

Report between the President and Constitutional Court and its influence on the functioning of the Constitutional System in Kosovo

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Abstract

This paper aims at clarifying the report between the President and the Constitutional Court. If we take as a starting point the constitutional mandate of these two institutions it follows that their final mission is the same, *i.e.*, the protection and safeguarding of the constitutional system. This paper, thus, will clarify the key points in which this report is expressed. Further, this paper examines the theoretical aspects of the report between the President and the Constitutional Court, starting from the debate over this issue between Karl Schmitt and Hans Kelsen. An important part of the paper will examine the Constitution of Kosovo, *i.e.*, the contents of the constitutional norm and its application. The analysis focuses on the role such report between the two institutions has on the functioning of the constitutional system. In analyzing the case of Kosovo, this paper examines Constitutional Court cases in which the report between the President and the Constitutional Court has been an issue of review. Such cases assist us in clarifying the main theme of this paper. Therefore, the reader will be able to understand the key elements of the report between the President as a representative of the unity of the people on the one hand and the Constitutional Court as a guarantor of constitutionality on the other hand.

Keywords: President; constitutional court; unity of the people; constitutionality; constitutional system.

Introduction

The Constitutional and factual report between the President as a chief of state and the Constitutional Court has been a subject of debate for long. This debate, containing conflicting ideas and thoughts has culminated in the 30's of last century and is largely attributed to the authors Karl Schmitt and Hans Kelsen. The key question of this debate centered on the idea of who should be the guardian of the Constitution? At the time, this debate focused on the Constitution of Weimar¹.

¹ Stockholm Institute for Scandianvian Law; Stanley L. Paulson; *Some Issues in the Exchange between Hans Kelsen and Erich Kaufmann*, 2010, page 2.

This paper will examine the theoretical views over the report between the President as a representative of the unity of the people and the Constitutional Court as a safeguarding institution of the Constitution and of constitutionality. The paper focuses on the constitutional system of Kosovo, as a new system, created in conformity with the highest standards of a democratic state and adopting western values.² This report between two of the most important constitutional institutions, which together embody the duty of guaranteeing the democratic functioning of state institutions could be examined from different viewpoints and places, however in this case, this paper is limited in the Republic of Kosovo.

As stated above, every reader and author on this topic, cannot avoid the debate of the last century between Schmitt and Kelsen, as such this debate cannot be left aside without commenting upon, before we analyze the Constitution of Kosovo, as concerns the the theme of this paper. On the one hand, Hans Kelsen's theory is a pure legal theory and not political whereas on the other, Karl Schmitt's thoughts have a pure political nature, based on the fact that Schmitt thought that the protection of the Constitution is best achieved when done by the President of the Reich. Despite that the majority of Schmitt's concept revolves around and is dominated by political elements, nonetheless, this concept is also important in the legal aspect even though all of Schmitt's arguments on this debate are political.³

Kelsen, on the other hand, disputes Schmitt's ideas, by opposing the presence of political elements in judicial decisions. As David Dyzenhaus has pointed out, "Kelsen's strategy was an instance of liberal recognition of the reality of politics and the way that decision breaks through the normative, at the same time as it is a futile and purely formal attempt to contain that breakthrough".⁴ Among others, we have to keep in mind that even though this debate has taken place in the last century and in a political reality which is not the same as in our time, thus this debate should not be considered only from a historical viewpoint, but also from a judicial viewpoint. Moreover, we should analyze the thoughts from this debate based on the current realities that exist among different constitutional systems.

In the context of this debate, Schmitt argues that the President, in addition to exercising the competences afforded to him, he represents the unity of the people, thus the President for reasons of moral prestige and the general trust, shall have a unique authority in the state. This moral position of the President empowers his neutral force

² The Constitution of Kosovo has been approved on 09 April 2008 and entered into force on 15 June 2008, and is considered the establishing act of the state of Kosovo and its new constitutional order, after an international supervision of over eight years under the administration of the United Nations Mission in Kosovo – UNMIK.

³ Luis Pereira Coutinho, Massimo La Torre, Steven D. Smith; *Judicial Activism – An Interdisciplinary Approach to the American and European Experiences; Ius Gentium: Comparative Perspectives on Law and Justice*; Springer International Publishing, Switzerland, 2014, page 89.

