo, that legal act must be in compliance with the competencies of the Government as defined in Article 93 of the Constitution. Furthermore, this legal act is foreseen to be directly applicable and is to be submitted to the Court for a review of its constitutionality. Therefore, it must be in compliance with the jurisdiction of the Court as defined in Article 113.2 of the Constitution.
125. The Court notes further that the Association/Community will be defined by its Statute. This Statute will be adopted by a constituent assembly composed of the elected members of the municipal assemblies of the participating Serb majority municipalities. Furthermore, under the general and final provisions of the Principles, Principle #21, the procedures towards the drafting and adoption of this Statute are set out, including the relationship between the Statute and the legal act to be adopted by the Government of Kosovo.
126. It stems from the Principles that the legal act and the Statute will define the objectives, organizational structure, legal capacity, budget and support, and relations with central authorities of the Association/Community.
127. The Court recalls that Article 12 of the Constitution is the foundation of local self-governance in the Republic of Kosovo, which provides that:
- “1. Municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo.*
- 2. The organization and powers of units of local self-government are provided by law.”*

128. Regarding the establishment of associations by municipalities, the Court recalls Article 21.4 [General Principles] of Chapter II [Fundamental Rights and Freedoms] of the Constitution, which provides that,

*“4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”*

129. The Court also recalls Article 44 [Freedom of Association] of the Constitution, which provides, *inter alia*, that,

*“1. The freedom of association is guaranteed. The freedom of association includes the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization.*

[...]

*3. Organizations or activities that infringe on the constitutional order, violate human rights and freedoms or encourage racial, national, ethnic or religious hatred may be prohibited by a decision of a competent court.”*

130. The Court further recalls that the Association/Community is foreseen by the First Agreement, *inter alia*, point 3 provides that *“The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities, e.g. President, vice President, Assembly, Council.”*

131. That implies that Article 12, Article 21.4 and Article 44, as well as Article 124.4 of the Constitution shall be taken into consideration.

132. The Court notes that the Association/Community as foreseen by the First Agreement and the Principles shall be an organization within the meaning of Article 44 of the Constitution.

133. The Court considers that the Statute shall be adopted by a constituent assembly that is a founding or inaugural meeting composed of representatives of its members as foreseen in the Principles.

134. The Court also notes that the Association/Community is foreseen to be composed of participating municipalities for the purpose of advancing certain objectives.

135. In this respect, the Court recalls Article 124.4 [Local Self-Government Organization and Operation] of the Constitution, which provides that,

*“4. Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law.”*

136. Based on the above, the Court considers that the Principles laid down in the chapter on Legal framework do not meet entirely the constitutional standards. Considering that the nature of the Association/Community will be established

in this part, the legal act and the Statute must be in compliance with Articles 12, 21.4, 44 as well as Article 124.4 of the Constitution.

### **Objectives**

137. The chapter on Objectives provides that,

*“(4) In accordance with the First Agreement, the Association/Community will have as its main objectives in delivering public functions and services to:*

- a. Strengthen local democracy;*
- b. Exercise full overview to develop local economy;*
- c. Exercise full over view in the area of education;*
- d. Exercise full overview to improve local primary and secondary health and social care;*
- e. Exercise full overview to coordinate urban and rural planning;*
- f. [there is no item f]*
- g. Adopt measures to improve local living conditions for returnees in Kosovo;*
- h. Conduct, coordinate and facilitate research and development activities;*
- i. Promote, disseminate and advocate issues of common interest of its members and represent them, including to the central authorities;*
- j. Provide services to its members in accordance with Kosovo law;*
- k. Assess the delivery of public services to its members and their residents as to support the Community/Association [sic] in forming positions of common interests for the participation to the work of the central authorities;*
- l. Conduct monitoring as required for the implementation of its objectives;*
- m. Establish relations and enter into cooperation arrangements with other associations of municipalities, domestic and international.*

*(5) The Community/Association [sic] will exercise other additional competences as may be delegated by the central authorities.”*

138. The Court notes that these objectives raise issues under Article 12 [Local Government] and Chapter X [Local Government and Territorial Organization] of the Constitution.

