

Constitutional Activism and Democratic Consolidation: The Role of the Constitutional Court of Kosovo

Abstract

This paper examines the evolving role of the Constitutional Court of Kosovo in shaping democratic governance through constitutional adjudication. Focusing on its jurisprudence on presidential elections and government formation, it analyses how constitutional procedures, voting thresholds, and institutional mandates have been interpreted in a fragile post-conflict context. This paper argues that the Court has played a decisive role in resolving political impasses by clarifying constitutional ambiguities and enforcing procedural discipline where political institutions have failed to act. Drawing on theories of judicial activism and procedural constitutionalism, this paper contends that the Court has functioned as a stabilising force in Kosovo's constitutional order. While some decisions reflect a strict formalist approach, others demonstrate adaptive reasoning aimed at safeguarding democratic continuity and constitutional legitimacy. It concludes that constitutional activism has contributed to democratic consolidation, though its long-term sustainability depends on a balanced relationship between judicial authority, political responsibility, and constitutional reform.

KEYWORDS: Kosovo Constitutional Court, judicial activism, government formation, presidential elections, quorum, procedural constitutionalism, constitutional interpretation, norm-generative adjudication

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1 | Introduction

The establishment of the Constitutional Court of Kosovo in 2009 marked a foundational moment in the country's post-conflict trajectory towards democratic state-building and constitutional governance. Emerging from a deeply fragmented political environment and shaped by the normative framework of the Ahtisaari Plan, the Court was conceived not merely as a judicial body, but as a central institutional safeguard for the nascent constitutional order. From its inception, it was entrusted with the dual responsibility of ensuring constitutional supremacy and facilitating democratic transformation in a society still grappling with the legacies of conflict, international supervision, and fragile political institutions. As Enver Hasani observes, the Constitutional Court of Kosovo was modelled on continental European constitutional traditions and endowed with extensive powers of abstract and individual constitutional review. Its mandate positioned it as an exceptional court, tasked with protecting constitutional legality against political encroachment while simultaneously promoting democratic consolidation. This institutional design reflected an explicit awareness that, in a post-conflict setting, constitutional adjudication would inevitably intersect with questions of political authority, legitimacy, and institutional balance.^[1]

Within a decade of its establishment, the Constitutional Court has become one of the most influential actors in shaping Kosovo's political and constitutional landscape. Its jurisprudence has been particularly consequential in disputes concerning government formation, presidential powers, and the legality of parliamentary procedures. Through these interventions, the Court has frequently stepped into moments of political uncertainty where other institutions proved unable or unwilling to resolve constitutional crises. As a result, the Court's role has gradually evolved from that of a reactive adjudicator into a proactive constitutional arbiter with tangible effects on political outcomes.

This evolution has attracted significant scholarly attention. Several commentators have noted the Court's transformation from a formally

¹ Enver Hasani, "The Role and Position of the Constitutional Courts in Society: The Case of Kosovo" *University of Pittsburgh Law Review*, 74 (2013): 665-669, 666; Enver Hasani, "Judicial Review of Democracy: Maintenance of Democracy as a Functionalist Mission in the Jurisprudence of the Constitutional Court of Kosovo" *Comparative Southeast European Studies*, No. 4 (2020): 530-553, 531.

constrained judicial body into a de facto rule-making authority, capable of generating binding constitutional norms through interpretation. In periods of electoral deadlock or institutional paralysis, the Court's rulings have often determined the trajectory of political developments, effectively substituting judicial clarity for political consensus. While such interventions have contributed to short-term stability, they have also raised important questions regarding the boundaries of judicial authority and the democratic legitimacy of constitutional adjudication.^[2]

Furthermore, Christie S. Warren highlights the Constitutional Court of Kosovo as a notable example of post-conflict constitutional institution-building, emphasising its potential to serve as a model for other societies undergoing constitutional reconstruction.^[3] At the same time, this optimistic assessment is not universally shared. Andrea Lorenzo Capussela offers a critical evaluation of the Court's performance, arguing that its jurisprudence has often lacked coherence and independence, and that some of its most influential decisions appear aligned with the interests of dominant political actors. According to this view, the Court has at times reinforced, rather than corrected, structural weaknesses within Kosovo's rule of law framework.^[4]

Furthermore, Capussela advances a sustained and critical assessment of the Constitutional Court's performance, questioning both its institutional independence and the coherence of its jurisprudential reasoning. He maintains that the Court has, at various points, operated under the influence of political dynamics and international involvement, thereby lacking the autonomy required to act as an effective guardian of the Constitution. According to this critique, several of the Court's most consequential decisions have tended to coincide with the interests of dominant political elites, a pattern that, in Capussela's view, weakens the Court's legitimacy and exacerbates broader institutional dysfunction. He ultimately argues that

² Fisnik Korenica, "«Advise and Rule» or «Rule by Advising»: The Changing Nature of the Advisory Jurisdiction of the Constitutional Court of Kosovo" *German Law Journal*, No. 8 (2020): 1570-1585.

³ Christie S. Warren, "Building a Constitutional Court in a Post-Conflict Setting: The Case of Kosovo" *Texas International Law Journal*, 49 (2014): 1.

⁴ Although Andrea Lorenzo Capussela represents a minority viewpoint among scholars, his critique is included here to offer a balanced academic discussion. His opinion holds weight because of the substance of his arguments and because he led the economics unit of Kosovo's international supervisor, the International Civilian Office.

the Court represents not merely a reflection of Kosovo's fragile rule-of-law environment, but also an active contributor to it, insofar as it has failed to develop a stable, consistent, and authoritative body of constitutional jurisprudence.^[5]

Similar concerns have been raised by scholars such as Bashkim Rrahmani, who point to the politicised process of judicial appointments and the resulting vulnerability of constitutional adjudication to external pressures.^[6] These critiques suggest that the Court's activism may reflect not only legal reasoning but also the broader political environment in which it operates. Yet even such critical perspectives acknowledge the centrality of the Court in Kosovo's constitutional system and the absence of viable alternatives capable of resolving constitutional disputes with comparable authority.