⁴ *Ibid.* 88-89

in a system of checks and balances. Moreover, according to Schmitt, the President of the Reich is equipped with competences that make him an independent “neutral” from the legislative power.⁵ Pursuant to this and to these arguments, Karl Schmitt, in response to Hans Kelsen’s theory, would argue that only the President is in a position to defend the Constitution and not the Court. Whereas, on the other hand, in 1928, Hans Kelsen argued that only a Constitutional Court would be in a position to defend the Constitution. In addition to this key debate, Schmitt and Kelsen have examined further and more peripheral issues, nonetheless these examinations are and remain still valuable.

Only the passing of time resolved these theoretical differences with practical consequences for the judicial and constitutional adjudication. This happened only after a human catastrophe brought by the second world war. Developments followed as had Hans Kelsen predicted. The chief of state, in the majority of states today, plays an instrumental role in the protection of constitution through exercising of authorizations of the passive side of powers. This does not occur in all constitutional democracies, rather only in cases of a parliamentary constitutional system. However, it does not follow that the monopoly of defending the constitution rests with the chief of state, as a constitutional justice in a broad sense. That monopoly rests with another institution, separated from the other powers, which usually is not part of the judiciary, that is, the Constitutional Court.⁶ We can deduce from this that because of the events of the past century which divest the figure of the President by showing his ego and at the same time by weakening his role as a potential guarantor of constitutionality through his exercising of his competencies, the role of protection of the constitution is attributed only to the Constitutional Court.

Despite this very thoughtful debate, which embodies the relationship between the President and the Constitutional Court, in a constitutional and practical sense it can be concluded that both these institutions have constitutional mandates to be guarantors of the constitutionality and guardians of the Constitutions, but the procedure to achieve this differs. Whereas the Constitutional Court achieves this through a judicial procedure of adjudicating on the constitutional and legal norms, on the other hand, in the President’s case we can witness the presence of the political element, which in many cases is misused and abused, especially in places where the President by calling upon his constitutional competences turns himself into a dictator.⁷ However, in democratic

⁵ (Cambridge Studies in Constitutional Law) Lars Vinx-*The Guardian of the Constitution_ Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*-Cambridge University Press (2015), pages 50-160.

⁶ Law – Journal for Juridical and Social Issues, Enver Hasani: *Preventive Abstract Control of Constitutional Amendments and Protection of the Head of State from Unconstitutional- Dismissal: The Case of Kosovo*, USAID, Prishtina, pages 105-150.

⁷ If we take for example former communist states, which in their constitutional systems have adopted a strong President, who often would misuse his competences, by not exercising them democratically and with the purpose of ensuring the functioning and guaranteeing of a decent constitutional order. A typical case which proves such an attitude is Albania, which in the Constitutional Law of 1992 had designed a strong President, which later proved to be a wrong solution.

states with functional constitutional systems, the guaranteeing and protection of the Constitution and of constitutionality can be considered as a responsibility exercised by both the President and the Constitutional Court.

Constitutions of democratic states have embodied remarkably the report between the President and the Constitutional Court, by creating independent mechanisms for these two constitutional institutions through which they guarantee the constitutionality and protect the Constitution. Besides this, the constitutions of democratic states have designed such mechanisms, through which the President in cooperation with the Constitutional Court guarantee the functioning and protection of the Constitution and constitutionalism.⁸

Such design of the report between the President and the Constitutional Court has been adopted also by the Constitution of the Republic of Kosovo, from which the constitutional system of Kosovo derives. This report will be examined in details below.

Report between the Constitutional Court and the President in the Constitution of Republic of Kosovo

The constitutional system of Kosovo, stemming from the Constitution which is in force since 2008, has designed a typical and common relation between the President and the Constitutional Court. Generally, such adoptions have been contained and designed by other constitutions as well. We have to examine this report in the constitutional system of Kosovo by identifying and analyzing the case law and the exercise of their respective power by these two institutions to clarify the report beyond what is written in the Constitution. That said, this section looks at some practical elements which characterize the report between the President and the Constitutional Court.