139. Chapter X of the Constitution provides that,

### **“Chapter X Local Government and Territorial Organization**

#### **Article 123 [General Principles]**

- 1. The right to local self-government is guaranteed and is regulated by law.*
- 2. Local self-government is exercised by representative bodies elected through general, equal, free, direct and secret ballot elections.*



3. *The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter of Local Self-Government to the same extent as that required of a signatory state.*

4. *Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.*

**Article 124 [Local Self-Government Organization and Operation]**

1. *The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.*

2. *Establishment of municipalities, municipal boundaries, competencies and method of organization and operation shall be regulated by law.*

3. *Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates competencies shall cover the expenditures incurred for the exercise of delegation.*

4. *Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law.*

5. *Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.*

6. *Municipalities are bound to respect the Constitution and laws and to apply court decisions.*

7. *The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law."*

140. The Court considers that, based on the Objectives defined by the Principles, the establishment of the Association/Community comes within the scope of inter-municipal cooperation within the meaning of Articles 12 and 124.4 of the Constitution. These provisions of the Constitution require that any inter-municipal cooperation must be in accordance with the law.

141. The Court notes that when the Principles are elaborated into a legal act and the Statute, they shall respect the provisions of the legislation of vital interest within the meaning of Article 81 of the Constitution.

142. The Court notes that, the objectives of the Association/Community are related to *“delivering public functions and services”* and that several of the enumerated objectives provide that the Association/Community shall *“exercise full overview”*, specifically in the areas of the development of local economy, education, local primary and secondary health care and social care, and urban and rural planning.
143. The Court is concerned that the meaning of the English term *“exercise full overview”* is ambiguous and does not conform to the terms used in either the Albanian-language text of the Principles nor the Serbian-language text of the Principles. The Court notes that the Albanian term used in the Principles is *“ushtrimin e vështrimit të plotë”*, which translates approximately into English as *“exercise of full view”*, which is similar to simply observing. The Court notes further that the Serbian term used in the Principles is *“obavljanje potpuno pregleda”*, which translates approximately into English as *“conduct a full review”*, which is similar to conducting an audit.
144. The Court notes that the First Agreement in point 4 uses the language *“The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning”* i.e. *“being informed”*. The wording to be used in the elaborated legal act and the Statute has to be in compliance with the wording of the First Agreement, point 4.
145. The Prime Minister of the Republic of Kosovo, in his letter of 19 November 2015, stated that, although the signed version of the Principles was the English-language version, nevertheless, *“For the delegation of the Republic of Kosovo, as original and authentic language version during the entire process of negotiations, was considered and accepted the version of principles translated into Albanian language, as the first official language in the Republic of Kosovo.”*
146. Regarding the quality of the language to be used when drafting legal acts, the Court recalls the case-law of the European Court of Human Rights. In its Judgment in the case *Sunday Times v. United Kingdom* (App. No. 6538/74, ECtHR Judgment of 26 April 1979, para. 49) the European Court of Human Rights stated, *inter alia*, that,
- “49. In the Court’s opinion, the following are two of the requirements that flow from the expression “prescribed by law”. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as “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. [...]”*
147. This Judgment of the European Court of Human Rights specifies that the law must be sufficiently accessible, precise and foreseeable in its consequences for it to qualify as *“law”*. Therefore, the Court finds that when elaborating the First Agreement and the chapter on Objectives of the Principles into a legal act and

the Statute any ambiguities in the definition of the objectives of the organization foreseen by the Principles shall be clarified. It also has to be ensured that each official language version of the legal act and the Statute is reconciled with the other language versions such that their meanings are identical, to the greatest extent possible.

148. Moreover, the Court finds that when the objectives of the Association/Community are elaborated into a legal act and the Statute, they shall take into account Articles 12, 81, 123 and 124 of the Constitution regarding the status, objectives and competencies of municipalities. In particular, the legal act and the Statute of the Association/Community shall not replace or undermine the status of the participating municipalities as the basic units of democratic local self-government within the meaning of Article 12 and Chapter X of the Constitution.
149. Based on the above, the Court considers that the Principles laid down in the chapter on Objectives do not meet entirely the constitutional standards. The Court considers that the objectives of the Association/Community as defined in the legal act and the Statute shall guarantee constitutional standards for local self-government related to the responsibility of the participating municipalities and to their relations with central authorities, within the meaning of Articles 124.6 and 124.7 of the Constitution. The objectives shall secure the responsibility of the participating municipalities to respect the Constitution and the laws and shall not circumvent or avoid the administrative review by central authorities.