Against this background, this paper examines the activist role of the Constitutional Court of Kosovo in interpreting the Constitution in ways that frequently extend beyond strict textualism. Through an in-depth analysis of its jurisprudence, most notably the rulings concerning presidential mandates, government formation, and procedural legitimacy, the paper argues that the Court has consciously adopted a form of constructive constitutional activism. This approach has sought to stabilise democratic governance, clarify constitutional ambiguities, and reinforce institutional integrity in a context marked by political volatility and limited democratic tradition.

While judicial activism is often viewed with scepticism in continental legal systems, where judicial authority is traditionally subordinate to legislative intent,^[7] the Kosovo experience suggests a more nuanced assessment. In a constitutional order characterised by ambiguity and institutional fragility, judicial intervention has functioned as a necessary corrective mechanism, aimed at preventing political capture and ensuring procedural discipline. As academic analyses have noted, the Court has gradually assumed the role of a *norm entrepreneur*, mediating between

⁵ Andrea Lorenzo Capussela, "A Critique of Kosovo's Internationalized Constitutional Court" *European Diversity and Autonomy Papers*, No. 4 (2014): 29-38; Andrea Lorenzo Capussela, *State-Building in Kosovo: Democracy, Corruption and the EU in the Balkans* (London: I.B. Tauris, 2015), 163-165.

⁶ Bashkim Rrahmani, "Judicial Review and Political (In)Stability in Kosovo" *Eastern Journal of European Studies*, No. 2 (2021): 181.

⁷ Wojciech Sadurski, *Rights Before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (Dordrecht: Springer, 2005), 163-169; Michel Rosenfeld, "Constitutional Adjudication in Europe and the United States: Paradoxes and Contrasts" *International Journal of Constitutional Law*, No. 4 (2006): 633, 640.

abstract constitutional principles and the practical demands of democratic governance in a post-conflict society.

Methodologically, this paper adopts a normative-doctrinal and case-law-based approach, grounded in constitutional provisions, judicial decisions, and relevant legal scholarship. This analysis is complemented by comparative references to constitutional courts operating in other transitional democracies. The paper seeks to address three central questions: whether the Constitutional Court of Kosovo has acted primarily as a neutral arbiter or as an activist guardian of democratic order; how its jurisprudence has shaped the processes of government formation and presidential elections; and to what extent its decisions have contributed to constitutional consistency and democratic consolidation. The sections that follow examine the Court's most prominent decisions and assess their broader implications for Kosovo's evolving constitutional architecture.

2 | The Constitutional Court of Kosovo: Origins and Institutional Foundations

The establishment of the Constitutional Court of Kosovo is inseparable from the broader historical and political context of Kosovo's post-conflict state-building process. Unlike constitutional courts formed through internal democratic evolution, Kosovo's Constitutional Court emerged in a *sui generis* constitutional environment, heavily influenced by international actors and designed to guarantee democratic legitimacy, minority protection, and legal certainty in a newly independent state. Its constitutional and legal foundations reflect both the legacy of the United Nations Administration and the aspirations of a liberal democratic order rooted in European constitutionalism.

The Constitutional Court was established by the 2008 Constitution of the Republic of Kosovo, which entered into force on 15 June 2008, following the Declaration of Independence on 17 February 2008.^[8] The Court's

⁸ Constitution of the Republic of Kosovo [and its amendments], Official Gazette of the Republic of Kosovo, June 2008. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>. [accessed: 20.1.2025].

mandate, structure, and authority are laid out in Chapter VIII (Articles 112–118) of the Constitution, complemented by the Law on the Constitutional Court (No. 03/L-121), adopted by the Assembly of Kosovo in December 2008. According to Article 112(1) of the Constitution, “The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.”^[9]

The very idea of establishing a constitutional judiciary in Kosovo originated during the Vienna negotiations for Kosovo’s final status, mediated by the UN Special Envoy Martti Ahtisaari. The Comprehensive Proposal for the Kosovo Status Settlement (2007), known as the Ahtisaari Plan, not only proposed the formation of Kosovo’s independent state institutions but also explicitly required the establishment of a Constitutional Court.^[10] The Court was envisioned as the ultimate guarantor of constitutional order, individual rights, and multiethnic coexistence.

Under the Ahtisaari Plan, the Court’s composition was carefully designed to reflect both professional excellence and multiethnic and international balance. Initially, nine judges were appointed: six selected domestically and three nominated internationally, with the latter chosen by the President of the European Court of Human Rights in consultation with the International Civilian Representative.^[11] This hybrid composition reflected Kosovo’s limited sovereignty during supervised independence and its reliance on international legitimacy.

The Constitutional Court was conceived not merely as a legal institution but as a foundational pillar in Kosovo’s constitutional architecture. The Constitution distinguishes the Court from the ordinary judiciary (Chapter VII) and classifies it as an independent body for constitutional review, outside the regular court hierarchy. In Article 4(9), the Constitution emphasises the separation of powers and assigns the Court a critical role in maintaining constitutional balance: “The Constitutional Court is an independent

⁹ Constitution of the Republic of Kosovo, art. 112(1); See Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, Official Gazette of the Republic of Kosovo, no. 46/2009 (15 January 2009).

¹⁰ United Nations Secretary-General, *Comprehensive Proposal for the Kosovo Status Settlement*, UN Doc S/2007/168/Add.1 (2007), Annexe 1, art. 6. <https://reliefweb.int/report/serbia/comprehensive-proposal-kosovo-status-settlement-s2007168add1>. [accessed: 20.1.2025].

¹¹ Krystian, Nowak, “The Constitutional Court of Kosovo – Introductory Remarks” *Przegląd Prawa Konstytucyjnego*, No. 58 (2020): 499–500.

body and protects the constitutionality of laws and acts and is the final interpreter of the Constitution.”

Beyond structural considerations, the substantive mission of the Court was ambitious. It was empowered with both preventive (ex-ante) and repressive (ex-post) review mechanisms. For example, constitutional amendments require prior review by the Court to ensure they do not violate the fundamental rights protected in Chapter II of the Constitution (Art. 113(9)). Moreover, a broad range of actors, ranging from the President, Government, Assembly members, and Ombudsperson, to municipalities and community representatives, have standing before the Court.