Taking the constitutional norms as a starting point, the Constitution of Kosovo, in the provision in which regulates the separation of powers, it has defined the role of the President and of the Constitutional Court⁹. In this case, in the said article refers to the separation of powers where the President is the representative of the unity of the people, represents the country internally and externally and finally, is a guarantor of the democratic functioning of the institutions, emphasizing these three key attributions that a President has in a constitutional system. In the same article the Constitutional Court is said to be the institution that protects the constitutionality and providing the final interpretation of the Constitution¹⁰. It seems that the way this constitutional norm

⁸ Constitution of Croatia article 89, Constitution of Poland articles 122.3 and 144.3.9, Constitution of Hungary article 9.3, Constitution of Albania article 134, Constitution of Macedonia article 84, Constitution of Slovenia and Constitution of Montenegro on the report between the President and the Constitutional Court refer also to the institute of discharging the President.

⁹ Constitution of Kosovo, article 4.

¹⁰ *Ibid.*, article 4, para 3 and 6. (3) The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and - 2 - externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution. (6) The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution.

has been drafted, is a reflection of Schmitt's and Kelsen's theory for the powers of the President and the Constitutional Court respectively. There is no dilemma that the President and the Constitutional Court have two separate functions even though both these institutions through various mechanisms serve as regulators in a constitutional system of a country, in this case of Kosovo's. It follows naturally that the role of the Constitutional Court as a regulator and protector of constitutionality in a country, like in Kosovo is achieved by being a final interpreter of the constitutional and legal norms, in a constitutional and legal process, without and political element, as Kelsen suggests. On the other hand, the President has constitutional authorizations to serve as a regulator and guarantor of the democratic function of the institutions, including ensuring the constitutionality. However, this is achieved by means of a process which differs from that of the Constitutional Court and which can include political elements into the decision making process, as suggests Schmitt¹¹. These competences and the means by which they are exercised, provide the President with the opportunity of being a neutral actor in the public and constitutional life in the Republic of Kosovo, by utilizing the President's competences.

Let's return at the main theme of this paper, the report between the President and the Constitutional Court in the Constitution of Kosovo, where this report has two dimensions. First, what lies and is provided by the constitutional norm and second, the way what is provided by the constitution is implemented and exercised in practice. That said, there are three key issues which identify the report between the President and the Constitutional Court within the constitutional system of Kosovo. One is the competence of the President in appointing and discharging the judges of the Constitutional Court, which creates a report demonstrating that only the President is empowered with the right to appoint the individuals which shall protect and interpret the constitution. This competence of the President, *prima facie*, appears to be only formal, but this should be further analyzed below. Second, the report between the Constitutional Court and the President is expressed also through the discharging of the President, where the Constitutional Court is mandated to conclude whether the President has violated the Constitution¹². This way the Constitutional Court has considered two cases of this nature, where in one it had ruled that the President, his excellency Fatmir Sejdiu, had committed a serious violation of the Constitution¹³. In the other, the Constitutional Court had ruled that the procedure for the election

¹¹ Article 84 lists the authorizations of the President of Kosovo where it is clear that the majority of the competences of the President aim at fulfilling the attributes mentioned above, i.e., representing the unity of the people and guaranteeing the democratic functioning of the institutions. E.g., review the laws of the Kosovo Parliament, propose constitutional amendments, refer issues to the Constitutional Court, mandate the candidate for Prime Minister, appoint and discharge judges, prosecutors, chief prosecutor, President of the Supreme Court, Judges of the Constitutional Court, appoint leaders of national security institutions, appoint leaders of independent institutions.

¹² Constitution of Republic of Kosovo, article 91, para. 3.

¹³ Case Nr. KL.47/10, Naim Rrustemi and 31 members of Kosovo Parliament v. His Excellency Mr. Fatmir Sejdiu, President of Kosovo, 28 September 2010.

of the President had been unconstitutional¹⁴. In the first case, the Constitutional Court has clarified the importance of the political element of a President, ruling it as nonconforming with the Constitution for a President to hold the function of the President and a function on a political party. This tendency seems to be against Schmitt's thesis, which as we saw above, suggests that the President may be a guarantor of the Constitution. On the other hand, the Constitutional Court of Kosovo, in relation to the report between the President and a political party, i.e., whether a President may hold a post in a political party, has clarified that this rule is only applicable to the President but not to the Acting President¹⁵.

Outside this issue we have to agree that the jurisprudence of the Constitutional Court of Kosovo, for all the years in its existence, through its judgments has dealt with in detail about the constitutional function of the President¹⁶. These judgments have served as a source for discussions and scholarly debates among jurists and the academic community¹⁷.

