

4th Congress of the World Conference on Constitutional Justice

THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD

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QUESTIONNAIRE

To the Constitutional Court of the Republic of Kosovo

Background

As a result of new political developments in the country and the need to establish key institutions of the Republic of Kosovo, in May 2008, in accordance with decision of the President of the Republic of Kosovo Prof. Dr. Fatmir Sejdiu and the Prime Minister Mr. Hashim Thaçi, Working Group on Establishment of the Constitutional Court was established. This Working Group was authorized to prepare legal framework needed for functioning of the Court; budget for the period 2009, 2010 and 2011; design the organizational structure of the Constitutional Court, as well as prepare the plan for location of the premises of the Constitutional Court of Kosovo.

The composition of the Working Group reflected comprehensive representation of the institutions of the Republic of Kosovo (Government and Office of the President), international organizations (USAID, ICO, Council of Europe) and both local and international legal experts, who during the period May – December 2008, have given valuable contribution in realization of all duties assigned to them. Activities of the Working Group have been supported by the Secretariat of the Working Group, through technical and professional assistance provided by the EWMI, funded by UK DFID.

Finally, the Constitutional Court of Kosovo was established in January 2009. With its authority to review legislation and individual complaints of violations of rights, the Court is ultimate check on legislative and executive power in Kosovo and the final arbiter for interpretation of the constitutional provisions for human rights and freedoms.

From January 2009 until October 2016, the Constitutional Court has received a total of 1223 referrals, of which 1151 were decided. Of this total number of the referrals received, 50 of them were submitted by the state institutions, such as the President of the Republic of Kosovo, the Assembly of Kosovo, Deputies of the Assembly, the Government of Kosovo, the Ombudsperson and the Kosovo judiciary, while 1101 referrals were submitted by individuals. From 1151 cases, 67 are Judgments and others are Resolutions on Inadmissibility. The number of referrals in general has increased significantly year after year.

A. The rule of law and constitutional justice in the modern world

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The Republic of Kosovo has a legal system based on the Continental-European system. According to the Kelsen norm hierarchy the Supreme legal act is the Constitution of Kosovo. A Continental-European System is a legal system based on written norms. This means that besides the Constitution there are also under-constitutional legal acts such as laws, bylaws, rules and regulations.

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

The Constitutional Court of the Republic of Kosovo is the youngest Constitutional Court established in Europe. Even though the Constitution was promulgated in 2008, the Court itself commenced its work in 2009. Until now, the Court did not interpret the Concept of Rule of Law as a particular constitutional principle. Therefore, we cannot conclude if the concept of the Rule of Law in Kosovo is more similar to the concept of *Rechtsstaat*, *Etat de droit* or *Rule of Law*.

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

The Constitutional Court of Kosovo had to deal mostly with cases regarding the right to a fair and impartial trial or property rights. However, this does not mean that these fields of law do prevail compared to others. It's worth noting that since the Court cannot act ex-officio it can review only cases submitted by the authorized parties.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

The Constitutional Court of the Republic of Kosovo included in its work the main elements of the concept of rule of law, which are foreseen also with the standards of the European Convention on Human Rights and Fundamental Freedoms (ECHR). So, the Court found violation of various aspects of the rule of law such as: the principle of legal certainty, equality before the law, non-discrimination and access to justice.

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

As mentioned above, the Court did not interpret the concept of the rule of law as a particular constitutional principle.

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

According to Article 22 of the Constitution of the Republic of Kosovo there are several international legal acts which are directly applicable in Kosovo. Among them, in connection with Article 53 of the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols have a significant role in the interpretation of human rights and freedoms. "*Human rights*

and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”

Article 53 simply means that when the Constitutional Court and the regular courts of Kosovo interpret human rights and freedoms guaranteed by the Constitution, the human rights standards elaborated by the European Court in its case-law need to be applied to these rights and freedoms, when applicable. In case of conflict between the two the ECHR standards shall prevail.