Scholars have pointed out that the Court’s role has been both symbolic and functional. It embodies the liberal constitutionalism model and serves as a bulwark against authoritarianism, clientelism, and majoritarian abuses, concerns deeply rooted in Kosovo’s authoritarian and ethnicized past.^[12] Enver Hasani, the Court’s first President, argued that Kosovo’s constitutional identity represents a radical break with the past, positioning the Court at the forefront of the struggle for the rule of law and democratic consolidation.^[13] He further noted that the Court’s broad jurisdiction, including its power to adjudicate constitutional complaints (individual access), aligns Kosovo with the most advanced European constitutional models.^[14]

Iliriana Islami emphasises the Court’s unique position in reconciling group rights and individual freedoms, especially in a post-conflict society. She notes that Kosovo’s Constitution—under strong international guidance—offered one of the most progressive frameworks in Europe for minority protection and power-sharing.^[15] The Court, therefore, became the guardian not only of constitutional legality but of the delicate multi-ethnic equilibrium essential for peace and democratic stability.

Moreover, the institutional creation of the Court was accompanied by extensive international support. Experts from the European Council, USAID, the East-West Management Institute, and Kosovo’s legal academia

¹² When we speak of an “authoritarian and ethnicized” past, we are referring not only to the period under violent Serbian administration, during which everything was forcibly “Serbianized,” but also to the era under the communist regime, when Kosovo had its own Constitutional Court.

¹³ Enver Hasani, “The Role of the Constitutional Court in the Development of the Rule of Law in Kosovo” *Review of Central and East European Law*, 43 (2018): 274.

¹⁴ Ibidem, 275.

¹⁵ Iliriana Islami, “Building Constitutionalism in Kosovo” *Law & Justice Review*, No. 1 (2010): 127-133.

contributed to drafting its foundational law. The preparatory process lasted over six months and involved sensitive deliberations on voting secrecy, judicial independence, and procedural access to the Court.^[16]

In sum, the Constitutional Court of Kosovo is more than a typical constitutional tribunal. As will be demonstrated through the case studies that follow, it stands as an atypical institution with a distinct and far-reaching role in shaping and safeguarding the constitutional order. It has consistently functioned as a primary upholder of the rule of law.^[17] And has made a direct contribution to the consolidation of Kosovo's constitutional democracy, particularly during its formative post-independence phase. In effect, the Court has operated as a constitution-making actor, reflecting Kosovo's hybrid sovereignty, international tutelage, and democratic transformation. Its foundation, rooted in international law and European constitutionalism, serves not only to safeguard constitutional order but also to advance Kosovo's journey toward full democratic legitimacy and Euro-Atlantic integration.

The following sections will address these questions by examining the most prominent decisions of the Court and their implications for Kosovo's evolving constitutional architecture.

3 | The Sejdiu Case: Dual Functions and the Ethics of Constitutional Authority

A pivotal decision in Kosovo's constitutional jurisprudence came in 2010, when the Constitutional Court held that President Fatmir Sejdiu had breached the Constitution by simultaneously serving as both the President of the Republic and the leader of the Democratic League of Kosovo (LDK). Initiated by opposition members of the Assembly, the case placed under scrutiny fundamental constitutional principles such as the separation

¹⁶ Nicolas Mansfield, *Creating a Constitutional Court: Lessons from Kosovo* (East-West Management Institute, 2013). https://gjk-ks.org/wp-content/uploads/ven-dimet/EWMI_Report_on_Kosovo_Constitutional_Court.pdf. [accessed: 12.1.2025].

¹⁷ Remzije Istrefi, Bekim Sejdiu, "Protection of the Rule of Law as a Constitutional Principle and Individual Right by the Constitutional Court of Kosovo" *Pravni vjesnik*, No. 2 (2024).

of powers, political impartiality, and the ethical responsibilities of high constitutional officeholders in a transitional democracy.

At the centre of the case was Article 88(2) of the Constitution, which clearly states: “The President shall not exercise any other public function.”^[18] While this wording may appear unambiguous, the dispute revolved around the interpretation of the term “exercise.” President Sejdiu argued that he had merely “frozen” his political role, refraining from any active participation while technically remaining party leader. The Court rejected this defence, ruling that even a nominal affiliation with a political party was incompatible with the constitutional expectation of presidential impartiality.^[19]

The Court emphasised that the President’s role is to serve as a neutral and unifying figure for all citizens—an office that must remain clearly above partisan interests. According to its interpretation, the constitutional framework leaves no room for partial detachment or symbolic distancing from political roles. Instead, it requires both genuine neutrality and the public perception of impartiality. As the Court stated: “The function of the President requires impartiality and symbolic unity; the leadership of a political party compromises both the real and perceived integrity of the office.”^[20]

This judgment marked a watershed moment in the development of Kosovo’s constitutional culture. It revealed the Court’s readiness to go beyond a strictly literal interpretation and embrace a teleological approach, prioritising the values and objectives embedded in constitutional norms, especially those that preserve institutional equilibrium and public trust.

The Court thus departed from rigid legal positivism and adopted a more purposive, ethically grounded reasoning, consistent with evolving trends in transformative constitutionalism. This approach aligns Kosovo with other post-conflict democracies and post-authoritarian states, such as South Africa, Romania, or Hungary, where constitutional courts have assumed their role as drivers of democratic change and enforcers of values.^[21]

¹⁸ Constitution of the Republic of Kosovo, art 88(2).

¹⁹ Naim Rrustemi and 31 other Deputies of the Assembly of the Republic of Kosovo. Fatmir Sejdiu, President of the Republic of Kosovo, Case No. KI 47/10, KCC Bulletin of Case Law 2009–2010, para. 69; see also Judgment KI 47/10, Constitutional Court of the Republic of Kosovo, 28 September 2010, paras. 45–46.

²⁰ Ibidem, Article 68.

²¹ Karl Klare, “Legal Culture and Transformative Constitutionalism” *South African Journal on Human Rights*, No. 1 (1998): 146. Venelin I. Ganev, “Post-Accession Hooliganism: Democratic Governance in Bulgaria and Romania after 2007” *East*

By squarely confronting the issue of dual functions, the Court set a precedent that reaffirms the inherent incompatibility between exercising executive authority and retaining partisan leadership. This aligns with constitutional practices in many parliamentary democracies, where the head of state is expected, or even explicitly required, to maintain strict political neutrality. In fact, constitutions in countries such as Croatia and Albania codify this principle in clear terms. In Croatia, the President must immediately resign from any political party upon assuming office and notify Parliament accordingly.^[22] Similarly, in Albania, the Constitution prohibits the President from being a member of any political party and from engaging in any private professional activity while in office.^[23] These constitutional safeguards are intended to preserve a clear demarcation between partisan political interests and the President's function as a symbolic and impartial representative of the state.