### **Organisational structure**

150. The chapter on Organisational structure provides that,

*“(6) The Association/Community will have the following organs:*

*a. An Assembly as a supreme body composed of representatives appointed by each assembly of the participating municipalities, among their elected members. The Assembly will have the right to adopt amendments to the Statute, rules of procedure and all necessary regulations and administrative decisions as per its Statute and related objectives.*

*All amendments to the Statute, rules of procedure and all necessary regulations and decisions adopted by the Assembly will be applicable to its members unless one of its members formally expresses a different decision.*

*b. A President, who will represent the Community/Association, [sic] including before the central authorities and outside Kosovo. The President will be assisted by a Vice-President. The President and the Vice-President will be elected by the Assembly from among the members of the participating municipalities' assemblies and their mayors.*

*c. A Council composed of a maximum of 30 members among the residents of the participating municipalities, including all mayors of the participating municipalities; the Council is an advisory body which provides guidance to the work of the Association/Community.*

- d. *A Board composed of 7 members voted by the Assembly from among the mayors and residents of the participating municipalities, the exact composition to be defined in the Statute, with the right to take the necessary decisions for the daily management of the Community/Association [sic]. The members of the Board will be supported in their work by professional collegia composed of experts, divided into and covering those areas falling under the objectives and tasks of the Association/Community. The Statute will define the number of professional collegia and their assignment to the members of the Board.*
- e. *An administration, headed by a Chief of Administration appointed by and reporting to the Board, supporting the work of the Community/Association, [sic] in particular the Board and the President. The staff of the administration will benefit from an employment status, in accordance with Kosovo law, including the Law on Labour and the Law on Civil Service, enabling them to perform their administrative duties. The members of the Association/Community may decide to use a number of employees to support the Community/Association in the execution of its objectives.*
- f. *A complaints office with a mandate to examine complaints in relation to its objectives.*

*7. The seat of the Community/Association [sic] will be determined in the Statute."*

151. The Principles regarding the Organisational structure of the Association/Community are to be considered under Article 3 [Equality Before the Law], Article 7 [Values], Chapter III [Rights of Communities and Their Members] Article 57 [General Principles], Paragraph 1, Article 61 [Representation in Public Institutions Employment], Article 62 [Representation in the Institutions of Local Government], and Article 101 [Civil Service] of the Constitution.
152. These Articles of the Constitution provide that,

***"Article 3 [Equality Before the Law]***

- 1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.*
- 2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.*

***Article 7 [Values]***

- 1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights*

*and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.*

[...]

### **Chapter III [Rights of Communities and Their Members]**

#### **Article 57 [General Principles]**

*1. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution.*

[...]

#### **Article 61 [Representation in Public Institutions Employment]**

*Communities and their members shall be entitled to equitable representation in employment in public bodies and publicly owned enterprises at all levels, including in particular in the police service in areas inhabited by the respective Community, while respecting the rules concerning competence and integrity that govern public administration.*

#### **Article 62 [Representation in the Institutions of Local Government]**

*1. In municipalities where at least ten per cent (10%) of the residents belong to Communities not in the majority in those municipalities, a post of Vice President of the Municipal Assembly for Communities shall be reserved for a representative of these communities.*

*2. The position of Vice President shall be held by the non-majority candidate who received the most votes on the open list of candidates for election to the Municipal Assembly.*

*3. The Vice President for Communities shall promote inter-Community dialogue and serve as formal focal point for addressing non-majority Communities' concerns and interests in meetings of the Assembly and its work. The Vice President shall also be responsible for reviewing claims by Communities or their members that the acts or decisions of the Municipal Assembly violate their constitutionally guaranteed rights. The Vice President shall refer such matters to the Municipal Assembly for its reconsideration of the act or decision.*

*4. In the event the Municipal Assembly chooses not to reconsider its act or decision, or the Vice President deems the result, upon reconsideration, to still present a violation of a constitutionally*

*guaranteed right, the Vice President may submit the matter directly to the Constitutional Court, which may decide whether or not to accept the matter for review.*

*5. In these municipalities, representation for non-majority Communities in the Republic of Kosovo in the municipal executive body is guaranteed.*