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

Since the declaration of independence a series of reforms for the consolidation of the institutions and the state of Kosovo have been undertaken. One of the most complex reforms undertaken from 1999 - 2008 and 2008 - 2016 is that of the rule of law sector in general and the justice system in particular.

The Government of the Republic of Kosovo, with the assistance of the international presence in Kosovo, has managed to significantly strengthen the rule of law, which constitutes a precondition for democratic development of the country. Having realized the necessity of further strengthening of the rule of law, the institutions of Kosovo were and always will be dedicated to utilizing the international assistance in the best possible way, to speed up the processes towards the European integration.

The economic development of the country in all its sectors represents a priority for the Government of Kosovo. The economic recovery of Kosovo after the war and until today also represents a challenge for the Government of Kosovo. The Republic of Kosovo in a systematic way is accompanied by changes to legislation, creating a favorable legal infrastructure for the investments in the private, public and public-private sectors.

The Government of the Republic of Kosovo continues to be committed to combat the informal economy and other phenomena that impede the economic development of the Republic of Kosovo. In its strategic plan for sustainable economic development the Government of Kosovo has created its own mechanism for managing the risks that hinder and threaten the economic development of the country. Despite the regional and global economic crisis, the Republic of Kosovo has managed to preserve its economic stability and achieve satisfactory progress in this respect.

In addition to primary legislation, the Government of the Republic of Kosovo has drafted the following strategies:

- Private Sector Development Strategy 2013 - 2017;
- National Anti-Corruption Strategy 2012 - 2017;
- National Strategy against Organized Crime 2012 - 2017;
- National Strategy for the Protection of Intellectual Property 2010 - 2014;
- National Strategy against Forgery 2012-2017;
- National Strategy on Integrated Border Management 2012-2017.

However, the fight against the informal economy, corruption, organized crime and the reduction of high unemployment rate at national level still remain a challenge for the Republic of Kosovo.

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

(Migration) Taking into account the high level of unemployment, the Republic of Kosovo after the war faced the systematic displacement of population both within Kosovo and abroad. The emigration of citizens of Kosovo represents one of the major challenges for the Government of Kosovo. Regarding this phenomenon, the Government of Kosovo in cooperation with some countries of the European Union, has developed its strategic policies for reintegration of the repatriated persons. In this regard, the concrete agreements have already been reached between the Government of Kosovo and some countries of the European Union for legal employment of Kosovo citizens in those countries. These agreements have contributed significantly to the prevention of migration of citizens of the Republic of Kosovo towards the EU countries. Regarding the immigration, Kosovo is not seen as country with prospective by foreign nationals. However, there are a significant number of foreign nationals who seek to gain citizenship of Kosovo.

Primary legislation, but not limited only to these legal acts, regarding the migration issues:

- The Constitution of the Republic of Kosovo,
- Law no. 04/L-215 on Citizenship of Kosovo,
- Law no. 04/L-217 on Asylum,
- Law no. 04/L-219 on Foreigners,
- Law no. 03/L-208 on Readmission,
- Law no. 04/L-003 on Civil Status,
- Law no. 02/L-121 on Dwelling and Emplacement,
- Law no. 02/L-118 on Personal Name,
- Law no. 03/L-172 on the Protection of Personal Data,
- Law no. 03/L-099 on Identity Card,
- Law no. 04/L-126 on Amending and Supplementing the Law no. 03/L-099 on Identity Card,
- Law no. 03/L-154 on Property and Other Real Rights,
- Law no. 03/164 on Housing Financing Specific Programs ,
- Law no. 2003/13 on Amendments and Additions to the Law no. 2002/5 on the Establishment of the Immovable Property Right Registry,
- Law no. 03/L-079 on Amending UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property,
- Law no. 03/L-237 on Population and Housing Census,
- Law no. 04/L-125 on Health,
- Law no. 02/L-50 on Medical Emergency Service,
- Law no. 04/L-096 on Amending and Supplementing the Law no. 2003/15 on Social Assistance Scheme in Kosovo,
- Law no. 03/L-212 on Labor,
- Law no. 04/L-054 on the Status and the Rights of Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims and their Families,