In the fragile context of Kosovo, where the legacies of authoritarian governance and war continue to shape political dynamics, the Court's ruling served both a pedagogical and a legal function. It communicated to the public and to political elites that constitutional roles carry not only legal mandates but also ethical and institutional responsibilities. In doing so, the Court helped elevate the discourse around public office and accountability, embedding constitutional principles into the expectations of political conduct.

Moreover, the decision highlighted the Court's evolving role as a moral guardian of constitutional order. It reinforced the view that the presidency must represent the unity of the state, not the interests of a particular party. This reflects the concept of "value-oriented constitutionalism," where courts are entrusted with defending unwritten yet foundational democratic values like impartiality, transparency, and ethical leadership.^[24]

European Politics and Societies, No. 1 (2012): 26-44; *Constitutional Law in Kosovo: Commentary of the Constitution*, ed. Wolfgang Benedek et al. (Baden-Baden: Nomos, 2012); *Judicial Law-Making in European Constitutional Courts*, ed. Monika Florczak-Wątor (Abingdon: Routledge, 2020), 91, 128, 165.

²² Constitution of the Republic of Croatia, art. 96(2) (English translation). https://www.usud.hr/sites/default/files/dokumenty/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf. [accessed: 2.2.2025].

²³ Constitution of the Republic of Albania, art. 89 (English translation). https://www.gjk.gov.al/web/constitution_of_albania_2090.pdf. [accessed: 2.2.2025].

²⁴ Gino Scaccia, "Constitutional Values and Judge-Made Law" *The Italian Law Journal*, 3 (2017): 1.

As noted in comparative legal literature, courts in emerging democracies often bear the burden of norm-setting in the absence of deep-rooted democratic practices or political consensus.^[25] This has been particularly evident in post-communist European states, where constitutional courts played a foundational role in constructing democratic legal frameworks during transitional periods.^[26]

From a comparative perspective, the Sejdiu case reflects a broader trend observed in several post-communist and transitional democracies, where constitutional courts have taken on an active role in delineating the limits of executive authority and upholding the principle of political impartiality. In such contexts, constitutional adjudication often serves as a corrective mechanism in the absence of robust democratic traditions or clear political consensus. Kosovo's Constitutional Court, however, marked a distinctive step forward by delivering a binding decision with immediate institutional consequences: President Sejdiu resigned shortly after the ruling, thereby setting a significant precedent for constitutional enforcement and reinforcing the normative power of the Court's authority.^[27] The resignation of President Sejdiu following the judgment amplified the importance of the Court's role in institutional enforcement. It also affirmed that constitutional jurisprudence in Kosovo was more than symbolic, had real consequences, shaping the behaviour of top-level officials and redefining the limits of political power. As we will see later in this paper, this case laid the groundwork for several future rulings that clarified the scope of presidential powers and the procedures governing government formation.

Still, the Court's intervention was not without criticism. Analysts expressed concern that the Court had established too vague a standard for what constitutes the exercise of a public function, potentially opening the door to selective or politically motivated enforcement. It was questioned whether the ruling was driven purely by constitutional principles or

²⁵ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003), 247-255.

²⁶ *The Transformation of Constitutional Law in Post-Communist Europe*, ed. András Jakab, Arthur Deyevre (Oxford: Oxford University Press, 2019), 15-20; Ganev, "Post-Accession Hooliganism", 566.

²⁷ "Kosovo President Resigns After Court Ruling" *Radio Free Europe/Radio Liberty*, 27 September 2010. https://www.rferl.org/a/Kosovo_President_Resigns_After_Court_Ruling/2169684.html. [accessed: 2.2.2025].

whether it served broader political agendas, particularly given the timing of intra-party tensions and looming elections.^[28]

Despite these concerns, the Sejdiu case remains a cornerstone in the evolution of Kosovo's constitutional identity—not merely as a legal turning point, but as a moment of institutional reorientation. It confirmed the Court's emerging role beyond textual interpretation, positioning it as an active agent in the construction of constitutional meaning and political ethics.^[29] By directly confronting the incompatibility between partisan leadership and presidential impartiality, the Court articulated a deeper normative vision for executive conduct—one that placed constitutional loyalty above political convenience.

This case did not simply clarify a constitutional provision; it catalyzed embedding of constitutional norms into the expectations of governance. In a fragile post-conflict society, where political roles often overlap with party agendas, the decision signalled a deliberate shift toward a culture of principled restraint and institutional credibility. The Court, through this judgment, demonstrated how constitutional activism – when grounded in normative clarity and democratic aspirations – can perform a dual function: enforcing the text of the law while also cultivating public trust in the rule of law as a living, evolving framework. As this paper will further explore, the legacy of the Sejdiu case echoes in later rulings related to presidential elections and government formation, forming a normative chain that reinforces the Court's identity not just as a guardian of legality, but as a constructor of democratic accountability.

²⁸ Capussela, *A Critique of Kosovo's Internationalized Constitutional Court*, *European Diversity and Autonomy Papers*, 15-19.

²⁹ Qerim Qerimi, Vigan Qorrolli, "A Constitutional Tradition in the Making: The Presidents' Cases and the Role of Kosovo's Constitutional Court in the Process of Democratic Consolidation" *ICL Journal*, No. 1 (2013): 49, 65-66.

4 | The KO103/14 Decision and the Constitutional Logic of Government Formation

One of the most influential and structurally transformative rulings delivered by the Constitutional Court of Kosovo is encapsulated in the decision KO103/14, which addressed a fundamental ambiguity in the constitutional framework: the President's authority to nominate a candidate for Prime Minister following parliamentary elections. This case did more than clarify institutional procedure; it laid the normative foundation for interpreting the Constitution during transitional moments and helped shape the emerging equilibrium between electoral legitimacy and executive power.