**Article 101 [Civil Service]**

*1. The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality.*

*2. An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo."*

153. The Court notes that the Principles regarding the organizational structure of the Association/Community raise concerns regarding respect for the diversity of communities resident within the participating municipalities, and the reflection of this diversity in the staffing and structures of the Association/Community as required by the Constitution of the Republic of Kosovo.
154. The Court recalls that the First Agreement, point 3 determines the structure of the Association to be established on the same bases as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.
155. The Court finds that when these Principles on the organizational structure of the Association/Community are elaborated into a legal act and the Statute, they shall secure respect for the diversity of communities resident in the participating municipalities, in accordance with Articles 3, 7, 57.1, 61, and 62 of the Constitution.
156. The Court notes that the Principles define that staff members in the administration of the Association/Community may benefit from an employment status based on Kosovo law, including either the Law on Labour or the Law on Civil Service.
157. The Court recalls that Article 101 [Civil Service] of the Constitution comes within Chapter VI [Government of the Republic of Kosovo]. As such, the civil service is understood to be employment within a governmental body or entity within the meaning of Chapter VI. The purpose of the civil service can be understood with reference to Article 92.2 [General Principles] of Chapter VI, namely, "2. *The Government of Kosovo exercises the executive power in compliance with the Constitution and the law.*"
158. Employment in the civil service, and the special legal regime governing this employment, is a consequence of the purpose of the civil service as the administrative organ through which the Government exercises executive power. The authority of individual employees in the civil service to exercise executive

functions derives from the status within the public bodies of administration established by the Government.

159. Therefore, the Court concludes that the staff of the administration of the Association/Community shall not to be considered part of the Civil Service *per se*. They may only benefit from the status of the Law on Civil Service when employed on a position in a public body of the government administration, within the meaning of Article 101 of the Constitution.
160. Based on the above, the Court considers that the Principles laid down in the chapter on Organizational structure do not meet entirely the constitutional standards.

### ***Relations with the central authorities***

161. The chapter of the Principles on relations with the central authorities provides that,

*“(8) The Association/Community will work with the central authorities on the basis of mutual cooperation and information sharing.*

*(9) The Association/Communities will promote the interests of the Kosovo Serb community in its relations with the central authorities.*

*(10) The Association/Community will be entitled to propose, in accordance with Kosovo law, amendments to the legislation and other regulations relevant for the performance of its objectives.*

*(11) The Association/Community will have the right to initiate or participate in proceedings before the competent courts, including to the Constitutional Court, against any acts or decisions from any institution affecting the exercise by the Association/Community of its powers in accordance with its Statute.*

*(12) The Association/Community will have the right to nominate representatives in the competent organs/bodies of the central government, including the Consultative Community Council [sic]. In pursuit of the monitoring function envisaged by the First Agreement, the representative of the Association/Community will have the right to have access and information from the central authorities in accordance with Kosovo law.*

*(13) Acting on behalf of the Association/Community, the four mayors of the northern municipalities will provide the Ministry of Interior a list of candidates for nomination as regional Police Commander as specified in Article 9 of the First Agreement.”*

162. The Court recalls Chapter III [Rights of Communities and Their members] Article 57 [General Principles], Article 59 [Rights of Communities and their Members], under point (14), Article 60 [Consultative Council for Communities], Article 79 [Legislative Initiative], as well as Article 113 [Jurisdiction and Authorized Parties], Paragraphs 4 and 7, of the Constitution.

163. These Articles of the Constitution provide that,

***“Chapter III [Rights of Communities and Their Members]***

***Article 57 [General Principles]***

*1. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution.*

*2. Every member of a community shall have the right to freely choose to be treated or not to be treated as such and no discrimination shall result from this choice or from the exercise of the rights that are connected to that choice.*

*3. Members of Communities shall have the right to freely express, foster and develop their identity and community attributes.*

*4. The exercise of these rights shall carry with it duties and responsibilities to act in accordance with the law of the Republic of Kosovo and shall not violate the rights of others.*

***Article 59 [Rights of Communities and their Members]***

*1. Members of communities shall have the right, individually or in community, to:*

*[...]*

*(14) establish associations for culture, art, science and education as well as scholarly and other associations for the expression, fostering and development of their identity.*

***Article 60 [Consultative Council for Communities]***

*1. A Consultative Council for Communities acts under the authority of the President of the Republic of Kosovo in which all communities shall be represented.*

*2. The Consultative Council for Communities shall be composed, among others, of representatives of associations of Communities.*

*3. The mandate of the Consultative Council for Communities shall:*

*(1) provide a mechanism for regular exchange between the Communities and the Government of Kosovo.*

*(2) afford to the Communities the opportunity to comment at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives, and to seek to have their views incorporated in the relevant projects and programs.*

*[...]*



**Article 79 [Legislative Initiative]**

*The initiative to propose laws may be taken by the President of Kosovo from his/her scope of authority, the Government, deputies of the Assembly or at least ten thousand citizens as provided by law.*

**Chapter VIII [Constitutional Court]**

**Article 113 [Jurisdiction and Authorized Parties]**

[...]