- Criminal Code of the Republic of Kosovo,
- Criminal Procedure Code,
- Law no. 2003/23 on Disability Pensions in Kosovo,
- Law no. 2004/32 on Family in Kosovo,
- Law no. 04/L-081 on Amending and Supplementing the Law no. 02/l-17 on Social and Family Services,
- Law no. 02/L-52 on Preschool Education,
- Law no. 02/L-78 on Public Health,
- Law no. 04/L-095 on Diaspora and Migration
- Law no. 04/L-032 on Pre-University Education in the Republic of Kosovo,
- Law no. 2004/37 on Inspection of Education in Kosovo,

Secondary legislation regarding the reintegration of repatriated persons:

- GRK Regulation No. 20/2013 on Reintegration of Repatriated Persons and Management of the Reintegration Program,
- Administrative Instruction No. 18/2010 for Content of the Contract for Non-profit Housing Rent,
- Administrative Instruction Nr. 03/2012 for re-registration in principal registers of civil status,
- Administrative Instruction No. 17/2010 on determination of the conditions, criteria and procedures to fulfill the strategy for reintegration of repatriated persons,
- Administrative Instruction No. 19/2010 for the housing bonus content,
- Administrative Instruction No. 21/2010 on criteria determining the order of precedence for categories of families that can benefit from the programs,
- Administrative Instruction No.16/2003 for registering students in 10th year coming from other countries,
- Administrative Instruction 1/2004 on equivancy and nostrification of documents of primary and lower secondary education taken in state outside Kosovo.

In addition, the Strategies to address the issue of reintegration of repatriated persons have also been drafted:

- Revised Strategy for the Reintegration of Repatriated Persons and Action Plan
- National Migration Strategy 2012 - 2017;
- Strategy for RAE Community,
- Strategy for Communities and Returns,
- National Strategy against trafficking in human beings,
- Kosovo Health Strategy,
- Strategy on Prevention of Incidents at Schools.

Conventions and international laws applicable in the Republic of Kosovo, which affect the protection of reintegrated persons:

- Geneva Convention on the Protection of Refugees of 1951 and Protocol of 1967; and
- New York Convention Relating the Status of Stateless Persons

(Terrorism) As with many countries of the world, in the Republic of Kosovo, terrorism and its forms pose a serious threat to peace and security at the national level and beyond.

Until 2015 the Republic of Kosovo had only the Criminal Code which sanctioned the commission of the criminal offenses, such as: hostage taking, kidnapping or unlawful deprivation of liberty in violation of Articles 175, 194 or 196; pollution of drinking water or food products; pollution or destruction of the environment in violation of Articles 270 and Chapter XXVII; causing general danger; arson or reckless burning or exploding in violation of Articles 334 or 365; destruction, damage or removal of public installations or endangering public traffic in violation of Articles 129, 366, 378 or 380; unauthorized supply, transport, production, exchange or sale of weapons, explosives or nuclear, biological or chemical weapons in violation of Articles 176, 369 or 372-377; unauthorized acquisition, ownership, control, possession or use of weapons, explosives or nuclear, biological or chemical, or research into or development of chemical or biological weapons in violation of Articles 176, 369 or 372-377; endangering internationally protected persons in violation of Article 173; endangering United Nations and associated personnel in violation of Article 174; hijacking aircraft or unlawful seizure of aircraft in violation of Article 164 of this Code, or hijacking other means of public or goods transportation; endangering civil aviation safety in violation of Article 165; unauthorized appropriation, use, transfer or disposal of nuclear materials in violation of Article 176; threats to use or to commit theft or robbery of nuclear materials in violation of Article 177; or 1.19, threatening to commit any of the acts listed in sub-paragraphs 1.1 to 1.18 of this paragraph.