The case emerged in the wake of the 2014 parliamentary elections, when diverging interpretations arose regarding which political actor – an individual party or a post-electoral coalition – possessed the constitutional legitimacy to nominate the Prime Minister. Faced with the political stalemate, President Atifete Jahjaga referred the matter to the Court, seeking clarification on the interrelation between Article 84(14), which assigns the President the role of nominating a Prime Minister, and Article 95(1), which outlines the procedural pathway to forming a government. At the heart of this dilemma were several intricate constitutional uncertainties: What does it mean to have “won the elections”? Does this refer to the party with the most seats or to a post-electoral coalition with a parliamentary majority? How binding is the President's role in interpreting these outcomes?^[30] In its ruling, the Court offered a textual yet normatively rich interpretation, holding that the term “winning the elections” refers specifically to the political party or pre-election coalition that received the highest number of seats in the Assembly. As the Court declared: “The constitutional concept of «winning the elections» refers to the electoral will expressed on the day of the vote, not to subsequent political rearrangements.”^[31] This distinction carried substantial constitutional and political weight. It effectively constrained the President's discretion, prioritising electoral integrity over post-electoral coalition negotiations. The immediate consequence was the recognition of the Democratic Party of Kosovo (PDK) as the rightful holder of the first mandate to form a government, despite the numerical strength

³⁰ Judgment in Case No. KO103/14, Constitutional Court of the Republic of Kosovo, 1 July 2014, para. 3.

³¹ Ibidem, para 72-74.

of a post-electoral opposition coalition. This clarification provided a decisive framework for future institutional behaviour, offering predictability amid political fragmentation.

Doctrinally, KO103/14 reflects elements of Kelsenian constitutionalism, wherein the Court asserts itself as the guardian of constitutional normativity. Yet, it simultaneously embodies a form of judicial activism—precisely because the Constitution remains silent on the operational meaning of electoral victory. Instead of deferring to political compromise, the Court imposed a binding and detailed interpretation, anchoring its legitimacy in democratic principle rather than political consensus.

Legal scholars have interpreted this move as an act of constitutional construction, rather than mere interpretation. In spaces marked by textual silence and political contestation, the Court stepped in to define the very architecture of constitutional meaning. While this approach ensured legal clarity, it also sparked debate over the rigidity of the ruling.^[32] Indeed, by excluding post-electoral coalitions from the initial stage of government formation, the Court appeared to narrow the space for political negotiation, one of the cornerstones of parliamentary democracy, particularly under proportional representation systems. In most such systems, coalition-building after elections is not only legitimate but often necessary to ensure governance and inclusion. In most systems with proportional representation, post-electoral coalition-building is not only legitimate but often essential to form representative and stable governments.^[33] The Court's restrictive reading arguably curtailed the political flexibility required to form broad-based and functional governments.

From a normative perspective, this moves toward formalism – privileging electoral arithmetic over political adaptability – risks elevating textual rigidity at the expense of democratic pluralism. In a political culture where no single party consistently secures an absolute majority, coalition-building is more than a convenience; it is a democratic necessity. The Court's emphasis on procedural order may thus be seen as trading off representational inclusivity for institutional clarity.

³² Behar Selimi, Murat Jashari, "Constitutional Interpretation or Construction of the Government-Formation Process in Kosovo" *Zbornik Pravnog fakulteta u Zagrebu*, No. 6 (2021): 867-896. See also Lech Morawski, "Aktywizm sędziowski a sprawy polskie" *Prawo i Więź*, nr 2(16) (2016): 7 et seq.

³³ Daniel Diermeier, Hülya Eraslan, Antonio Merlo, "The Effects of Constitutions on Coalition Governments in Parliamentary Democracies" *PIER Working Paper*, 03-037 (2003).

However, such formalism cannot be evaluated in isolation from Kosovo's broader constitutional reality. Post-independence governance has been marked by institutional fragility, repeated deadlocks, and a limited culture of political compromise. In this light, the Court's insistence on procedural predictability and constitutional fidelity can be viewed as an attempt to strengthen fragile democratic routines and insulate key processes, like government formation, from opportunistic manipulation.

Importantly, KO103/14 also had long-term implications for the constitutional role of the President. By prioritising the electoral outcome in the first mandate, the decision inadvertently enhanced presidential discretion in subsequent steps. Should the first nominee fail to secure parliamentary confidence, it falls upon the President to decide who should be offered the second mandate. In doing so, the Court indirectly expanded the President's influence during political transitions, aligning with the broader constitutional mandate under Article 84, which includes safeguarding democratic continuity and institutional stability. In the absence of parliamentary clarity or cohesion, the President's stabilising role becomes especially significant.

In this sense, the decision reflects the Court's role not just as an arbiter of disputes but as a norm-generating institution—one that actively shapes the evolving constitutional order. KO103/14 was not simply a technical interpretation of vague provisions; it was a foundational act of constitutional design, influencing how executive authority is structured and how political legitimacy is channelled into governance. Its legacy became even more evident in KO72/20,^[34] when the Court invalidated the election of the Hoti government by reaffirming the principles first articulated in KO103/14. As we will see later in this paper, the reasoning in KO103/14 did not remain confined to a single episode but reverberated across subsequent jurisprudence, reinforcing the Court's status as a central actor in defining constitutional democracy in Kosovo.

³⁴ Constitutional Court of the Republic of Kosovo, Judgment in Case No. KO72/20, Applicant: Rexhep Selimi and 29 Other Deputies of the Assembly of the Republic of Kosovo, Assessment of the Constitutionality of the President's Decree No. 24/2020 of 30 April 2020 on the Proposal of a Candidate for Prime Minister to the Assembly of the Republic of Kosovo, 21 December 2020. The government was later invalidated by the Constitutional Court in another case, Judgment KO95/20, after it found that one of the 61 votes in favour had been cast by a deputy (Etem Arifi) whose mandate was invalid due to a prior criminal conviction. As a result, the government did not meet the absolute majority requirement under Article 95(3) of the Constitution, leading to the Prime Minister's resignation.

5 | Presidential Elections and the Quorum Standard: From Pacolli to Thaçi

Among the most controversial areas of Kosovo's constitutional development has been the interpretation of the quorum required for the election of the President. KO29/11 stands out as a rare example in the European context where a constitutional court annulled a presidential election due to procedural defects, namely the lack of electoral competition and the absence of a valid constitutional quorum. This proactive judicial stance underscores the Court's role as a constitutional guardian, not only of text, but also of democratic ethos. While Article 86 of the Constitution outlines the procedural framework for electing the head of state, several ambiguities regarding the required presence and voting thresholds in different rounds have opened the door for judicial intervention. Through its decisions in the cases of President Behgjet Pacolli (2011) and the rejected referral on President Hashim Thaçi (2016), the Constitutional Court of Kosovo set crucial parameters for ensuring democratic legitimacy and constitutional regularity in presidential elections.