In addition to the two above mentioned aspects in which the report between the President and the Constitutional Court is reflected, one other important aspect is the competence of the President to refer issues to the Constitutional Court. Indeed, this may represent the key point of the constitutional report between the President and the Constitutional Court in Kosovo, if we take into account the constitutional role of the President in guaranteeing the constitutionality and democratic functioning of the institutions, as well as the representation of the unity of the people. We find this competence of the President in most of the constitutional systems of the world. In Kosovo's case, this competence is found in two forms. First, as part of the special and original jurisdiction¹⁸. Second, as part of the general jurisdiction, as a competence of the President¹⁹. The Constitutional Court of Kosovo has treated this competence following the second form, in cases when it has ruled over the admissibility of requests by the President on this basis²⁰.

¹⁴ Case Nr. KO 29/1, Sabri Hamiti and other members of Kosovo Parliament on examination of the constitutionality of the Decision of the Kosovo Parliament Nr. 04-V-04, related to the election of the President of the Republic of Kosovo, 22 February 2011.

¹⁵ Case Nr. KO 97/10 on the request submitted by the Acting President, Dr. Jakup Krasniqi related to the issue of holding the position of Acting President at the same time of the function of General Secretary of Democratic Party of Kosovo.

¹⁶ The following are cases in which the Constitutional Court examines and clarifies through a Judgments the constitutional role of a President, including his or her role in representing the unity of the people and guaranteeing the democratic functioning of the institutions: Case KO 29/12 and Case KO 48/12 Proposed Constitutional Amendments, submitted by the President of the Kosovo Parliament on 23 March 2012 and 4 May 2012.

¹⁷ The contents of this judgment has been examined and challenged also by Prof. Dr. Enver Hasani. See further: Law – Journal for Juridical and Social Issues, Enver Hasani: *Preventive Abstract Control of Constitutional Amendments and Protection of the Head of State from Unconstitutional- Dismissal: The Case of Kosovo*, USAID, Prishtina, pages 105-150.

¹⁸ Constitution of Kosovo, Article 113, para. 2-3.

¹⁹ *Ibid*, article 84, para. 9.

²⁰ Case Nr. K0103/14, President of Republic of Kosovo on the examination of conformity of article 84 (14) [Competences of the President] with article 95 [Election of Government] of Constitution of Kosovo. See in particular the part on the admissibility of the request.

The Constitution of Kosovo differs the functions of the President and the Constitutional Court in such a way as each of these institutions has a general constitutional function²¹, which is materialized in specific articles²². Based on what was said above, in order to clarify the report between the President and the Constitutional Court in more detail, we have to take into account that both these institutions are considered as neutral institutions, but separate ones. Concretely, the competence of the President to refer issues to the Constitutional Court, enables for the joint exercise of the function of both institutions to guarantee and protect the constitutional system of Kosovo.

The opportunity for the President to refer cases to the Constitutional Court of Kosovo has been proven to be a useful tool, as it has been used by the President indirectly to enable the democratic functioning of the institutions by means of a process of interpretation of the Constitution, by the Constitutional Court of Kosovo.

Such convergence of the function of the President to refer cases to the Constitutional Court and an interpretation of the Constitutional Court for a concrete issue that is referred by the President seems to be an ideal solution to guarantee a functional constitutional system. Despite of other competences of the President of Kosovo to guarantee the constitutional and democratic functioning of the institutions, it has been proven in practice that when the President of Kosovo has used the competence to refer cases to the Constitutional Court, everything has been clearer and the Constitutional Court has provided more trust and legal security.

This point of the report between these two constitutional institutions safeguards and contributes to a functional constitutional system, the protection of the constitution and of constitutionality. Often, the President cannot manage the functioning of the constitutional system, in particular in cases which in and of themselves require constitutional interpretations. As such in order for the President to reflect faith in cases of doubts over the inclusion of any political elements in the President's decision making, the same is activated through the competence to refer cases to the Constitutional Court, to clarify a particular issue for the purpose of ensuring constitutionality. One such situation has occurred in Kosovo during the institutional crisis of 2014 which has lasted for months.