However, having realized the risk of spreading terrorism at the international level and the possibility of involvement of its citizens in terrorist acts, the Government of Kosovo has taken concrete steps to combat and prevent this phenomenon. On 12 March 2015, the Assembly of Kosovo approved the Law no. 05/L-002 on Prohibition of Joining the Armed Conflicts outside the Territory of Kosovo. The purpose of this law is to protect the public interest and national security. Provisions of this law shall be applicable to each person that participates or organizes, recruits, finances, incites, leads or trains persons or groups of persons with the aim of joining or participating in a foreign army or police, in foreign paramilitary formations, in organized groups or individually, in any other form of armed conflict outside the territory of the Republic of Kosovo. The criminal offenses or crimes that are categorized by this law will be sentenced to 15 years of imprisonment.

Terrorism presents an open challenge also for the judicial system which is expected to respond efficiently and effectively to this phenomenon. The Republic of Kosovo is determined in its fight against terrorism. The security institutions of Kosovo have an excellent cooperation with relevant international factors in the fight against organized crime and terrorism.

The Government of the Republic of Kosovo has developed a special strategy for the prevention of money laundering and terrorist financing for the period 2012 - 2015. According to the national risk assessment, in 2013 the Government came to the conclusion that the financing of terrorism and financial crimes are connected to each other. For this reason, it was decided that the program of the Government for the Prevention of Informal Economy and Strategy for the Prevention of Money Laundering and Financing of Terrorism, are joined in a common strategy for the period 2014 - 2018. We will further mention some of the strategies for the protection of the state from the organized crime and terrorism:

- National Strategy for Crime Prevention 2013 - 2017;
- National Strategy Against Organized Crime 2012 - 2017;
- National Strategy against Drugs 2012 - 2017;
- National Strategy against Terrorism 2012 - 2017;
- National Strategy against Trafficking in Human Beings 2011 - 2014;

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

Regarding the potential conflict between national and international norms, the Constitutional Court recalls that the Constitution of the Republic of Kosovo clearly defines the importance of international norms in the legal system of the Republic of Kosovo.

In this regard, Article 19 (1) of the Constitution [Applicability of International Law], provides: *“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. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law.”*

However, the Constitutional Court in its case KO130/15 of 21 December 2015, which was submitted by the President of the Republic of Kosovo, for the assessment of the constitutionality of the principles of the Association/Community of Serb majority municipalities in Kosovo, which stemmed from the Brussels Agreement 2013 reached between the Government of Kosovo and Serbia, it came to the conclusion that the General Principles/Main elements of the Association/Community of Serb majority municipalities in Kosovo are not entirely in compliance with the spirit of the Constitution of the Republic of Kosovo, respectively Article 3.1 [Equality before the Law], Chapter II [Fundamental Rights and Freedoms], and Chapter III [Rights of Communities and Their Members].

http://www.gjk-ks.org/repository/docs/gjk_ko_130_15_shq.pdf

In this context, the Constitutional Court established a standard and drew attention to the authorities of Kosovo, that during the drafting of normative acts take into account the Constitution of the Republic, as the highest legal act in the country, with which all other legal acts should be in compliance.

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

The Constitutional Court of Kosovo is the final authority for the interpretation of the Constitution and the law. It represents the ultimate check on legislative and executive power in Kosovo and as such represents the final arbiter with a purpose of interpreting the constitutional provisions for protection of human rights and freedoms. The

decisions of the Constitutional Court are binding upon the regular courts and other public authorities. The Constitutional Court is the ultimate guarantor that the public authorities will act within the scope of their constitutional powers.

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

There is an explicit constitutional rule that speaks about the nature and effect of its decisions. Namely, the decisions of this Court are binding on the judiciary and all persons (natural and legal) and institutions of the Republic of Kosovo (Article 116, paragraph 1) and as such are published in the Official Gazette.