In February 2011, Behgjet Pacolli was elected President of Kosovo in the third round of voting. However, a group of opposition deputies immediately challenged the constitutionality of the process, arguing that the required quorum of two-thirds of all deputies was not met in the first two rounds, and that the process lacked the procedural safeguards required under Article 86. In particular, the challengers claimed that there was no genuine electoral competition due to the presence of only one candidate, and that the voting session had been interrupted before the third round to influence deputies, thus violating both the spirit and procedure of constitutional democracy. In its decision (KO29/11), the Constitutional Court invalidated Pacolli's election, holding that the vote had not been conducted by constitutional procedures. Most importantly, it was found that the presence of only one candidate undermined the democratic integrity of the process, and that the Assembly had failed to meet the required quorum of 80 deputies in the initial rounds.^[35]

Although the Court addressed a range of procedural concerns, this analysis will place particular emphasis on the issue of quorum, a foundational

³⁵ Judgment KO29/11, Constitutional Court of the Republic of Kosovo, 30 March 2011, paras. 75–77.

procedural safeguard in parliamentary democracy. The Court clarified that in the first two rounds of presidential voting, the required two-thirds majority must be calculated against the total number of deputies minus those who are formally excused from attending. Moreover, the election is valid only if at least 80 deputies from this adjusted total vote in favour of a candidate.^[36] This interpretation reflects a strict formalist approach that emphasises institutional participation and substantive support, affirming that presidential legitimacy derives from numerical thresholds and meaningful parliamentary engagement.

However, the Court's rigid formalism in KO29/11 – particularly its requirement that the process cannot proceed to the second or third round unless the first round meets the full quorum – raises a structural concern: in a politically polarised environment such as Kosovo, opposition deputies may deliberately boycott the session, thereby obstructing the quorum and rendering the election process inoperative.^[37] The judgment thus inadvertently empowers parliamentary minorities with veto power through non-participation. While normatively rigorous, these standards risk producing constitutional deadlock if consensus among parliamentary groups is not reached. In light of this, one may reasonably hope that in the future, the constitutional obligation requiring the presence and participation of at least 80 deputies in the first two rounds will either be softened through a formal constitutional amendment or reinterpreted by the Court in a more pragmatic direction.

The later clarification in KO47/16 arguably mitigated this risk. Although delivered in the form of a decision on inadmissibility, the Court reaffirmed that the two-thirds quorum is required only in the first two rounds, and that in the third round, a simple majority of all deputies (61 votes) suffices for both quorum and election threshold.^[38] This interpretive distinction allows the process to continue despite parliamentary fragmentation and prevents strategic obstruction from entirely derailing the presidential selection. More broadly, the legal structure developed by the Court promotes inter-party dialogue and political compromise – elements particularly vital in post-socialist democracies such as Kosovo, where institutional trust and democratic culture are still in consolidation. Furthermore, the

³⁶ Ibidem, paras. 75, 86–87.

³⁷ Ibidem, paras 84–85.

³⁸ Decision KO47/16, Constitutional Court of the Republic of Kosovo, 19 July 2016, para. 64.

requirement for a high quorum threshold in early rounds serves a symbolic purpose. Given that the President of Kosovo is the Head of State and represents the unity of the people, broad parliamentary support enhances not only procedural legitimacy but also substantive democratic authority. Thus, while KO47/16 may appear to carry lesser precedential weight as an inadmissibility decision, its interpretive content remains binding. Under Article 4(6) of the Constitution, the Constitutional Court is the final and authoritative interpreter of the Constitution, and its jurisprudence defines the operational boundaries of institutional practice.

Doctrinally, this reflects the principle of procedural constitutionalism, which posits that democratic legitimacy depends as much on how decisions are made as on what those decisions produce.^[39] Scholars argue that constitutional courts serve a critical role in enforcing these standards, particularly in transitional democracies where institutional maturity is still developing.^[40] The jurisprudence of the Constitutional Court of Kosovo in KO29/11 and KO47/16 demonstrates a commitment to this approach, underscoring that the Presidency, as a symbol of state unity, must emerge through a process marked by constitutional discipline and procedural integrity.

From a theoretical perspective, the decision in KO29/11 exemplifies the normative imperative that the legitimacy of political institutions depends not solely on electoral outcomes, but also on fidelity to constitutionally significant procedures. In this context, the Constitutional Court's intervention reaffirmed that democratic authority is not merely majoritarian, but the procedural principle that would echo in later cases involving government formation and institutional legitimacy.

³⁹ Milton César, Jiménez Ramírez, "Weak Procedural Constitutionalism: The Judicial Process as Legitimacy of Judicial Review" *ICL Journal*, No. 1 (2024): 59-76.

⁴⁰ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003), 99-105, 266; Wojciech Sadurski, *Constitutional Justice, East and West: Democratic Legitimacy and Constitutional Courts in Post-Communist Europe* (The Hague: Kluwer Law International, 2002); Wojciech Sadurski, *Rights Before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (Dordrecht: Springer, 2005), 289-299.

6 | Invalidating a Government: The Hoti Case and the Reaffirmation of Constitutional Standards

In June 2020, the Assembly of the Republic of Kosovo elected Avdullah Hoti as Prime Minister with a narrow majority of 61 votes, the minimum required for confirmation. Shortly thereafter, a group of opposition deputies submitted a referral to the Constitutional Court, arguing that one of the decisive votes had been cast by a deputy who had previously been convicted of a criminal offence and therefore was ineligible to serve as a member of the Assembly. The case (KO72/20) triggered intense legal and political debate regarding the validity of parliamentary votes, the legal status of deputies, and the limits of constitutional interpretation in matters of institutional composition.

At the core of the Court's reasoning was Article 70(3.6) of the Constitution, which stipulates that a deputy's mandate is terminated if he or she is convicted of a criminal offence by a final court decision.^[41] In its judgment, the Court held that the deputy in question, Etem Arifi, had been convicted and sentenced before the vote, and that his mandate had therefore ended automatically by constitutional force, rendering his participation in the vote unconstitutional.^[42] As a consequence, the election of the Hoti government was declared invalid for failing to meet the constitutional requirement of majority support in the Assembly.

This ruling carried immense political significance: it led to the dissolution of the sitting government and triggered new parliamentary elections in early 2021. Yet its constitutional implications were arguably even more profound. From a jurisprudential standpoint, the Hoti case reaffirmed the interpretive logic and institutional principles established in the earlier KO103/14 decision.^[43] In that case, the Court had emphasised that procedural regularity and constitutional hierarchy must be upheld in all stages of government formation, including the President's appointment of a mandate holder and the Assembly's vote of confidence. In KO72/20, the Court extended this logic to the composition of the Assembly itself,

⁴¹ Constitution of the Republic of Kosovo, art 70(3.6).

⁴² *Judgment KO72/20*, Constitutional Court of the Republic of Kosovo, 21 December 2020, paras. 59–68.

⁴³ *Ibidem*, para. 70.

insisting that only lawfully mandated deputies may contribute to the formation of executive power.

This view reflects a wider judicial approach that treats constitutional procedures not merely as ceremonial formalities but as essential safeguards of democratic legitimacy.^[44] As scholars have argued, in emerging democracies, constitutional courts frequently act as architects of institutional minimalism, emphasising that even the most minor procedural lapses can pose a serious threat to Critics, however, viewed the decision as a hyper-formalist interpretation with disproportionate political consequences. Drawing on Professor Kristina Stoichev, Bashkim Rrahmani underscores that “where the Constitutional Court rules on the legality of a Member of Parliament’s (MP) election other than in the cases of ineligibility or incompatibility, it may not determine which MP is to be stripped off their status and who shall succeed them; the Court simply establishes a violation; it is another body that quashes the MP’s election.”^[45] He then cautions that by stepping into what might otherwise have been an administrative question for the Central Election Commission, the Court continued to increase a discourse of distrust on the work of this independent institution, highlighting the decision’s destabilising impact on Kosovo’s fragile political system.^[46] Despite such critiques, the judgment in KO72/20 reflects a consistent commitment by the Court to the principle that constitutional norms must govern not only grand questions of power-sharing but also the smallest procedural elements of democratic practice. It is part of a pattern of rulings that have placed the Court at the centre of Kosovo’s democratic consolidation, sometimes stepping in when other institutions fail to self-regulate or correct constitutional violations.

⁴⁴ See: Francesco Biagi, *European Constitutional Courts and Transitions to Democracy* (Cambridge: Cambridge University Press, 2019).

⁴⁵ Kristina Stoichev, *Constitutional Justice: Functions and Relationship with the Other Public Authorities*, quoted in Bashkim Rrahmani, “Judicial Review and Political (In)stability in Kosovo” *Eastern Journal of European Studies*, No. 2 (2021): 185.

⁴⁶ *Ibidem*, 186.

Comparatively, constitutional courts in Latvia,^[47] the Czech Republic,^[48] and Ukraine^[49] have taken similar positions, holding that votes cast by unauthorised or illegitimately seated deputies vitiate the legality of parliamentary decisions. These rulings reflect the underlying belief that the rule of law must govern not only outcomes but also the processes that produce them.

The Hoti case also reinforced the perception of the Constitutional Court as a counter-majoritarian institution, willing to invalidate politically endorsed outcomes if they violate the letter or spirit of the Constitution. While such decisions may generate friction with elected branches, they also serve a vital function in consolidating the credibility of democratic institutions, especially in a fragile post-conflict context where procedural integrity is often subordinated to short-term political expediency. Ultimately, KO72/20 illustrates the Court's activist posture as both a legal guardian and institutional gatekeeper, determined to maintain constitutional discipline even at the highest levels of government formation. This approach, while controversial, has solidified the Court's role as one of the most influential actors in Kosovo's evolving constitutional democracy.

⁴⁷ Spriedums par "Saeimas vēlēšanu likuma" 38. panta otrās daļas atbilstību LR Satversmes 6., 8., 91. un-116. pantam (Satversmes tiesa [Constitutional Court of Latvia], judgment no. 2002-08-01, 1 Aug. 2002). In that decision, the Court held that any vote cast by a deputy whose mandate the Mandate, Ethics and Submissions Committee had not validly confirmed is null, so that any Saeima decision in which such a vote was decisive must be annulled.

⁴⁸ Pl. ÚS 5/02 (Ústavní soud České republiky [Constitutional Court of the Czech Republic], Collection of Decisions vol. 28, judgment no. 476/2002 Coll., 5 Feb. 2002). Here, the Court quashed the election of a deputy whose candidacy had been irregularly certified—and by necessary implication any Chamber of Deputies resolution passed with his participation—reaffirming that procedural defects in seating a member vitiate all subsequent votes.

⁴⁹ Judgment in case no. 13-p/2020 (Constitutional Court of Ukraine, 27 Oct. 2020). On a petition by 47 MPs, the Court ruled that several anti-corruption measures adopted by the Verkhovna Rada were void because some deputies voting for them had never had their mandates properly verified. It emphasised that allowing unmandated deputies to vote undermines not only individual outcomes but the rule-of-law foundations of parliamentary procedure.

7 | Between Judicial Activism and Democratic Consolidation: A Critical Evaluation

The evolving jurisprudence of the Constitutional Court of Kosovo over the past decade offers a unique lens through which to examine the dynamic role of constitutional adjudication in transitional democracies. Far from being a passive referee of legal disputes, the Court has emerged as an active architect of constitutional meaning, intervening at critical junctures to shape the rules of governance. Through decisions on government formation, presidential eligibility, and institutional checks and balances, the Court has stepped beyond its traditional adjudicative function, assuming a role of political norm-setter and institutional stabiliser. This trajectory speaks to broader theoretical debates surrounding the boundaries between judicial activism and judicial restraint, especially in post-conflict states. In consolidated liberal democracies, the judiciary is traditionally seen as the “least dangerous branch,” tasked with interpreting rather than crafting political norms.^[50] Yet in post-conflict societies like Kosovo, where institutional trust is limited, political elites are fragmented, and constitutional texts are either vague or rapidly evolving, courts often assume a far more interventionist and creative role.

Several theoretical frameworks illuminate this dynamic. Bruce Ackerman articulates the notion of “constitutional moments,” during which institutional actors transcend their formal competencies to forge new constitutional norms in moments of foundational flux.^[51] Ran Hirschl’s concept of “juristocracy” likewise describes a context in which judiciaries do more than interpret existing law – they actively construct and enshrine a state’s core values.^[52] In Kosovo, the Constitutional Court – though still in its formative stages – operates squarely within this model of guardian constitutionalism, performing the dual roles of interpreter and custodian

⁵⁰ Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*, 2nd ed. (New Haven: Yale University Press, 1986), 1-3.

⁵¹ Bruce Ackerman, *We the People: Foundations* (Cambridge: Harvard University Press, 1991), 6,41; John O. McGinnis, “Civil Rights and Constitutional Moments” *Law & Liberty*, 11 May 2014. <https://lawliberty.org/civil-rights-and-constitutional-moments/>; For a critical evaluation of Ackerman’s theory of constitutional moments, see Gordon Ballingrud, “Legitimacy in Constitutional Moments” *Ratio Juris*, No. 4 (2024): 314-329.

⁵² Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge: Harvard University Press, 2004), 12-15.

of the constitutional order amid a landscape marked by limited legislative and political self-restraint.

This model of judicial activism is not without risk. As Tom Ginsburg has argued, in new democracies, courts may suffer from a legitimate paradox: they are asked to resolve the most divisive political questions, yet their authority rests on a fragile and often contested legal culture.^[53] The more assertive their decisions, the greater the danger of political backlash or institutional isolation. This paradox is particularly acute in Kosovo, where the Court has invalidated governments, disqualified Presidents, and overridden parliamentary procedures – actions which, although constitutionally grounded, may appear excessive in a system struggling for institutional balance. Yet despite these tensions, there is a strong case to be made that the Court's jurisprudence has had a disciplining effect on Kosovo's political system. Rather than acting arbitrarily, its rulings demonstrate a consistent concern with procedural fairness, constitutional clarity, and institutional accountability. This aligns with the theory of “normative stability” in post-conflict societies, wherein judicial institutions play an outsized role in entrenching the rules of the game and preventing executive overreach.^[54]

Moreover, the Court's approach reflects elements of what scholars have called transformative constitutionalism – the idea that constitutional adjudication in developing democracies is not merely about interpreting fixed rules, but about actively constructing democratic norms, values, and practices in line with constitutional aspirations.^[55] In this view, the Court's decisions – while at times pushing the boundaries of interpretation – serve a broader social function: cultivating a political culture in which the Constitution is not just a legal text, but a framework for responsible governance.

Nevertheless, transformative or activist jurisprudence must be carefully calibrated to avoid undermining the very legitimacy it seeks to protect. The Court must avoid becoming a substitute for democratic debate or legislative compromise. Its power rests not only on constitutional authority but also on public confidence, methodological rigour, and institutional modesty. When judicial constructions become indistinguishable from political interventions, the risk of judicialization of politics becomes real, and the Court may be perceived as a partisan actor rather than a neutral guardian.

⁵³ Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, 24–27.

⁵⁴ David Landau, “Constitutional Courts and Stabilisation of Politics in Fragile Democracies” *Berkeley Journal of International Law*, No. 2 (2010): 227.

⁵⁵ Klare, “Legal Culture and Transformative Constitutionalism,” 146.

To mitigate these risks, a combination of judicial strategies is necessary:

1. **Transparent doctrinal reasoning:** The Court must clearly distinguish between interpretive methodology (textual, purposive, systematic) and normative construction, especially when no clear textual basis exists.
2. **Dialogue with institutions:** Rather than asserting supremacy, the Court should encourage deliberative engagement with the Assembly, Presidency, and civil society, fostering a culture of constitutional responsiveness.
3. **Judicial humility in crisis:** In moments of deep political fragmentation, the Court should focus on reinforcing constitutional procedure rather than attempting to resolve substantive political disputes.

Finally, many of the Court's landmark decisions highlight the need for constitutional amendments and legislative clarification. The Court has often filled legal vacuums that ideally should have been resolved by political consensus or through constitutional reform. By repeatedly constructing binding norms in place of textual clarity, the Court has become, in effect, a secondary constitutional legislator, whose interpretations function as de facto amendments.^[56] While such judicial creativity has served the short-term need for stability, its sustainability depends on institutional responsiveness. Without legislative action to address constitutional ambiguities, the Court risks being overburdened with expectations that exceed its constitutional mandate. In the long run, reinforcing the system of checks and balances requires that the interpretive leadership of the Court be matched by political maturity and reform-oriented consensus in the other branches of government. These developments illustrate both the potential and the limitations of judicial activism in transitional democracy, setting the stage for a broader reflection on the role of constitutional adjudication in democratic consolidation.

⁵⁶ Richard Albert, "Constitutional Amendment by Constitutional Desuetude" *American Journal of Comparative Law*, No. 3 (2014): 641.

8 | Conclusion

In the fragile institutional landscape of post-independence Kosovo, the Constitutional Court has emerged not only as a legal interpreter but also as a constitutional guide – bridging legal ambiguity and political uncertainty. Through transformative and often controversial rulings such as KO103/14, KO29/11, KO47/16, and KO72/20, the Court has actively contributed to shaping the rules of democratic engagement, clarifying procedures for government formation, and setting expectations for executive accountability.

This paper has argued that the Court's approach reflects a form of constructive constitutional activism – one that does not replace political dialogue but anchors it within a coherent legal framework. By intervening in moments of political deadlock and filling normative gaps, the Court has played a stabilising role in the country's institutional evolution. Its decisions, while sometimes rigid in form, have consistently aimed to preserve constitutional order and cultivate accountability.

Yet, no court can carry the burden of democracy alone. The enduring strength of Kosovo's constitutional order will depend not only on judicial enforcement but on broader institutional and political maturity. If the Court's principles are to gain lasting meaning, they must be reflected in legislative action, internalised by political actors, and reinforced through a culture of constitutional responsibility.

Ultimately, the legacy of Kosovo's Constitutional Court will not be measured solely by its legal doctrines, but by its impact on the democratic ethos—its success in embedding constitutional values into the fabric of governance. Its bold jurisprudence, though not without tension, has offered a vital foundation upon which democratic norms may grow. The challenge ahead lies in ensuring that judicial authority complements rather than substitutes the work of democratic deliberation.

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