*7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

164. The Court notes that Chapter III of the Constitution provides specific guarantees for the rights and interests of communities and, in Article 57.1, defines communities as, "*Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo [...].*"
165. Furthermore, Chapter III provides for specific rights to establish associations and to provide representation to central government bodies for the purposes of protecting the rights of communities. The Court notes that these rights granted to individuals and groups by virtue of belonging to a community within the meaning of Article 57.1 of the Constitution. As such, the Court finds that these rights are inalienable and inviolable attributes of these communities and their members.
166. As such, the Court finds that the Association/Community cannot be vested with full and exclusive authority to promote the interests of the Kosovo Serb community in its relations with the central authorities. It is to be noted that the Association/Community does come within the scope of the definition of a community within the meaning of article 57.1 of the Constitution.
167. The Court finds that when the Principles on relations with central authorities of the Association/Community are elaborated into a legal act and the Statute, they must ensure that the Association/Community shall comply with the provisions of Chapter III of the Constitution and shall not replace or undermine the authority of any associations of communities established within the meaning of Articles 57, 59(14) and 60.2 of the Constitution.
168. The Court notes that Article 60.2 of the Constitution provides that, "*The Consultative Council for Communities shall be composed, among others, of representatives of associations of communities.*" The Court considers that the inclusion in this provision of the words "*among others*" implies that entities or persons that do not come within the definition of "associations of communities" may also become members of the Consultative Council for Communities.

169. The Court also notes that the First Agreement in its point 6 refers to membership of the Association/Community to the Consultative Council for Communities, stating that:

*“The Community/Association shall have a representative role to the central authorities and will have a seat in the communities consultative council for this purpose. In the pursuit of this role a monitoring role is envisaged”*

170. Therefore, the Court finds that the Association/Community may become a member of the Consultative Council for Communities under Article 60.2 of the Constitution and the First Agreement.
171. As a member of the Consultative Council for Communities the Association/Community may benefit from the right to suggest initiatives for legislation, in consultation with other communities, within the scope of the mandate of the Consultative Council for Communities within the meaning of Article 60.3 under (2) of the Constitution.
172. However, the Court recalls that under Article 79 of the Constitution, the right of legislative initiative is exclusively provided to the President of the Republic of Kosovo, the Government, the deputies of the Assembly or to at least ten thousand citizens.
173. Therefore, the Court finds that the Association/Community cannot be entitled to propose amendments to legislation and other regulations, as indicated by Principle #10 of the Principles.
174. Regarding Principle#11 of the Principles, on the rights of the Association/Community of access to the courts of the Republic of Kosovo, the Court notes that the definition of parties authorized to bring referrals to the Court is regulated by Article 113 of the Constitution. The authority of the Association/Community to bring referrals must comply with the provisions of Article 113 of the Constitution.
175. The Court recalls Article 21.4 of the Constitution, as quoted above. Article 21.4 provides that legal persons also benefit from the protection of their fundamental rights and freedoms under Chapter II of the Constitution. The Court also recalls its case-law regarding the access to the Court for legal persons alleging a violation by a public authority of their rights and freedoms as guaranteed by the Constitution (see AAB-RIINVEST v. Government of the Republic of Kosovo, KI41/09, Resolution on Inadmissibility of 27 January 2010, paragraph 14).
176. The Court finds that the Association/Community may only initiate proceedings before the Constitutional Court where the Association/Community, as an entity having legal personality, can claim to be a victim of a violation of its fundamental rights and freedoms guaranteed by the Constitution within the meaning of Article 113.7 of the Constitution.

177. Based on the above, the Court considers that the Principles laid down in the chapter on Relations with the central authorities do not meet entirely the constitutional standards.