We are not able to fully understand the impact of this report in the functioning of the constitutional system in Kosovo, as unfortunately the Presidents of Kosovo thus far have not produced that many cases in the Constitutional Court, to clarify concrete constitutional situations. In all the jurisprudence of the Constitutional Court of Kosovo we are able to find only four cases referred by Kosovo's Presidents thus far, by utilizing the competence of the President to refer cases to the Constitutional

²¹ Constitution of Kosovo, article 4.

²² Comparing article 4 with article 84 and 113 of the Constitution reflects that the general constitutional jurisdiction is materialized with concrete competences.

Court. In the first case, the President of Kosovo, his excellency Mr. Fatmir Sejdiu has asked the Constitutional Court to clarify the issue of resignation of the Mayor of Rahovec Municipality Mr. Qazim Qeska²³. On the other hand, the President of Kosovo, her excellency Madame Atifete Jahjaga has asked the Constitutional Court to rule on whether the Assembly of Kosovo has violated her right to veto the Law Nr. 04/1-084 on Pensions of the members of the Kosovo Security Force²⁴.

We will not be analyzing these two cases, but we have to emphasize that the Constitutional Court has in both cases, as in other cases as well, argued in details over the issues asked. Further, the most known case which relates to the exercise of the competence to refer cases to the Constitutional Court by the President has been submitted in 2014, in which case the President of Kosovo, her excellency Madame Atifete Jahjaga has asked the Constitutional Court questions of constitutional nature, to examine the conformity of article 84.14 with article 95 of the Constitution, for the purpose of clarifying who is entitled to propose the mandate holder for the formation of Government²⁵. Indeed, before the referral of this case to the Constitutional Court by President Jahjaga, scholarly and political debates have been taking place over who is entitled to establish the government following the 2014 elections which created the necessity for coalition between political parties. The President, facing public pressure because of the blockade of the state institutions, to avoid any dilemmas from her decision making process, as it was her competence to mandate a candidate for Prime Minister, the President asked the Constitutional Court for this issue. A professional, objective and fully independent interpretation of the Constitutional Court enabled the clarification of the issue and avoiding any and all dilemmas.

The second most important case, which has produced heated political debate²⁶ and which has instigated protests by the opposition is the case of Association of Serb Majority Municipalities, an agreement signed between the Republic of Kosovo and Republic of Serbia in Brussels, in August 2015²⁷. The contents of this agreement by the public and academic community was classified as containing provisions in nonconformity with the constitution²⁸. Such a determination produced protests and blocked the work of

²³ Case Nr KO 80/10 Request of the President of Kosovo, his excellency Dr. Fatmir Sejdiu, on clarifying the competences of the President in the case of the Mayor of Rahovec, Mr. Qazim Qeska.

²⁴ Case Nr. KO 57/12 Request of the President of Kosovo, her excellency Atifete Jahjaga, on the effects of the right to veto of the President related to the voting and approving in Parliament after a veto of Law Nr. 04/1-084 on Pensions of Members of the Kosovo Security Force.

²⁵ Case Nr. KO 103/14, Request of the President of Kosovo, her excellency Atifete Jahjaga on the examination of the conformity of article 84(14) [Competences of the President] with article 95 [Election of Government] of the Constitution of Kosovo.

²⁶ It refers to the political debate occurring in national media over the last five months of 2015., between analysts and members of political parties, related to the contents of the Agreement on the Principles of the Association of Serb Majority Municipality.

²⁷ See e.g., <http://botasot.info/lajme/445144/nis-takimi-mustafa-mogherini/>, accessed on 04.01.2016.

²⁸ Public and academic opinion in the context of this paper means the debate and opinions offered in national and international media of university professors and jurists as well as other opinion makers. These debates have been going on for the last five months of 2015 related to the issue of the Association of Serb Majority Municipalities.

the Kosovo Parliament for months from the date signing this agreement. The President of Republic of Kosovo, Mrs. Jahjaga, as a representative of the unity of the people and a guarantor of the democratic functioning of the institutions, after failed attempts of political dialogue between the position and opposition, utilized her competence and referred the signed agreement for examination by the Constitutional Court, by means of a constitutional question. The President achieved this, by utilizing the competence of the President to refer issues to the Constitutional Court and through this the President ensured the safeguarding of the constitutional and democratic functioning of the institutions and represented the unity of the people. Further and finally the President safeguarded the constitutional order, from anti constitutional elements of a particular legal act, such as the agreement on the principles of the Association of Serb Majority Municipalities²⁹.

The Role of the President in appointing Constitutional Judges

In examining the report between the Constitutional Court and the President, we have to look at the role and competences of the latter in in the process of appointment of the judges of the Constitutional Court.

Many constitutions have designed various models of the involvement of the President in the process of appointment of judges of the Constitutional Court. The determination of this role of the President, takes into account the role of the President as a representative of the unity of the people and of executive powers, which the President has based on the Constitution.

By analyzing the Constitution of the Republic of Kosovo, we can see the positioning of the President in relation to this process, i.e., the appointment of the judges of the Constitutional Court as a position of final nature in the decision-making process. The Constitution has foreseen that the President shall conclude such an important process by finalizing the appointment of the judges proposed by the Kosovo Parliament, with a decree for their appointment. This position of the President, as final in this process, comes from the competence of the President, to guarantee the constitutional functioning of the institutions foreseen by the Constitution³⁰. This means that the Presidents offers the guarantees for a constitutional process of appointment of the judges of the Constitutional Court, by means of the decree with which the President concludes this process.

What is the concrete role that the Constitution has appointed to the President in this process. If we refer to the Constitution of Kosovo, we shall see that it is silent, on whether the President for any reasons, can refuse the final appointment by a decree of the judges of Constitutional Court, which have been proposed by Kosovo Parliament

²⁹ Judgment in case Nr. K0130/15, dated 23.12.2015.

³⁰ Constitution of Republic of Kosovo, article 84, para. 2.

by a qualified majority vote of 2/3 of all the members of the Assembly that are present and voting³¹. The Law on Constitutional Court has dealt with in more detail with this report between the President and the Constitutional Court, by specifying in which cases the President may not respect the proposal of the Kosovo Parliament, by not finally appointing the judges of the Constitutional Court which are proposed by the Parliament. This way, the law has foreseen, that candidates which have been political affiliation in the past, such as holding a function in a political party, the President may not appoint such proposal, until such candidates do not convince the President by sufficient proofs that they have resigned from any responsibility or function in any political party or political organization³².

This law specifies only one aspect of compliance, which is the political independence of the candidate proposed by the Kosovo Parliament. It is unclear to understand what would be the role of the President, if faced with a candidate, for whom the President is reserved as to his or her professional qualifications or moral integrity of the candidate, for which even the law does not provide guidance. Generally, the conclusion that the President's competence for the appointment of judges of the Constitutional Court is just formal remains true, as the President has no discretion to refuse the proposals by the Kosovo Parliament, at least not based on the law. It remains unsolved whether the President's discretion in particular cases may exceed the legal requirements³³.

A debate over the President's position in the process of appointment of judges of the Constitutional Court was held in the Republic of Slovakia. There, the Constitution has designed the President as a constitutional authority, to appoint the judges of the Constitutional Court.³⁴

In the second year of the mandate of President Kiska, the Parliament of the Republic of Slovakia, in conformity with the provisions of the Constitution, has made the proposal to the President for members of the Constitutional Court. The Constitution of Slovakia, provides that the President selects the candidates from a group proposed by the Parliament. The number is always twice as the number of free positions. However, the Constitution of Slovakia does not offer guidance on how to continue if the President fails to select the candidates or based on what criteria can the President ask the Parliament to submit more nominations or candidates. In this case, from six (6) proposals made by the Parliament for three (3) vacant positions, President Kiska has appointed only one (1) judge, leaving two (2) vacant positions in the Constitutional Court.

³¹ *Ibid*, article 114, para. 2.

³² Law on Constitutional Court, article 5, para. 3.

³³ Decree of the President of Republic of Kosovo, of date 30.12.2015 for the appointment of Mrs. Gresa Caka-Nimani and Mrs. Selvete Gerxhaliu as judges of the Constitutional Court was the last case in which the President of Kosovo approved the proposals of the Kosovo Parliament.

³⁴ Constitution of Republic of Slovakia, article 10, para. 1., point "s".

Three of the judges not appointed lodged an appeal to the Constitutional Court against the decision of President Kiska, for not appointing the candidates for all vacant positions, alleging that the President, by this act, had violated the Constitution and had not fulfilled the President's constitutional obligations.

The Constitutional Court has decided that President Kiska has violated the rights of judges Eva Fulcová, Juraj Sopoliga and Miroslav Duris. The Constitutional Court at the same time has annulled the respective decision of Kiska to refuse the candidates of 2 July 2014 and had order the President to deal with this issue again. Moreover, the Office of the President has been ordered to pay the three judges their expenses related to legal proceedings. (See further case: Eva Fulcová, Juraj Sopoliga and Miroslav Duris v. President Kiska).

The case of the decision of the Constitutional Court of Slovakia, by not clarifying the role of the President, over the right to return the appointment of judges of the Constitutional Court in the Parliament, demonstrates one more time, the complexity of the reports of the President not only with the Constitutional Court, but also with the Parliament.

In conclusion, although the constitutional system of Kosovo and the Constitution of Kosovo have designed a President fully independent, with a considerate number of authorizations which enable the President's neutrality and his role as a guarantor of the democratic functioning of institutions. However, the cooperation of the President with the Constitutional Court assists and enables the President to fully realize his authorizations which aim at guaranteeing the democratic functioning of the institutions. These two important institutions as separate institutions, but also in cooperation with one another play an important role in the functioning of the constitutional system, by complementing each other, in particular in cases of constitutional crisis.

Bibliography

1. Cambridge Studies in Constitutional Law) Lars Vinx-The Guardian of the Constitution_ Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law-Cambridge University Press (2015);
2. Law – Journal for Juridical and Social Issues, Enver Hasani: Preventive Abstract Control of Constitutional Amendments and Protection of the Head of State from Unconstitutional- Dismissal: The Case of Kosovo, USAID, Prishtina.
3. Luis Pereira Coutinho, Massimo La Torre, Steven D. Smith; Judicial Activism – An Interdisciplinary Approach to the American and European Experiences; Ius Gentium: Comparative Perspectives on Law and Justice; Springer International Publishing; Switzerland; 2014;

4. Stockholm Institute for Scandinavian Law; Stanley L. Paulson; Some Issues in the Exchange between Hans Kelsen and Erich Kaufmann; 2010;
5. Constitution of Kosovo;
6. Constitution of Croatia;
7. Constitution of Poland;
8. Constitution of Hungary;
9. Constitution of Albania;
10. Constitution of Macedonia;
11. Constitution of Slovenia;
12. Constitution of Montenegro;
13. Decree of the President of Kosovo, of date 30.12.2015 for the appointment of Mrs. Gresa Caka-Nimani and Selvete Gerxhaliu as judges of the Constitutional Court;
14. Case Nr. KL 47/10, Naim Rrustemi and 31 members of Kosovo Parliament v. His Excellency Mr. Fatmir Sejdiu, President of Kosovo, 28 September 2010;
15. Dobjani, Elsa Toska. "Length of proceedings as standard of due process of law in the practise of the Constitutional Court of Albania." *Academicus International Scientific Journal* 13 (2016): 160-170.
16. Case Nr. KO 29/1, Sabri Hamiti and other members of Kosovo Parliament on examination of the constitutionality of the Decision of the Kosovo Parliament Nr. 04-V-04, related to the election of the President of the Republic of Kosovo, 22 February 2011;
17. Case Nr. KO 97/10 on the request submitted by the Acting President, Dr. Jakup Krasniqi related to the issue of holding the position of Acting President at the same time of the function of General Secretary of Democratic Party of Kosovo;
18. Case KO 29/12 and Case KO 48/12 Proposed Constitutional Amendments, submitted by the President of the Kosovo Parliament on 23 March 2012 and 4 May 2012;
19. Case Nr. KO 130/15, date 23.12.2015;
20. Case Nr. K0103/14, President of Republic of Kosovo on the examination of conformity of article 84 (14) [Competences of the President] with article 95 [Election of Government] of Constitution of Kosovo. See in particular the part on the admissibility of the request;
21. Case Nr KO 80/10 Request of the President of Kosovo, his excellency Dr. Fatmir Sejdiu, on clarifying the competences of the President in the case of the Mayor of Rahovec, Mr. Qazim Qeska;

22. Case Nr. KO 57/12 Request of the President of Kosovo, her excellency Atifete Jahjaga, on the effects of the right to veto of the President related to the voting and approving in Parliament after a veto of Law Nr. 04/1-084 on Pensions of Members of the Kosovo Security Force;
23. <http://botasot.info/lajme/445144/nis-takimi-mustafa-mogherini/>, accessed on 04.01.2016.