The regular courts are obliged to follow and act in accordance with the case law of the Constitutional Court. There were no concrete conflicts between the Constitutional Court and other courts in regard to the implementation of the Constitutional Court Decisions’.

In fact, when examining whether there has been a violation, the Constitutional Court acts in accordance with its role, and as we know, it is not the task of the Court to act as a court of fourth instance in respect of the decisions taken by the Supreme Court. It is the role of the regular courts to interpret and apply pertinent rules of the procedural and substantive law. The role of the Constitutional Court is to determine whether the proceedings before the regular courts were fair in their entirety, including the way the evidence was taken. Article 31 of the Constitution and Article 6 of the ECHR refer to the right to a fair trial.

We consider that the conflict arises when it is not clear what powers are within the jurisdiction of the Constitutional Court and other courts, which is not the case. By clear differentiation of powers we have prevented and minimized the potential conflicts of the Constitutional and other courts. The possibility of a conflict always exists because as in life nothing is perfect in the laws either.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, *non bis in idem*, *nulla poena sine lege*, etc.).

The Constitutional Court is in a way the most stable guardian of the democratic principles on which rests the modern concept of justice. The Constitution determines that the judicial power is unique and independent and that it is exercised by independent courts. Certainly, in order that the Constitution does not become a dead letter on the paper, the real and the normative must match. In order that the Constitutional Court could exercise its extremely important and sensitive function, this body is “*fully independent in the performance of its responsibilities*” (Article 112, paragraph 2). The Constitution is based on the fundamental principle, according to which the legal system of the Republic of Kosovo is unique and regulates the hierarchy of international regulations and general rules of the domestic law, publication of laws and enactment of laws, the compliance of laws, decrees of the President and the Prime

Minister and the regulations of the Government with the Constitution. The Constitutional Court is ensured for unhindered exercise of its duties, the autonomy and independence.

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

The respect for the rule of law is one of the objectives which the Constitutional Court is constantly striving to. As regards the practice related to private actors that perform public functions, it's worth mentioning the case no. KO 119/10, where are assessed the provisions of the Law on Rights and Responsibilities of Deputies, specifically the provisions regarding the supplementary pension. In fact, the Court found that according to the provisions of this Law, the deputies could realize pensions that are more favorable and are not inconsistent with the principles of equality, rule of law, non-discrimination, social justice...The Court declared this provision null and void.

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have the case law regarding the accountability of public officials for their actions?

It is of highest importance that the public officials do not receive more powers than required by the rule of law. In this regard, it's worth mentioning the Law on Prevention of Conflict of Interest in Discharge of Public Functions. The goal of this law is to prevent the conflict between public and private interest of senior officials in discharge of public functions.

There is also the Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials. This law defines obligations of senior public officials to declare their property, revenues and the origin and obligation of Agency to control declared property and origin of property and the obligations of all officials to declare gifts and their origin.

As regards the responsibilities of public servants, this issue is addressed by the Law on Civil Service. The procedures related to civil servants, namely the violations of the Law on Civil Service are resolved by the Independent Oversight Board as a department for administration of the conflicts of the Basic Court in Prishtina.

The regular courts are to follow possible irregularities and to sanction it in accordance with the law, and the Constitutional Court is there, in accordance with its subsidiary and corrective role, to ensure that there is no possible abuse, and to follow whether everything is going in accordance with the Constitution and other adopted principles of a democratic society.

IV. The law and the individual

15. is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

Yes. Individuals may submit constitutional complaints with the Constitutional Court of the Republic of Kosovo for breaches of their fundamental rights by public authorities. However, they can do so only when they have exhausted all legal remedies in regular proceedings provided for by law (See Article 113.7 of the Constitution of the Republic of Kosovo and Article 47 of the Law on Constitutional Court of the Republic of Kosovo). This means that individuals have indirect access to the Constitutional Court because according to the Constitution the constitutional complaint is of a subsidiary nature and is not part of the so-called original jurisdiction of the Constitutional Court which entails constitutional review of laws, decrees and regulations issued by the executive and the legislative branches of the government. Individuals usually challenge individual acts of public authorities but they also challenge acts of general nature. One good example that illustrates best the rights of individuals to challenge a general act can be found in the case law of the Constitutional Court of the Republic of Kosovo (*See case No. KI56/09, Judgment of 22 December 2010*).