### ***Legal Capacity, Budget and Support, and General and Final Provisions***

178. The chapters on Legal Capacity, Budget and Support, and Final Provisions of the Principles provide that,

#### ***“Legal capacity***

*(14) The Association/Community will be endowed with the legal capacity necessary under Kosovo law to perform its objectives, including the right to own moveable and immovable property, to co-own companies that provide local services within the scope of the Association/Community and to conclude contracts, including employment contracts.*

*(15) On the basis of the First Agreement, the Association/Community is considered established, upon the adoption of the decree, for the purposes of its objectives.*

#### ***Budget and support***

*(16) The Association/Community will have its own budget, which will be administered in accordance with the principles of transparency and accountability, and the provisions of the law on public procurement. Those principles will in particular apply to the channeling of funding, including under 17.d. The expenditures shall be subject to audits by the competent authorities, including by the Auditor General.*

*(17) The Association/Community will be funded from:*

- a) contributions from its members;*
- b) income and revenue from the services provided by the Association/Community, its companies or drawn from its moveable or immovable assets;*
- c) transfers from the central authorities;*
- d) contributions, grants, donations as well as financial support from other associations and organisations, domestic and international as well as from the Republic of Serbia; the Community/Association will be exempt from duties and taxes in the pursuit of its objectives, on the same basis as the participating municipalities.*

#### ***General and final provisions***

*(18) The Association/Community will be open to any other municipality provided the members are in agreement.*

*(19) The Association/Community can only be dissolved by decision of its Assembly adopted by a 2/3 majority of its members.*

*(20) The Association/Community will be entitled to have its own official symbols (coat of arms and flag), in accordance with Kosovo law.*

*(21) The statute of the Association/Community will be drafted by the Management Team and presented to the High level Dialogue within 4 months from the date of agreement of these principles/elements, with facilitation if necessary, including with the Ministry of Local Government. The Statute will be endorsed by decree upon agreement in the Dialogue. Any amendments will be presented by the Association/Community, will be endorsed by decree and will be reviewed by the Constitutional Court.*

*(22) Within one year of the adoption of the Statute of the Association/Community, a review of its implementation shall be conducted, including with regard to Article 5 of the First Agreement."*

179. The Court notes that, in particular, the Principles regarding budget and support are to be assessed under Articles 124.5 and 137 of the Constitution. These Articles provide that,

***"Article 124 [Local Self-Government Organization and Operation]***

*[...]*

*5. Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.*

*[...]*

***Article 137 [Competencies of the Auditor-General of Kosovo]***

*[The] Auditor-General of the Republic of Kosovo audits:*

*(1) the economic activity of public institutions and other state legal persons;*

*(2) the use and safeguarding of public funds by central and local authorities;*

*(3) the economic activity of public enterprises and other legal persons in which the State has shares or the loans, credits and liabilities of which are guaranteed by the State."*

180. The Court notes that in Article 124.5 the Constitution provides for financial transfers from central government to municipalities and allocates to municipalities the right to decide on their expenditures. However, the Constitution is silent regarding transfers to other entities or bodies connected

with local self-government. As such, these rights belong exclusively to the municipalities.

181. The Court finds that when elaborating the Principles on the financing, budget and expenditures of the Association/Community in a legal act and the Statute, they shall ensure that financing and expenditures of the Association/Community shall be compatible with Article 124.5 of the Constitution. Thus, the legal act and the Statute shall ensure proper financing and expenditure of the association. They also shall not replace or undermine the rights of the participating municipalities to receive and decide on the spending of municipal revenues and appropriate funding from the central government.
182. The Court notes that the Auditor-General is mandated by Article 137 of the Constitution to audit public institutions and other state legal persons, central and local authorities, and the economic activity of public enterprises and other legal persons in which the State has shares, or where the State has guaranteed the loans, credits and liabilities of such legal persons. Therefore, for the Auditor-General to be mandated to perform audits of the Association/Community, it must come within the ambit of such public institutions, authorities or enterprises within the meaning of Article 137.
183. The Court finds that the authority of the Auditor-General of the Republic of Kosovo to conduct audits of the economic activity and the use of public funds by the Association/Community is in compliance with the Constitution. This is the case when such audits come within the Auditor-General's competencies as a natural and logical extension of the auditing of the use of public funds by the participating municipalities within the meaning of Article 137 of the Constitution.
184. Regarding the chapter of the Principles on "General and final provisions", the Court notes that these provide further procedural guidance on the elaboration and implementation of the First Agreement provisions for the establishment of the Association/Community. In particular, Principle #21 details how the Statute shall be drafted and negotiated, that the Statute shall be endorsed by a decree, and how amendments to the Statute shall be proposed, adopted by decree and be subject to review by the Court.
185. The Court recalls its findings related to the chapter of the Principles on the "Legal framework" above. The Court considers that the procedural principles contained in the chapter on "General and final provisions" must be harmonized with the procedural principles contained in the chapter on "Legal framework".
186. Based on the above, the Court considers that the Principles laid down in the chapter on Legal Capacity, Budget and Support, and General and Final Provisions do not meet entirely the constitutional standards.
187. Furthermore, the Court reiterates its finding that when the procedural rules to amend the Statute are elaborated into a legal act and the Statute, they must be in compliance with the competencies of the Government as defined in Article 93 [Competencies of the Government], point (4) of the Constitution.