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

As stated above, when it comes to protection of fundamental human rights, the Constitutional Court plays a role which is subsidiary in nature, and moreover, the Constitutional Court requires from the applicants not only to exhaust legal remedies formally but also to raise constitutional questions, at least in substance, before the regular courts or other public authorities prior to lodging a constitutional complaint with the Constitutional Court. If the applicants do not do this, then they risk having their complaints declared inadmissible on the grounds of not having exhausted all legal remedies, as established by Article 113.7 of the Constitution and Article 47 of the Law on Constitutional Court. The Constitutional Court in principle does not and cannot interfere with the way the proceedings are developed before the regular courts such as, for example, costs, mandatory representations by a lawyer and time-limits, because these procedures are regulated by and are the duty and prerogative of the legislative branch of government. However, if any such claim is successfully raised in the realm of constitutionality then the Constitutional Court may find a violation, in case there is one. Moreover on this point, Article 113.8 of the Constitution establishes that regular courts may submit constitutional questions with the Constitutional Court if in a concrete case they have doubts or are unsure that the law they are about to apply is in compliance with the Constitution. Sadly, the procedure prescribed by Article 113.8 of the Constitution has not been used much by the regular courts simply because it will take time to embed that powerful procedure in the legal culture of the Republic of Kosovo.

17. Has your Court developed case-law on other individual rights related to the rule of law?

Basically all constitutional questions put forth before the Constitutional Court of the Republic of Kosovo by the executive and legislative branches of the government, the President of the Republic of Kosovo and the Ombudsperson, are invariably linked to the principle of the rule of law and are within the so-called original jurisdiction of the Court. Having said that, the Constitutional Court of the Republic of Kosovo has made use of the principle of the rule of law in individual cases as well, especially in cases whereby the applicants had final decisions in their favor not being enforced. In such

cases, the Constitutional Court of the Republic of Kosovo inter alia stated that non-enforcement of a final and binding decision by a public authority in the Republic of Kosovo is in contravention to the principle of the rule of law. There are several judgments rendered by the Constitutional Court of the Republic of Kosovo in that regard, however, for the purposes of this questionnaire we are going to refer to two recent cases. These cases are: No. KI 132/15, Judgment of 20 May 2016 and No. KI65/15, Judgment of 26 October 2016.

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

The Constitution of the Republic of Kosovo has two chapters, namely Chapters II and III, which explicitly guarantee the basic human rights and the rights of communities that are not in the majority in the Republic of Kosovo. In addition, Article 22 of the Constitution of the Republic of Kosovo provides that international agreements and instruments guaranteeing fundamental human rights and freedoms are directly applicable in the Republic of Kosovo and one of those instruments is the European Convention on Human Rights. Moreover, Article 53 of the Constitution of the Republic of Kosovo establishes that human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. Article 7 of the Constitution of the Republic of Kosovo establishes that the constitutional order is based, inter alia, on the principle of the rule of law. The Constitution of the Republic of Kosovo guarantees specific human rights namely the so-called entrenched rights in Chapters II and III of the Constitution, and moreover, any amendment to the Constitution shall be carried out only after the proposed amendment has been reviewed by the Constitutional Court in order to determine whether that proposed amendment diminishes any of the rights and freedoms set forth in Chapter II of the Constitution. And if the Constitutional Court determines that the proposed amendment diminishes basic human rights, then that amendment is set aside and declared unconstitutional. As a corollary, the Constitutional Court of the Republic of Kosovo is under constitutional obligation to protect fundamental human rights based on very specific constitutional provisions, and thus, the need to make use of the rule of law as a general concept did not arise.