188. In order for these legal acts to be submitted for review by the Court as foreseen by the Principles, they have to come within the scope of Article 113 [Jurisdiction and Authorized Parties], paragraph 2 (1) of the Constitution.

## **Conclusions**

189. In conclusion, the Court finds that:

1. The Applicant is an authorized party to bring this Referral to the Court within the meaning of Article 84(9) in conjunction with Article 112.1 of the Constitution:
2. The referral is admissible within the meaning of Article 84(9) in conjunction with Article 112.1 of the Constitution:
3. The First Agreement, ratified on 27 June 2013, foresees the establishment of an Association/Community of Serb majority municipalities in Kosovo. Furthermore, it provides for the establishment of this Association/Community by a Statute. In addition, it defines the structures of the Association/Community to follow the same basis as the existing statute of the Association of the Kosovo municipalities. Moreover, the participating municipalities are entitled to cooperate through the Association/Community collectively based on the European Charter for Local Self-Government and Kosovo law. The Association/Community will have full overview in the areas of different activities. In addition, the Association/Community will exercise other competencies delegated by the central authorities. Thus the establishment of the Association/Community has become part of the internal legal system.
4. The Principles as elaborated in the "*Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*" are not entirely in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo.
5. The elaboration of the Principles into the legal act and the Statute shall be done in accordance with the spirit of the Constitution, Article 3 [Equality Before the Law], Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution, and in particular with Articles 3, 7, 12, Chapter II [Fundamental Rights and Freedoms] Articles 21 and 44, Chapter III [Rights of Communities and Their Members] Articles 57, 59, 60, 61 and 62, as well as with Articles 79, 81, 93, 101, 113, 123, 124 and 137 of the Constitution of the Republic of Kosovo. Thus, these Principles shall be in compliance with the constitutional standards of the Republic of Kosovo as reasoned by the Judgment of the Court.
6. The Court notes that the legal act and the Statute, as well as its amendments will be reviewed by the Constitutional Court.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 84(9) in conjunction with Article 112.1 of the Constitution, Article 20 of the Law, and Rule 56 (a) of the Rules of Procedure, in its session held on 21 December 2015, by majority

### DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that the Association/Community of the Serb majority municipalities is to be established as provided by the First Agreement, ratified by the Assembly of the Republic of Kosovo and promulgated by the President of the Republic of Kosovo;
- III. TO HOLD that the Principles as elaborated in the “Association/Community of Serb majority municipalities in Kosovo – general principles/main elements” are not entirely in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo;
- IV. TO HOLD that the legal act of the Government of the Republic of Kosovo and the Statute implementing the Principles in order to be in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo shall meet the constitutional standards and be in compliance particularly with Articles 3, 7, 12, Chapter II [Fundamental Rights and Freedoms] Articles 21 and 44, Chapter III [Rights of Communities and Their Members] Articles 57, 59, 60, 61 and 62, as well as with Articles 79, 81, 93, 101, 113, 123, 124 and 137 of the Constitution of the Republic of Kosovo as reasoned by the Judgment;
- V. TO HOLD that the Interim Measure decided on 10 November 2015 ends upon the entry into force of this Judgment;
- VI. TO NOTIFY this Judgment to the Parties;
- VII. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20 (4) of the Law;
- VIII. TO DECLARE this Judgment effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi