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

BULLETIN OF CASE LAW

Volumi I

Publisher:

Constitutional Court of the Republic of Kosovo

Editorial Board:

Znj. Arta Rama-Hajrizi, President of the Constitutional Court of the Republic of Kosovo
Prof. Dr. Ivan Cukalovic, Vice-President of the Constitutional Court of the Republic of Kosovo
Almiro Rodrigues, Judge of the Constitutional Court of the Republic of Kosovo
Prof. Dr. Snezhana Botusharova, Judge of the Constitutional Court of the Republic of Kosovo
Milot Vokshi, Secretary General of the Constitutional Court of the Republic of Kosovo
Legal Office, Constitutional Court of the Republic of Kosovo

Contributors:

Mr. Malte Kirchner, Project Manager, GIZ
Mrs. Pranvera Ejupi- Hajzeraj, Project Coordinator, GIZ
Mr. Lavdim Krasniqi, Legal Expert
Premium Consulting

Disclaimer:

According to Article 116.4 of the Constitution of the Republic of Kosovo, the decisions of the Constitutional Court are published in the Official Gazette of the Republic, which is the primary source for the decisions of the Constitutional Court. This Bulletin does not replace the primary source for the decisions of the Constitutional Court. In case of conflicts or inconsistencies between the decisions published in this Bulletin and the decisions published in the Official Gazette of the Republic of Kosovo, the latter shall prevail.

The purpose of the summary of the decisions is to provide a general factual and legal overview of the cases and a brief summary of the decisions of the Constitutional Court. The summary of decisions and judgments has been compiled by the "Project Legal Reform" implemented by Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ),, and as such, they do not replace the decisions of the Constitutional Court nor do they represent the actual form of the decisions / judgments of the Constitutional Court.

Published by giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

BULLETIN OF CASE LAW

Volume I

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

This Bulletin was supported by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Legal Reform Project in Kosovo, on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ)

Table of Contents

Foreword

As a continuation of the decision making work of the Constitutional Court, which has published the Bulletin of the Case Law for many years in row, it is my great pleasure, in the capacity of the new President, to write this Foreword to the Bulletin of Case Law 2015 of the Constitutional Court which is the fifth publication of its kind since the Court's establishment. I wholeheartedly thank the Secretariat and the Legal Unit of the Court for the excellent work and great dedication in preparing this Bulletin. As the publication of Bulletin 2014, also the publication of the present Bulletin has been enabled thanks to a generous donation of the German International Cooperation (GIZ) for which the Court is very grateful.

This Bulletin contains a number of landmark cases, including the request for preventive constitutional control – assessment of constitutional amendments proposed by the deputies of the Assembly of the Republic of Kosovo concerning the establishment of Specialized Chambers within the judiciary and prosecution, and the request for gender representation in ministerial and deputy ministerial positions of the Government of the Republic of Kosovo. The Court was requested to confirm that the proposed amendments did not diminish the rights and freedoms guaranteed by Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and their Members] of the Constitution. The Court has also rendered two other important decisions related to individual referrals, where issues of Kosovo banking system and the rights stemming from the employment relationship have been dealt with from the constitutional judiciary perspective.

It is not an exaggeration to underline how important it is that prospective applicants and their legal representatives, who are intending to submit a referral to the Constitutional Court, should, by using this and previous bulletins, carefully consult the Court's decisions in similar cases and consider whether in light thereof their case could have any prospect of success. It must be clearly understood that, in principle, the right to petition cannot be denied to any applicant, but it would be better if they were informed beforehand about the Court's jurisprudence and have an objective consideration as to the success of their referral.

The goal of the publication of the Court's decisions in the Bulletin is to show the public that the judges of the Constitutional Court take their decisions independently in a fully transparent manner while applying the highest standards of human rights and constitutional justice.

Arta Rama-Hajrizi
President of the Constitutional Court

KI105/14, Applicant Ramiz Ukaj, Constitutional review of Notification KMLC no. 45/14 of the State Prosecutor of the Republic of Kosovo of 2 June 2014

KI 105/14, Resolution on Inadmissibility of 9 December 2014, published on 14 January 2015

Key words: *Individual Referral, civil proceedings, the right to a fair and impartial trial, referral manifestly ill-founded*

The Basic Court in Peja by Decision CN. No. 79/14 ordered for the Cadastral Office in Istog to restitute a contested plot of land to its former status because it considered that the Applicant withdrew his lawsuit.

The Applicant alleged inter alia that the Basic Court in Peja violated his right to a fair and impartial trial as guaranteed by Article 31 of the Constitution because he was not given the right to appeal.

The Constitutional Court considered that the Applicant did not substantiate his referral on constitutional grounds and did not provide any evidence that his fundamental rights and freedoms have been violated by the regular courts. Furthermore the Court noted that the Applicant filed a referral against the State Prosecutor but his complaints were directed against the Basic Court in Peja. The Applicant's referral was declared inadmissible on the grounds of being manifestly ill founded as foreseen by Rule 36 (2), b) and d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI105/14
Applicant
Ramiz Ukaj
Constitutional review of Notification KMLC no. 45/14 of the State Prosecutor of the Republic of Kosovo, dated 2 June 2014

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. This referral is submitted by Mr. Ramiz Ukaj, with residence in village Zallq, Municipality of Istog (hereinafter, the Applicant), who is represented by Mr. Xhafer Maloku.

Challenged act

2. The Applicant challenges Notification KMLC no. 45/14 of the State Prosecutor of the Republic of Kosovo (hereinafter, State Prosecutor), dated 2 June 2014, which was served on the Applicant on 11 June 2014, rejecting the Applicant's request addressed to the State Prosecutor to request protection of legality.

Subject matter

3. The Applicant alleges that the abovementioned notification violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely Article 21 [General Principles], Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to

Legal Remedies], Article 53 [Interpretation of Human Rights Provisions] and Article 54[Judicial Protection of Rights].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 20 June 2014 the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 7 July 2014 the President of the Constitutional Court, with Decision No. GJR. KI105/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI105/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 4 September 2014 the Court notified the Applicant of the registration of the Referral.

8. On 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On an unspecified date during 2004, the Applicant brought a civil action with the Municipal Court in Istog, against individuals N. U. and A. U. *"for confirmation of the ownership of a plot of land, registered in cadastral books under no. 523/5 , from the Possession List No. 350 of Zallq Cadastral Zone."*

10. On 9 September 2005 the Municipal Court in Istog adopted Judgment C. Nr. 108/04, *"approving the Applicant's civil action and recognized him as a sole owner of the property rights over the above-mentioned plot of land ... obliged the respondents N. U. and A. U. to reinstate a metal gate installed by the Applicant, which was previously removed by them... and to pay the expenses of the procedure..."*

11. Within the time limit provided by the law, the respondents N. U. and A. U. lodged an appeal with the District Court in Peja against the Judgment C. Nr. 108/04, of 9 September 2005.

12. On 13 November 2006 the District Court in Peja adopted Judgment AC. nr. 243/06, approving the respondents' appeal as to the reinstating the metal gate and the expenses of procedure, but rejected their appeal as to the confirmation of the ownership. Thus, returning the case for a retrial by the Municipal Court in Istog.

13. On an unspecified date during 2007 the respondents N. U. and A. U. requested the extraordinary legal remedy of revision with the Supreme Court, against the Judgment AC. nr. 243/06, of 13 November 2006.

14. On 14 April 2009 the Supreme Court adopted Decision 45/2007 approving the revision, and quashed the Judgment C. Nr. 108/04 of Municipality Court in Istog and Judgment AC. nr. 243/06 of District Court in Peja, stating that *"The Supreme Court of Kosovo, for the time being cannot accept such legal stance of lower instance courts, since according to evaluation of this court, judgments of both courts were rendered by constituting substantial violations of contentious procedure provisions, that of first instance court by violations provided by Article 354 para. 2 item 14 of LCP, whereas the judgment of second instance court was rendered by constituting violations as per Article 354 para.1 in conjunction with Article 365 para. 2 of LCP, for which reasons had to be quashed as such."*

15. In its Decision, the Supreme Court returned the case to the Municipal Court in Istog, stating that *" The first instance court in retrial is obligated to avoid the abovementioned flaws, to order the claimant to specify the ground of statement of claim, if by claim is requested the termination of servitude (if there is), annulment of agreement signed on 12.04.1996 (on which are based judgments of lower instance courts) or by claim is requested to be determined the ownership over immovable property, to determine expertise in relation to immovable property background, since from expertise, which is found in case file cannot be determined all elements in relation to these facts."*

16. On 23 May 2011 Municipal Court in Istog adopted Decision C. nr. 119/09, which as requested by the Supreme Court, ordered the Applicant, in compliance with Article 102.1 of the Law on

Contentious Procedure, within 3 days to specify the legal basis of the civil action.

17. The Applicant did not answer to this order of the Municipality Court.

18. On 16 April 2014 Basic Court in Peja, as a competent court after the entering into force of the Law on Courts (Law No. 03/L-199), adopted Decision CN. nr. 79/14, which ordered Directorate of Cadastre – Cadastral Office in Istog, in compliance with Decision C. nr. 119/09 of 23 May 2011, to register the plot of land as it was before the starting of the legal proceedings, since the Court considered that the Applicant withdrew the civil action.

19. On an unspecified date the Applicant submitted a request with the Office of the State Prosecutor, to initiate the request for protection of legality, as an extraordinary legal remedy.

20. On 2 June 2014, the State Prosecutor adopted Notification KMLC no. 45/14, which rejected the Applicant's request, since *" the challenged decision was not rendered, in contested procedure , nor in contentious procedure and neither in executive procedure, and was not decided in relation to the requests of parties, on the ground of statement of claim, but simply we have to do with administrative order, which was issued by an administrative body of the Court, which implies that the challenged decision has not the capacity of final decision a court, as provided by provision of Article 245.1 of LCP, against which can be filed legal remedy, request for protection of legality."*

Applicant's allegations

21. The Applicant alleges that "*By not giving the right to the injured party Ramiz Ukaj to appeal against Decision Cn. no. 79/14 of 16.04.2014, the President of the Court violated the Article 21, 24, 31, 32, 53 and 54 of the Constitution of the Republic of Kosovo."*

22. In this respect, the Applicant requests the Constitutional Court to *"... conclude that the Decision of the President of the Basic Court in Peja CN. nr. 79/14, of 16.04.2014, by not given the right, to appeal to Ramiz Ukaj, as a party, whose rights are violated by that decision, has violated his human rights to be equal part to a trial and to have a fair and dignified trial."*

Assessment of the admissibility of the Referral

23. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

24. In this respect, the Court refers to Article 113 (7), which provides:

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

25. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

> *(1) The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded".*
>
> *(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights,.*
>
> *[...], or*
>
> *(d) when the Applicant does not sufficiently substantiate his claim".*

26. Notwithstanding the fact that the Applicant submitted the Referral against Notification KMLC no. 45/14 of the State Prosecutor adopted on 2 June 2014, the complaints raised in the referral are directed to the Basic Court Decision CN. nr. 79/14.

27. However, the Court notes that the Applicant did not substantiate any claim on constitutional grounds and did not provide evidence that his fundamental rights and freedoms have been violated by the regular courts. The Applicant failed to meet the deadlines provided by the law, for which was duly notified by the competent court (see paragraph 16 of this Resolution).

28. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant have had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).

29. The Court notes that the regular courts sufficiently reasoned their decisions and thus the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis, Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

30. In sum, the Applicant did not show why and how his rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis, García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I; see also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

31. Thus, pursuant to Rule 36.1.c of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of
the Law and Rules 36 (1), c; Rule 36 (2), b) and d) of the Rules of Procedure, on 9 December 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI123/14, Applicant Lalushe Boneshta, Constitutional review of Judgment PML. No. 123/2014 of the Supreme Court of 19 June 2014

KI 123/14, Resolution on Inadmissibility of 9 December 2014, published on 14 January 2015

Key words: *Individual Referral, criminal proceedings, right to liberty and security, right to a fair and impartial trial, referral manifestly ill-founded*

The Supreme Court of Kosovo by Judgment PML. No. 123/2014 of 19 June 2014 approved the Applicant's request for protection of legality by substituting the measure of house arrest with a more lenient measure, that of appearance to the closest Police Station twice (2) a week. However, the Applicant challenged that judgment before the Constitutional Court of the Republic of Kosovo.

The Applicant alleged inter alia that the Supreme Court of Kosovo violated her right to liberty and security in addition to the right to a fair and impartial trial as guaranteed by Article 29 and 31 of the Constitution respectively, because her freedom of movement was restricted and hence she was placed in a discriminatory position.

The Constitutional Court noted that the Supreme Court substituted the measure of house arrest with a more lenient measure and further added that the fact the Applicant is not satisfied with the outcome of proceedings does not give rise to an arguable claim of violation of her rights and freedoms as guaranteed by the Constitution. The Applicant's referral was declared inadmissible on the grounds of being manifestly ill-founded as foreseen in Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI123/14
Applicant
Lalushe Boneshta
Constitutional Review of the
Judgment PML. No. 123/2014 of the Supreme Court
dated 19 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mrs. Lalushe Boneshta (hereinafter: the Applicant) with residence in Gjakova. The Applicant holds citizenships of both the Republic of Kosovo and Republic of Serbia.

Challenged Decision

2. The challenged Decision is the Judgment, PML. No. 123/2014 of the Supreme Court of Kosovo dated 19 June 2014, which was served on the Applicant on an unspecified date.

Subject Matter

3. The subject matter is the constitutional review of the Judgment, PML. No. 123/2014 of the Supreme Court of Kosovo dated 19 June 2014, which approved the Applicant's request for protection of legality and modified the Decisions of the lower courts by substituting the measure of house arrest with a more lenient measure, that of appearance in the Police Station twice (2) a week.

The Applicant in particular alleges that the imposed measure by the aforementioned Judgment has limited her freedom of movement and that she has been discriminated against.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articled 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 July 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 August 2014 the President by Decision, GJR. KI123/14 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President by Decision, KSH. KI123/14 appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

7. On 22 August 2014 the Court notified the Applicant of the registration of the Referral and requested to submit the Decisions of the Basic Court in Prishtina and the Court of Appeal of Kosovo. On the same date, the Court sent a copy of the Referral to the Supreme Court.

8. On 12 September 2014 the Applicant submitted the requested documents to the Court.

9. On 9 December 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

10. On 21 March 2014, based on the criminal report (2014 YNM 007 dated 21 March 2014) the Basic Prosecution in Prishtina issued a Decision on initiation of investigation against the Applicant. The Applicant was suspected of committing a criminal offence of smuggling of migrants as foreseen in Article 170, paragraph 1, in

conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.

11. On 21 March 2014, at the request of the Basic Prosecution in Prishtina, the Pre-trial Judge in the Basic Court in Prishtina decided to impose on the Applicant the measure of house arrest until 19 April 2014.

12. On 18 April 2014, at the request of the Basic Prosecution in Prishtina, the Basic Court in Prishtina rendered Decision, PPR. KR nr. 107/2014 and extended the measure of house arrest for the Applicant with two (2) months.

13. Against the aforementioned Decision of the Basic Court in Prishtina (PPR. KR nr. 107/2014 dated 18 April 2014), the Applicant filed an appeal with the Court of Appeals.

14. On 12 May 2014, the Court of Appeals by Decision, PN.1.892/14 rejected the Applicant's appeal as ungrounded. In its Decision, the Court of Appeals confirmed the decision of the first instance court to extend the measure of house arrest, because of the existence of the risk that the Applicant could hide or escape also due to the fact that the Applicant was also a holder of the citizenship of the Republic of Serbia.

15. The Applicant filed a request for protection of legality with the Supreme Court against the Decision of the Court of Appeals.

16. In her request for protection of legality, the Applicant alleged substantive violations of Criminal Code and Criminal Procedure Code, and violation of Article 5 (Right to Liberty and Security) of the European Convention on Human Rights (hereinafter: ECHR). She further argued that her husband, as a first defendant in this process was released from detention.

17. On 18 June 2014, the State Prosecutor in its response (KMLP 111. No. 30/14) to the Applicant's request for protection of legality, proposed that her request is to be rejected as ungrounded.

18. On 19 June 2014, the Supreme Court (Judgment, PML. 123/2014) approved the Applicant's request for protection of legality and substituted the measure of house arrest with a more lenient measure, that of appearance to the closest Police Station twice (2) a week.

19. In its Judgment, the Supreme Court held that:

> *"At the same time, this Court considers that there is no legal reason for extending the house arrest measure, under Article 178, paragraph 1 subparagraph 1.1 and 1.2 in conjunction with Article 187 paragraph 1 subparagraph 1.2 item 1.2.1 and 1.2.2 of CCRK [Criminal Code of Republic of Kosovo] given that there are no special circumstances which would justify the grounded fear that her being free, would affect the injured party and the first defendant. It is not disputable the fact that the injured party, [...] is a brother of the defendant Lalushe Boneshta and considering family relations, they have been in contact during this time and since the date when detention is abrogated against the first defendant, she is in ongoing contact considering that they are spouses and therefore they could have influenced each other as co-defendants and the injured party."*

Applicant's allegations

20. As stated above, the Applicant alleges that, the imposed measure by the challenged decision has limited her freedom of movement. In this regard, she argues that: *"I also own a house in Subotica, Republic of Serbia. I was not allowed to go to my place of residence. My family owns a shop there. Due to this imposed measure, I am not able to go to my shop. The case files confirm that no restrictive measure is imposed against my husband as an accomplice. I find myself in a discriminatory position. We have 7 children from our marriage with my husband. Now, our children cannot go to their home in Subotica, since there is no one who could look after them."*

21. The Applicant further alleges that the Judgment, PML. No. 123/2014 of the Supreme Court of Kosovo dated 12 May 2014 violated the Applicant's rights guaranteed by Article 21 [General Principles], paragraph 2, Article 24 [Equality Before the Law], Article 29 [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

22. She concludes by requesting the Court to annul the Judgment of the Supreme Court (PML. No. 123/2014 dated 19 June 2014).

Admissibility of the Referral

23. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

24. In this respect, the Court refers to Rule 36 of the Rules of Procedure, which provides:

> *(2) "The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[...]*
>
> *(d) the Applicant does not sufficiently substantiate his claim".*

25. As mentioned above, the Applicant alleges that the Judgment of the Supreme Court, PML. No. 123/2014 dated 19 June 2014 violated her rights guaranteed by the Constitution, in particular she argues that with the imposed measure her freedom of movement has been limited and that she has been discriminated against.

26. However, the Applicant does not explain and substantiate how her rights and freedoms guaranteed by the Constitution, in particular her freedom of movement has been limited.

27. The Court notes that the investigation procedure is still ongoing and an indictment has not yet been issued.
The completed procedure before the regular courts refer to the restrictive measure imposed on the Applicant during the investigation phase.

28. The Constitutional Court cannot substitute the role of the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima,*

Magbule Hima and Bestar Hima, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

29. The Court further notes that the challenged decision approved her request for protection of legality and substituted the measure of house arrest with a more lenient measure. Thus, the mere fact that the Applicant is not satisfied with the outcome of the proceedings in her case do not give rise to an arguable claim of a violation of her rights and freedoms as protected by the Constitution.

30. Furthermore, as mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Basic Court in Prishtina and the Court of Appeals have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

31. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional rights and freedoms invoked by the Applicant and the Applicant has not sufficiently substantiated her allegation.

32. Therefore, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2), b) and d) and 56 (b) of the Rules of Procedure, on 9 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur Snezhana Botusharova

President of the Constitutional Court Prof. Dr. Enver Hasani

KI126/14, Applicant Vebi Tahiri, Constitutional review of Decision Ac. no. 2109/2013 of the Court of Appeal of Kosovo of 16 December 2013

KI 126/14, Resolution on Inadmissibility of 9 December 2014, published on 14 January 2015

Key words: *Individual Referral, civil proceedings, protection of property, referral out of time*

The Court of Appeal of Kosovo by Judgment Ac. no. 2109/2013 adopted decisions of the trial courts by which the Applicant's mortgaged property was transferred and registered in the name of Pro Credit Bank Kosovo.

The Applicant alleged inter alia that his right to property as guaranteed by Article 46 of the Constitution was violated because he was put in difficult position due to actions of his creditor Pro Credit Bank Kosovo.

The Constitutional Court noted that the referral was not filed within the legal deadline provided for by Article 49 of the Law and as further specified by Rule 36 (1) (c) of the Rules of Procedure. The Applicant's referral was declared inadmissible on the grounds of being out of time.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI126/14
Applicant
Vebi Tahiri
Constitutional review of the
Decision Ac. no. 2109/2013, of the Court of Appeal,
of 16 December 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Vebi Tahiri (hereinafter: the Applicant), residing in Gjilan.

Challenged decision

2. The challenged decision is Decision Ac. no. 2109/2013, of the Court of Appeal, of 16 December 2013, which the Applicant claims he received on 12 February 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision, Ac. no. 2109/2013 of the Court of Appeal, of 16 December 2013, by which the Applicant's appeal was rejected as ungrounded and the Decision (E. no. 153/2011, of 10 June 2013) of the Basic Court in Gjilan was upheld. The Applicant alleges that the abovementioned Decision of the Court of Appeal has violated his right guaranteed

by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113. 7 of the Constitution, Article 47 of the Law on Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 4 August 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 4 September 2014 the Court informed the Applicant on registration of the Referral. On the same date, the Court submitted a copy of the Referral to the Court of Appeal.

7. On 5 September 2014 by Decision GJR. KI126/14, the President of the Court appointed Arta Rama-Hajrizi as Judge Rapporteur. On the same date, by Decision KSH. KI126/14, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 9 December 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

9. On 11 May 2007, the Applicant and ProCredit Bank, the branch in Gjilan (hereinafter: the creditor) have concluded a loan agreement. The mortgage agreement over the Applicant's immovable property and the pledge agreement were registered in the Cadastral Office of the Municipality of Gjilan.

10. As a result of the non-payment of debt, the creditor filed a proposal for execution and consequently by Decision of the Municipal Court in Gjilan (E. no. 153/2011, of 23 February 2011) with a purpose of the payment of debt, the sale of the mortgaged immovable property of the Applicant was scheduled.

11. On 6 March 2013, the Basic Court in Gjilan rendered the Conclusion (E. no. 153/2011) on the first public sale of the Applicant's mortgaged immovable property. After the failure of the first public auction sale, the Basic Court in Gjilan scheduled the second public sale of the immovable property, which was held on 7 June 2013.

12. On 10 June 2013, the Basic Court in Gjilan (Decision, E. no. 153/2011) assigned the creditor as the most advantageous bidder offering the highest price for purchase of the mortgaged immovable property and ordered that the immovable property is registered in the name of the creditor.

13. The Applicant filed an appeal with the Court of Appeal against the Decision of the Basic Court in Gjilan (E. no. 153/2011, of 10 June 2013), by proposing the court to quash the appealed decision and remand the matter to the first instance court for reconsideration.

14. On 16 December 2013, the Court of Appeal (Judgment, Ac. nr. 2109/13) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Basic Court in Gjilan (E. no. 153/2011, of 10 June 2013).

15. On 19 February 2014, the Directorate of the Geodesy and Cadastre in Gjilan rendered the Decision on registration of the immovable property in the name of the creditor, ProCredit Bank.

Applicant's allegations

16. As mentioned above, the Applicant argues that the challenged Decision violated his right guaranteed by Article 46 [Protection of Property] of the Constitution.

17. The Applicant also alleges that in the challenged Decision, Article 18 paragraphs 1, 2 and 3 of the Law of Contracts and Torts (published in the Official Gazette of SFRY, No. 29/78 with amendments and supplements of the Law, published in the Official Gazette of SFRY No. 39) was erroneously applied. In this respect, the Applicant states that *"It is not that they did not act in spirit of these provisions when it comes to this case. At contrary, with or without an intention, the debtor was put in difficult position due to creditor's actions (three debtor's parcels although having a real overall value of € 695,010, were bought by the creditor for the amount of only €232,000 and after 4 months only, the creditor*

sold one of them in the amount of €260,000. This illustrates the action of the creditor against the debtor…"

18. The Applicant concludes by requesting the Court to annul the Decisions of the Basic Court in Gjilan (E. no. 153/2011, of 10 June 2013) and that of the Court of Appeal (Ac. no. 2109/2013, of 16 December 2013).

Assessment of admissibility of the Referral

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

20. In this respect, the Court refers to Article 49 of the Law, which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."*

21. The Court also takes into account Rule 36 (1), (c) of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
>
> *[…]*
>
> *(c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant […]"*

22. To determine whether the Applicant has submitted the Referral within the provided time limit of four months, the Court refers to the date when the final decision was served on the Applicant and the date on which the Referral was submitted to the Constitutional Court.

23. The Applicant declares in his Referral that the Decision of the Court of Appeal (Ac. no. 2109/2013, of 16 December 2013) was served on him on 12 February 2014, while he submitted his

Referral to the Court on 4 August 2014. Based on this, it follows that the Referral was not filed within the legal time limit provided by Article 49 of the Law and Rule 36 (1), (c).

24. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that the cases, raising issues under the Constitution, are dealt within a reasonable time and that the past decisions are not continually open to challenge (See case *O'Loughlin and others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

25. Therefore, the Referral should be declared inadmissible because out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rules 36 (1), (c) and 56 (b) of the Rules of Procedure, on 9 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI143/14, Applicant Ferbend Haxhiaj, Constitutional review of Judgment Rev. no. 26/2012 of the Supreme Court of Kosovo of 16 September 2013

KI 143/14, Resolution on Inadmissibility of 9 December 2014, published on 15 January 2015

Key words: *Individual Referral, civil proceedings, protection of property, referral already decided*

In this case, the Court noted that it had already decided on the Applicant's referral by declaring it manifestly ill-founded and that the present referral does not contain any ground for rendering a new decision.

The Court declared the referral inadmissible in compliance with Article 116 (1) of the Constitution and Rule 63 (1) and 36 (3) d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI143/14
Applicant
Ferbend Haxhiaj
Constitutional Review of the
Judgment Rev. no. 26/2012 of the Supreme Court,
dated 16 September 2013

composed of

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

The Applicant

1. The Referral was submitted by Mr. Ferbend Haxhiaj, citizen of the Republic of Albania with residence in Durrës, Republic of Albania (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Judgment Rev. No. 26/2012 of the Supreme Court of 16 September 2013, which was served on the Applicant on 11 November 2013.

3. The Court has already rendered a decision on this same matter in case KI28/14, Applicants *Skender Mezini and Ferbend Haxhiaj*, Resolution on Inadmissibility, rendered on 19 May 2014 and published on 13 June 2014.

Subject matter

4. The subject matter is the constitutional review of the same challenged Judgment, which allegedly violated the rights of the Applicant guaranteed by Article 1 [Protection of Property] of Protocol No. 1 to the European Convention on Human Rights

(hereinafter, the ECHR) and his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution). The Applicant does not specify which provisions of the Constitution were violated.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 19 September 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 7 October 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 21 October 2014, the Court notified the Applicant on registration of the Referral.

9. On 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

The Facts of the Case

10. On 19 September 2014, the Applicant filed the Referral KI143/14, without having submitted any new facts or evidence related to the completed procedure before the regular courts and the Constitutional Court.

11. In fact, on 10 February 2014, the Applicant, together with Skender Mezini, had submitted to the Court the Referral KI28/14, by which they have challenged the same Judgment of the Supreme Court (Rev. no. 26/2012, of 16 September 2013).

12. Meanwhile, on 19 May 2014, the Court declared the Referral KI28/14l inadmissible for being manifestly ill-founded (Case KI28/14, Resolution on Inadmissibility, published on 13 June 2014).

13. The facts and court's decisions submitted by the Applicant in this new Referral KI143/14 have already been reviewed in the Case No. KI28/14, as decided by the Resolution on Inadmissibility dated 19 May 2014.

Applicant's allegation

14. The Applicant in this new Referral KI143/14 insists on claiming that the challenged Judgment has violated his right guaranteed by Article 1 of the Protocol No. 1 to the ECHR.

15. The Applicant further claims that the regular courts have violated his rights guaranteed by the Constitution, namely his right as an heir of his predecessors who were born in Kosovo to become citizen of the Republic of Kosovo and enjoy the property right over the immovable property of his predecessors.

16. However, the Applicant does not accurately specify the provisions of the Constitution, which were allegedly violated. Instead he refers to Articles 3, 4 and 5 of the Law No. 03/L-95 on the Rights of former Politically Convicted and Persecuted (published in the Official Gazette of the Republic of Kosovo on 10 December 2010).

17. The Applicant concludes by requesting the Court to enable him as an heir to enjoy the property right over the immovable property of his predecessors.

Admissibility of the Referral

18. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

19. In this regard, the Court refers to Article 116 (1) of the Constitution [Legal Effect of Decisions], which establishes:

> *Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.*

20. In addition, the Court also takes note of the Rule 63 (1) of the Rules of Procedure, which provides:

The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

21. Furthermore, the Rule 36 (3) d) of the Rules of Procedure foresees:

Referral may also be deemed inadmissible in any of the following cases:

(...) e) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision.

22. The Court considers that the facts and allegations raised by the Applicant in his new Referral do not provide any sufficient or relevant grounds or reasons for a new decision (See Constitutional Court Case KI02/14, Applicant *Hamdi Ademi*, Resolution on Inadmissibility of 26 May 2014).

23. In fact, the Court recalls that it has already dealt with the above-mentioned matter in Case KI28/14, Applicants *Skender Mezini and Ferbend Haxhiaj*, Resolution on Inadmissibility rendered on 19 May 2014. In its Resolution, the Court had declared the Referral inadmissible for being manifestly-ill founded because the presented facts by the then Applicants did not in any way justify their allegation of a violation of the constitutional rights and that the Applicants have not sufficiently substantiated how and why the Judgment of the Supreme Court had violated their rights, guaranteed by the Constitution.

24. Thus, the Court holds that it has already rendered a decision on this matter and that this Referral does not contain any ground for rendering a new decision.

25. Therefore, pursuant to Article 116 (1) of the Constitution, Rules 63 (1) and 36 (3) d) of the Rules of Procedure, the Court concludes that this Referral is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 (3) e) and 63 (1) of the Rules of Procedure, on 9 December 2014, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI114/14, Applicant Adem Hoti, Consituttional review of Decision Rev. no. 127/2014 of the Supreme Court of Kosovo of 12 may 2014

KI 114/14, Resolution on Inadmissibility of 8 December 2014, published on 19 January 2015

Key words: *Individual Referral, civil proceedings, right to work and exercise profession, referral manifestly ill-founded*

The Applicant filed the request for revision with the Supreme Court of Kosovo against decisions of the trial and appeal courts respectively in relation to non-extension of his work contract by the Municipal Directorate of Education in Podujeva. The Supreme Court of Kosovo dismissed the Applicant's request for revision as not being filed in compliance with procedural requirements of the pertinent law.

The Applicant alleged inter alia that the Supreme Court by dismissing his request for revision violated his rights as guaranteed by Articles 3.2 and 113.7 of the Constitution respectively, because he was not assigned to the working place of teacher of technical education. The Court noted that the Applicant did not substantiate how and why specific provisions of the Constitution were violated. The Court declared the Applicant's referral inadmissible on the grounds of being manifestly ill-founded as provided for by Article 48 of the Law and as further specified by Rule 36 (2) b) and d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI114/14
Applicant
Adem Hoti
Constitutional review of the Decision Rev. no. 127/2014 of the Supreme Court of the Republic of Kosovo, of 12 May 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Adem Hoti, with permanent residence in Podujeva.

Challenged decision

2. The Applicant challenges the Decision Rev. no. 127/2014 of the Supreme Court of the Republic of Kosovo, of 12 May 2014 (hereinafter: the Supreme Court), by which the revision filed by the Applicant against the Decision Ac. no. 3661/2013 of the Court of Appeal of the Republic of Kosovo, of 28 February 2013 (hereinafter: the Court of Appeal) was rejected as inadmissible.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Decision Rev. no. 127/2014 of the Supreme Court, of 12 May 2014. The Applicant alleges that by this Decision of the Supreme

Court, his rights guaranteed by Article 3.2 and 113.7 of the Constitution were violated.

Legal basis

4. The legal basis for this case is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 22 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 4 July 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 August 2014, the President of the Court by Decision No. GJR. KI114/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI114/14, appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Enver Hasani.

7. On 22 August 2014, the Court notified the Applicant on the registration of Referral. On the same date, a copy of the Referral was sent to the Supreme Court.

8. On 8 December 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 30 January 2013, in the Basic Court in Prishtina, Branch in Podujeva the Court Settlement C. no. 433/11, was concluded between the Applicant and the Municipal Directorate of Education in Podujeva (hereinafter: the MDE in Podujeva), for systematization of the Applicant in the payroll system for the school year 2013/2014. In the court settlement it is stated that the MDE in Podujeva is obliged to pay to the Applicant the personal income for the months July, August, September, October, November, December and January in the amount of 215.90 €, in total 1295.40 €. The unpaid salaries according to the court settlement should be paid by the MDE in Podujeva to the Applicant in February 2013, while the contract on deed will be extended by 30 June 2013. The MDA in Podujeva was also obliged to exploit all

of the opportunities, that at the beginning of the school year 2013-2014, to systemize the Applicant in the payroll system.

10. On 1 October 2013, the Applicant filed a proposal for granting execution of the Court Settlement C. no. 433/11 of the Basic Court in Prishtina, Branch in Podujeva, alleging that the Court Settlement C. no. 433/11 concluded between him and the MDE in Podujeva was not fully implemented by the MDE in Podujeva.

11. On 8 November 2013, the Basic Court in Prishtina, Branch in Podujeva (Decision CP. no. 439/13) rejected the proposal for allowing the execution filed against MDE in Podujeva.

12. Furthermore, the Basic Court in Prishtina, the Branch in Podujeva concluded:

> *"[...] From the employment contract signed for fixed term (service agreement), is determined that the claimant – creditor had a contract from 01.06.2013 until 31.08.2013, therefore due to the nature of such a contract this could have not been extended by the debtor after the time limit expired, on 31.08.2013, and the respondent – debtor, the Directorate for Education Culture And Science of Municipality of Podujeva, was not obliged to extend it if it did not need employees in that working place.*
>
> *Setting from such a situation, the court is of opinion that the creditor has no right to this; therefore the proposal is rejected as ungrounded. However, if the claimant considers that his rights were violated, he can seek recognition in a regular civil contest and not in this executive procedure according to the submitted proposal and based on the court settlement which has been concluded between the parties".*

13. On 12 November 2013, the Applicant filed an appeal against the first instance court decision with the Court of Appeal in Prishtina. The Applicant's appeal is based on violation of procedural provisions, namely Article 182.1 item (n) of the Law on Contested Procedure, erroneous and incomplete determination of factual situation and erroneous application of the material law, namely the Law on Executive Procedure (LEP), no. 03/L-008.

14. On 12 May 2013, the Court of Appeal in Prishtina (Decision, AC. no. 3661/13) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the first instance court. The said court

concluded that the first instance court has determined factual situation correctly and completely and applied correctly the material law.

15. On 19 March 2014, the Applicant filed revision against the Decision of the Court of Appeal with the Supreme Court, due to violation of the contested procedure provisions and erroneous application of the material law.

16. On 12 May 2014, the Supreme Court (Decision, Rev. no. 127/2014), rejected as inadmissible the revision filed by the Applicant, for the following reasons: *"Setting from such a state of the matter, and pursuant to Article 68, paragraph 1 of the Law on Executive Procedure, the Supreme Court of Kosovo found that pursuant to the abovementioned provision of the law, the revision of the creditor in this legal matter against the final decision in the executive procedure is not allowed"*.

Applicant's allegations

17. Applicant feels discriminated against because the MDE and the regular courts violated his rights guaranteed by Article 3.2 of the Constitution and Article 113.7 of the Constitution, because the Supreme Court rejected the revision as inadmissible.

18. The Applicant also claims that regular courts unfairly rejected his proposal for execution, by which he requested to be systemized in the payroll system for the school year 2013/2014, as of the beginning of the school year, in accordance with the Court Settlement C. no. 433/11, of 30 January 2013.

19. The Applicant addresses the Court, by these requests, we cite: *"to be assigned to the working place of a teacher of technical education, of a class teacher or of a librarian, in a primary or in a secondary school, or as an assistant to the school janitor in the Economic Secondary School "Isa Boletini" in Podujeva"*.

Admissibility of the Referral

20. The court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 48 of the Law, which provides:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".

22. In addition, Rule 36 (1) d) of the Rules of Procedure, provides:

"(1) The Court may consider a referral if:
[...]
(d) the referral is prima facie justified or not manifestly ill-founded."

23. Moreover, Rule 36 (2) of the Rules of Procedure provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(a) the referral is not prima facie justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his claim.

24. In this case, the Court notes that the Applicant alleges that the employer MDE in Podujeva and the regular courts have violated his rights guaranteed by Article 3.2 of the Constitution, due to the fact that they rendered unfair decisions, and by Article 113.7 of the Constitution, because of the rejection of the revision as inadmissible by the Supreme Court.

25. Regarding the alleged violation of Article 3.2, the Court refers to this constitutional provision, which provides:

Article 3.2.: *"The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.*

26. Regarding this allegation, the Court considers that the Applicant has not substantiated in any way, how and why, the first and second instance court violated his right guaranteed by this specific provision of the Constitution, while he was provided all opportunities to present facts, raise arguments and object the argument of the opposing party.

27. The Applicant also alleges that the Supreme Court violated his right guaranteed by Article 113.7 of the Constitution, because it did not approve the revision filed against the judgment of the Court of Appeal.

28. In this respect, the Court notes that the allegation of violation of this provision of the Constitution, filed by the Applicant has nothing to do with the possibility of filing an appeal or request before the regular courts or denial of these remedies by the latter, but the possibility that individuals, citizens of the Republic of Kosovo, challenge the decisions of the regular courts before the Constitutional Court for violation of the rights guaranteed by the Constitution, under a condition that they prove that they have exhausted all legal remedies provided by applicable laws in the Republic of Kosovo.

29. In addition, from the case file, the Court notes that the final decision on the Applicant's case, under applicable law, is the Decision Ac. no. 3661/13 of the Court of Appeal, which upheld the Decision of the first instance court, CP. no. 439/13 of 8 November 2013, regarding the Applicant's proposal for the execution of the Court Settlement, C. no. 433/11, of 30 January 2013.

30. But it is clear that the Applicant is dissatisfied with the outcome of the decision of the Court of Appeal, rendered in the executive procedure and that he has tried to realize his claims before the Supreme Court, which has rejected the revision as inadmissible because of procedural reasons (see reasoning of the Supreme Court in paragraph 16 of this document).

31. The Court recalls that the mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of constitutional provisions (see *mutatis mutandis* ECHR Judgment Appl. No. 5503/02, *Mezotur Tiszazugi Tarsulat v. Hungary*, or the Resolution of the Constitutional Court, case KI128/12, of 12 July 2013, Applicant *Shaban Hoxha*. the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).

32. The Court reiterates that it is not a fact finding court and it does not adjudicate as a court of fourth instance. The Court, in principle does not consider the fact whether the regular courts have correctly and completely determined factual situation, or, whether as in the case at issue, the Applicant's employment was terminated in lawful or unlawful manner, because this is a jurisdiction of the regular courts. For the Court the essential are those issues, upon which existence depends the assessment of possible violations of the rights guaranteed by the Constitution (constitutionality) and not clearly legal issues (legality) (See, *mutatis mutandis, i.a., Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).

33. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegations of violation of the rights, guaranteed by the Constitution.

34. Therefore, the Court concludes that the Applicant's Referral, in accordance with Article 48 of the Law and Rule 36 (1) d) of the Rules of Procedure, is manifestly ill- unfounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rules 36 (1) d), 36 (2) b) and d) and 56 (2) of the Rules of Procedure, on 8 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI70/14, Applicant Ahmet Arifaj, Constitutional review of Decision No. 351-3187/08 of the Municipal Assembly of Klina of 22 September 2008

KI 70/14, Decision to Strike Out the Referral of 23 September 2014, published on 21 January 2015

Key words: *Individual Referral, administrative proceedings, protection of property, referral struck out of the list*

In this case, the Court noted that it had already decided on the Applicant's referral by declaring it inadmissible on the grounds of non-exhaustion of all legal remedies provided for by law, and that, the present referral does not contain sufficient grounds for rendering a new decision.

The Court struck the referral out in compliance with Rule 36 (3) e) of the Rules of Procedure.

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI70/14
Applicant
Ahmet Arifaj
Constitutional Review of the Decision of the Municipal Assembly Klina, No 351-3187/08, dated 22 September 2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Ahmet Arifaj, residing in Zaberxhe/Stapanice, municipality of Klina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Municipal Assembly of Klina, No 351-3187/08, dated 22 September 2008, which was served on him in an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Municipal Assembly Klina, No 351-3187/08, dated 22 September 2008, by which the Applicant's request for support to rebuild the house destroyed during the war was rejected.

4. The Applicant does not refer specifically to the articles of the Constitution which were allegedly violated, instead he asked the

Court "*to review the documents and if possible exert … influence on the Municipal Assembly of Klina in order to solve the matter of reconstructing my home…*"

5. Furthermore, the Applicant asks the Court not to disclose identity, because he "*… is afraid I might damage my case at the Municipal Assembly in Klina*."

Legal basis

6. The referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

7. On 14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. On 6 May 2014, the President of the Court by Decision No. GJR. KI70/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI70/14, appointed the Review Panel consisting of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

9. On 26 May 2014, the Court notified the Applicant about the registration of the referral and sent a copy to Municipal Assembly of Klina.

10. On 23 September 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 30 June 2009, the Applicant filed his referral with the Court, which was registered under number KI23/09, thereby also challenging the Decision of the Municipal Assembly of Klina, No 351-3187/08, dated 22 September 2008.

12. In the referral KI23/09 the Applicant complained that his right to compensation for the property destroyed during the war has been violated without specifying any particular provision of the

Constitution. In the same referral the Mayor of Klina noted that …"*We as a municipality had no access or the possibility of preparing priority list for the beneficiaries*."

13. On 18 February 2010, the Court declared the Applicant's referral inadmissible in accordance with Article 113.7 of the Constitution (Case no. KI23/09, Resolution on Inadmissibility). The Court stated, *inter alia*: *"the Applicant has not substantiated in whatever manner why he considers that the legal remedies, mentioned in Law No 02/L-28 on the Administrative procedure, including an appeal to regular courts, would not be available, would not be effective, therefore not need to be exhausted"*.

14. On 14 April 2014, the Applicant filled a new Referral with the Court that was registered under number KI70/14. In his referral the Applicant stated the following "*I applied to the Ombudsperson in Pristina and Peja. I have not appealed anywhere else because Klina Municipality has continuously promised to me that they will reconstruct my house as soon as they acquired the necessary funds for the reconstruction of burned houses, but until today they have not reconstructed my home, this is the reason why I did not go the court to submit a claim*."

Applicant's allegations

15. In substance the Applicant complains that his right to compensation for the property destroyed during the war has been violated without specifying any particular provision of the Constitution.

Admissibility of the Referral

16. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

17. In this regard, the Court refers to Article 116.1 of the Constitution [Legal Effect of Decisions], which provides that:

> *"1. Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*

18. Furthermore, the Court also takes note of the Rule 63 (1) of the Rules of Procedure, which provides that:

> *"(1) The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*

19. Moreover, the Rule 36 (3) e) of the Rules of Procedure provides that:

> *"(3) Referral may also be deemed inadmissible in any of the following cases:*
>
> *(...)*
>
> *e) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision".*

20. The Court considers that the facts and allegations raised by the Applicant in his new Referral do not provide any sufficient or relevant grounds or reasons for a new decision.

21. In fact, the Court reiterates that it has already dealt with the above-mentioned question in case no. KI23/09. In its Resolution, the Court noted that the Applicant had not exhausted all legal remedies provided by law.

22. The Court finds that it has already rendered a decision on the matter at hand while the Referral in case KI70/14 does not contain sufficient grounds for rendering a new decision.

23. Therefore, the Referral must be declared inadmissible in compliance with Rule 36 (3) e) of the Rules of Procedure.

24. As regards the Applicant's request not to disclose identity, the Court recalls that pursuant to Article 22 2. of the Law "*The Secretariat shall send copies of the referral to the opposing party and other party (ies) or participants in the procedure*."

25. The Court also recalls that pursuant to the Court's Guidelines to assist a party or parties in submitting a referral to the Constitutional Court provide "*the Court may authorize anonymity in exceptional and duly justified cases. Of course, in anonymity is granted, your name has to be disclosed to the responding party...*"

26. Consequently, the Court considers that the Applicant's request not to disclose must be rejected on the grounds that it is not duly justified.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (3) e) of the Rules of Procedure, on 23 September 2014, unanimously

DECIDES

I. TO STRIKE OUT the Referral;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI141/14, Applicant Rrahim Ramadani, Constitutional review of Decision Ca. no. 2862/2014 of the Court of Appeal of Kosovo of 26 August 2014

KI 141/14, Resolution on Inadmissibility of 9 December 2014, published on 21 January 2015

Key words: *Individual Referral, administrative proceedings, the right to a fair and impartial trial, the right to work and exercise profession, referral manifestly ill-founded*

The Court of Appeal of Kosovo quashed decision of the Basic Court in Prishtina by which the Applicant's proposal for reinstatement to work place was approved.

The Applicant alleged inter alia that the Decision of the Court of Appeal was unfair because it did not take into account the finality of the decision of the trial court.

The Court noted that the Applicant's referral raises questions of legality and not of constitutionality, and that, the Court of Appeal had rendered a reasoned decision to back up its stance. The Court declared the referral inadmissible on the grounds of being manifestly ill-founded as foreseen by Rule 36 (2) d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI141/14
Applicant
Rrahim Ramadani
Constitutional review of
Decision CA. no. 2862/2014 of the Court of Appeal of Kosovo
of 26 August 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Mr. Rrahim Ramadani from Prishtina (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges Decision CA. no. 2862/2014 of the Court of Appeals of Kosovo of 26 August 2014. The challenged decision was served on the Applicant on 4 September 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision CA. no. 2862/2014 of the Court of Appeals of Kosovo of 26 August 2014.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 18 September 2014, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 7 October 2014, the President of the Court by Decision No. GJR. KI141/14 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI141/14 appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 22 October 2014, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal of Kosovo.

8. On 9 December 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant has worked as teacher of Albanian language over 30 years in several schools in Kosovo; however, due to reforms in the education system of Kosovo his contract was not extended.

10. On 14 December 2007, the CEO of the Municipality of Prishtina decided not to extend the Applicant's work contract (Decision no. 07-24385).

11. On an unspecified date the Applicant filed a complaint with the Independent Oversight Board of Kosovo (hereinafter, the IOBK).

12. On 19 June 2008, the IOBK by Decision A. 02. 139. 2008 invalidated the abovementioned decision of the Municipality of Prishtina and obliged the same body to allow the Applicant to

realize all the rights deriving from the work contract in compliance with decisions of the Ministry of Education, Science and Technology.

13. On an unspecified date the Applicant, as creditor, filed a request for enforcement of the IOBK decision with the Basic Court in Prishtina.

14. On 20 March 2014, The Basic Court in Prishtina by Decision E.nr.2433/2011 approved the Applicant's request to enforce the IOBK decision.

15. On an unspecified date the Municipality of Prishtina as debtor filed an objection with the Basic Court in Prishtina against enforcement of the IOBK decision.

16. On 16 June 2014, the Basic Court in Prishtina by Decision E.nr.2433/2011 rejected as unfounded the objection of the Municipality of Prishtina filed against the decision of the same court which approved enforcement of the IOBK decision.

17. On 4 July 2014, the Municipality of Prishtina filed an objection with the Court of Appeal of Kosovo against the above stated Decision of the Basic Court in Prishtina.

18. On 26 August 2014, the Court of Appeal of Kosovo by Decision CA. no. 2862/2014:

    i) approved the request of the Municipality of Prishtina;

    ii) changed the Decision of the Basic Court in Prishtina (E. nr. 2433/2011, 19.6.2014); and,

    iii) rejected the Applicant's proposal for enforcement as ungrounded.

19. In the above stated decision, the Court of Appeal of Kosovo further reasoned that:

    "The second instance court assesses that the first instance court, when applying the procedure, without any legal basis permitted the enforcement based on the proposal of the Creditor Rrahim Ramadani from Prishtina, against the Debtor Municipality of Prishtina, because the proposal on enforcement was not based on an eligible document for enforcement in

terms of Article 27 paragraph 1 of the LEP. Based on the case files, it results that the first instance court permitted the enforcement based on the decision of the Independent Oversight Board of Kosovo, A02, 139, 2008, of 19 June 2008, wherein the amount of money that the Debtor has to pay to the Creditor on behalf of damage compensation, caused as a consequence of dismissal from work, was not specified. Since in the present case, the request of the Creditor is not a joint request with the request for reinstatement to work, but for damage compensation due to dismissal from work, in this case the legal requirements under Article 315 of the LEP on permission of enforcement have not been fulfilled. The legal stance of the first instance court, expressed in the appealed decision is assessed by the second instance court as legally ungrounded, because, in such a case, the first instance court should have rejected the proposal on enforcement as ungrounded, since it lacks the grounds on permitting the enforcement, because the proposal was not based on an eligible document for enforcement, in terms of legal provisions under Articles 27 paragraph 1, and 29 paragraph 3 of the LEP".

Applicant's allegations

20. The Applicant alleges that the Court of Appeal of Kosovo has unfairly quashed decisions of the Basic Court and the IOBK respectively because it did not take into account time-limits to file an appeal and that IOBK decisions are final.

21. Furthermore, the Applicant asks the Court to: *"... be assigned to the work place in accordance with my qualification; to be paid 13 salaries, from 1 September 2007 until 30 September 2008, and the difference of the salary that I receive currently..."*

22. The Applicant does not invoke violation of any constitutional provision in particular.

Assessment of admissibility

23. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

24. In this respect, the Court refers to Article 113.7 of the Constitution which provides:

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

25. The Court also refers to Article 48 of the Law which provides;

> *In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge*.

26. The Court further takes into account Rule 36 (2) (d) of the Rules of Procedure which establish:

> *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *…*
>
> *(d) the Applicant does not sufficiently substantiate his claim;*

27. In the concrete case, the Court notes that the Applicant alleges that: *"the Court of Appeal unfairly quashed the Decision of the Basic Court"* and that the: *"Municipality of Prishtina filed an appeal after time limit of seven days provided for an appeal"*. Moreover, the Applicant requests, *inter alia*, to: *"be assigned to the work place in accordance with my qualification"*.

28. The Court considers that the Applicant's referral does not raise constitutional questions, but rather it raises questions of law and of fact which pertain to the duties and prerogative of the regular courts conferred upon them by the Constitution.

29. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

30. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain [GC],* no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

31. Furthermore, the Court considers that the Court of Appeal of Kosovo rendered a well reasoned decision because it explained the legal and factual deficiencies of the decisions rendered by the Basic Court in Prishtina and the IOBK respectively, in addition to providing legal grounds to back up its conclusions.

32. The Constitutional Court recalls that it is not a fact-finding Court. The Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

33. Moreover, the Referral does not indicate that the Court of Appeal of Kosovo acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom,* No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

34. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary,* No. 5503/02, ECtHR, Judgment of 26 July 2005).

35. In these circumstances, the Applicant has not substantiated his allegation of a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution because the facts presented by him do not show in any way that the Court of Appeal of Kosovo had denied him the rights guaranteed by the Constitution.

36. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rules 36 (2) (d) of the Rules of the Procedure, in its session held on 9 December 2014, unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI111/14, Applicants Mladen Denić and Milorad Vitković-Denić, Constitutional review of Decision AC-I.- 13 – 0041 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters of 5 June 2014

KI 111/14, Resolution on Inadmissibility of 8 December 2014, published on 26 January 2015

Key words: *Individual Referral, civil proceedings, interim measures, the right to a fair trial, protection of property, ratione materiae, referral inadmissible on several grounds*

In this referral the Applicants alleged violation of their rights be several institutions and on several grounds: a) that Supreme Court of Kosovo rendered an unlawful decision, b) the proceedings before the Basic Court in Prishtina were excessively lengthy, c) the bench of the Appellate Panel of the Special Chamber did not have a regular composition, and d) the Public Prosecutor and the Supreme Court intervened as incompetent institutions

The Court addressed each allegation made by the Applicants and held that: i) with regards to allegations under point A), this part of the referral is already decided and should be declared inadmissible pursuant to Rule 36 (3) (d) of the Rules of Procedure, ii) with regards to allegation under point B), this part of the Referral should be declared inadmissible on the grounds of non-exhaustion of all legal remedies pursuant to Article 47 (2) of the Law and Rule 36 (1) (b) of the Rules of Procedure, iii) with regards to allegation under point C), this part of the Referral is not substantiated and should be declared inadmissible as manifestly ill-founded pursuant to Rule 36 (2) d) of the Rules of Procedure and iv) with regard to allegation under point D) this part of the Referral should be declared inadmissible on the grounds of being incompatible ratione materia with the Constitution pursuant to Rule 36 (3) (e) of the Rules of Procedure. As to the Applicant request for interim measure, the Court held that there is no prima facie case for imposing an interim measure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI111/14
Applicants
Mladen Denić and Milorad Vitković-Denić
Constitutional Review
of the Decision, AC-I.-13-0041, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 5 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Referral was submitted by Mr. Mladen Denić and Mr. Milorad Vitković-Denić, residing in Kraljevo, Republic of Serbia (hereinafter, the Applicants). They are represented by Mr. Branislav M. Vitković residing in Kraljevo, Republic of Serbia.

Challenged Decision

2. The challenged decision is the Decision, AC-I.-13-0041, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, Appellate Panel of the SCSC) dated 5 June 2014, which the Applicants declare to have received on 16 June 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision which rejected the Applicants' appeal filed against the Decision (SCC-11-0026, of 20 March 2013) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, the Specialized Panel of the SCSC) concerning restitution of an immovable property.

4. The Applicants allege that the regular courts have violated their rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] in conjunction with Article 102 [Justice System] and Article 103 [Organization and Jurisdiction of the Court] paragraph 7.

5. The Applicants also request from the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely to prohibit any sale, resale, lease and sublease, construction or placing of any burden on the immovable property which is the subject of the dispute.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. On 1 July 2014 the Applicants submitted the Referral to the Court.

8. On 5 August 2014 the Applicants submitted an additional letter where they requested from the Court to impose an interim measure.

9. On 6 August 2014 the President by Decision, GJR. KI111/14 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date the President by Decision, KSH. KI111/14, appointed the

Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović.

10. On 8 August 2014 the Court informed the Applicants of the registration of the Referral and requested that Mladen Denić files a power of attorney for Branislav M. Vitković in case he chooses to be represented by him, as announced in the Referral. On the same date the Court sent a copy of the Referral to the Appellate Panel of the SCSC.

11. On 20 August 2014 Mladen Denić submitted the requested document to the Court.

12. On 12 September 2014, the Court informed the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (hereinafter, the SCSC) of the registration of the Referral and requested that they comment on the allegations raised by the Applicants in regards to excessive length of proceedings.

13. On 23 September 2014 the SCSC submitted their comments.

14. On 8 December 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible and to reject the request for interim measures.

Summary of facts

I. Proceedings before the Constitutional Court

15. In addition to the present Referral, the Applicants had submitted two other Referrals to the Court. The first Referral (KI 18/10) was filed on 24 February 2010 and the second Referral (KI 130/11) was filed on 3 October 2011.

16. On 12 April 2011, the Court decided on case no. KI 18/10 where it rejected the Applicants' request for constitutional review of the Decision (Gzz. No. 36/2007, dated 13 December 2007) of the Supreme Court of Kosovo as inadmissible due to non exhaustion of all available legal remedies.

17. After receiving the aforementioned Resolution on Inadmissibility, the Applicants filed their second Referral to the Court where they requested a reexamination of that Court's decision.

18. On 4 May 2012, the Court rendered its decision on case no. KI 130/11 and rejected the Applicants' request for reexamination of its Resolution on Inadmissibility pursuant to Rule 36 (3) e) of the Rules of Procedure because it considered that there are no sufficient grounds for a new decision. However, in respect to Applicants' complaint regarding the excessive length of proceedings the Court stated that this Resolution "*does not preclude the Applicants from submitting a new Referral complaining about the excessive length of proceedings"* once they have raised these allegations *"before the higher instance Courts, including the Supreme Court"*.

19. On 1 July 2014, the Applicants filed their third Referral with the Court where they challenge the constitutionality of the Decision (AC-I.-13-0041, of 5 June 2014) of the Appellate Panel of the SCSC.

II. Procedure before the regular courts

20. On 4 December 2006, the Applicants filed a claim with the SCSC requesting restitution of an immovable property which was nationalized for the establishment of the Agricultural Cooperative Kosova [latter known as the "Socially Owned Enterprise Kosova Export"].

21. On 31 January 2007 the Specialized Panel of the SCSC (Decision, SCC-06-0498) referred the case for adjudication to the Municipal Court in Prishtina.

22. On 16 April 2007 the Municipal Court in Prishtina (Judgment, P. No. 236/97) adjudicated the referred matter and it verified the Applicants' ownership over that immovable property and ordered the transfer of the property in the possession of the Applicants.

23. On 13 December 2007, acting upon the request for protection of legality filed by the State Prosecutor, the Supreme Court (Decision Gzz. No. 36/2007) annulled the aforementioned Judgment of the Municipal Court and remanded the case for retrial to the Municipal Court.

24. On 3 October 2011, after the case had been remanded to the Municipal Court in Prishtina and whilst it was still pending before it, the Applicants filed a parallel claim with the SCSC and requested that:

a) the Judgment (P. No. 236/97, dated 16 April 2007) of the Municipal Court in Prishtina is confirmed by the SCSC since, according to the Applicants: "*this Judgment has not been appealed and therefore became final on 5 May 2007*"; and

b) the Decision (Gzz. No. 36/2007, dated 13 December 2007) of the Supreme Court of Kosovo is declared null and void since: *"the Supreme Court did not have jurisdiction to review the Municipal Court Judgment P. No. 236/97 because pursuant to the Referral Decision SCC-06-0498 the Special Chamber retained exclusive jurisdiction over any appeal against the decision or judgment of the first instance court."*

25. On 22 June 2012 the Municipal Court in Prishtina sent the case file [repeated proceedings for the case P. No. 236/97] to the SCSC for adjudication. The case was registered with the SCSC under the number C-III-12-1095 and is still pending before the SCSC.

26. On 4 March 2013 the Applicants filed a request for Preliminary Injunction with the SCSC against three respondents, namely the Supreme Court of Kosovo [Respondent 1], M. M. [Respondent 2] and the Socially Owned Enterprise Kosova Export [Respondent 3].

27. On 20 March 2013 the Specialized Panel of the SCSC by Decision SCC-11-0026 dismissed the Applicants' claim and request for Preliminary Injunction as inadmissible. In reasoning its decision the Specialized Panel of the SCSC held that:

> *"[…] The court finds that the claim initially filed on 4 December 2006, SCC-06-0498, with the Special Chamber, as referred to the Prishtinë/Priština Municipal Court, is still pending, because it has not been decided with a final court judgment. Pursuant to Article 4.4 of the SCL the case was returned to the Special Chamber by the Prishtinë/Priština Municipal Court and is currently pending under the case number C-III-12-1095. Two of the claimants* [the Applicants] *of this case had filed the claim at hand requesting from the Special Chamber to confirm the Prishtinë/Priština Municipal Court* [Judgment P. No. 236/97, dated 16 April 2007] *that has been overturned by the Supreme Court* [Decision Gzz. No. 36/2007, of 13 December 2007] *upon request for protection of legality. However, since the initial case is still pending and it is filed prior to the case at hand, the latter case had to be dismissed pursuant to Article 262.3 and 262.4 of the Law No.03/L-006 on Contested Procedure […].*

The claim therefore fails to meet the admissibility requirements of Section 28.2 of the SCL and is rejected as inadmissible. Accordingly, also the request for Preliminary Injunction is inadmissible."

28. On 8 April 2013, the Applicants filed an appeal against the Decision of the Specialized Panel of the SCSC with the Appellate Panel of the SCSC. In their appeal, the Applicants requested the Appellate Panel of the SCSC *"to quash the appealed decision, to confirm that the decision of the Supreme Court of Kosovo is null and void, to uphold the Judgment of the Municipal Court in Prishtinë/Priština, P. No. 236/07 of 16 April 2007 and to oblige the Cadastral Office in Prishtinë/Priština to implement fully this judgment and to annul all transactions done in the period from 2004 over this subject matter."*

29. On 5 June 2014, the Appellate Panel of the SCSC (Decision, AC-I.13-0041) rejected the appeal of the Applicants as ungrounded and held that:

"The appealed decision is correct and is upheld. Initial claim is still pending with the SCSC under the number C-III-13-1095. Subject matter is the same, because claimant wants to proceed with initial claim by confirming original judgment of Municipal Court in Prishtinë/Priština and parties are same because adding Supreme Court of Kosovo into same procedure with same request makes no difference. In other words the Claimants are requesting that same claim is adjudicated by same judgment. […]"

Applicant's allegations

30. The Applicants allege that the regular courts have violated their rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] in conjunction with Article 102 [Justice System] and Article 103 [Organization and Jurisdiction of the Court] paragraph 7.

31. In supporting the alleged violations under Article 31 of the Constitution, the Applicants state that: "*the Supreme Court of Kosovo (although Applicants invoked lack of jurisdiction), as an incompetent court, agreed to deliberate on the request of the KPP*

[Kosovo Public Prosecution], *and rendered an unlawful decision Gzz. No. 36/2007 of 13.12.2007 which had created a permanent situation that has lasted since today."*

32. In addition, the Applicants claim that *"[…] the Appellate Panel of the Special Chamber […] did not have a regular composition, since it should have consisted of three (3) international judges and two (2) local judges as provided by Article 3, paragraph 12, of the Law No. 04/033 on the Special Chamber of the Supreme Court which is applicable until 01.07.2014."*

33. In supporting their allegations on excessive length of proceedings the Applicants state that: "*by an unlawful decision of the Supreme Court of Kosovo, and further conduct of the Basic/Municipal Court in Prishtina, a lengthy situation was created, during the period 16.04.2007-13.12.2007-22.06.2012, and further, due to which, the claimants cannot enjoy and dispose freely their property as per final judgment of the Municipal Court in Prishtina, P.no.236/97 of 16.04.2007, which must be enforced as a final judgment […]."*

34. In regards to the alleged violations under Article 46 of the Constitution, the Applicants state that: *"[…] by a decision of the Supreme Court of Kosovo, an incompetent court in this procedure, Gzz. No. 36/2007 of 13.12.2007, the Court unlawfully annulled the final judgment P. No. 236/97 of 16.04.2007 which made our enjoyment of property impossible […]."*

35. In regards to the alleged violations under Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution, the Applicants claim that*: "[…] in 2007, the Public Prosecutor and the Supreme Court of Kosovo intervened with the dispute as incompetent institutions […]".* In this regard the Applicants *"[…] request from the Constitutional Court of the Republic of Kosovo, on basis of Article 25, paragraph 1, in conjunction with Article 182, paragraph 2f, of the Law no. 03/L-006, no. 04/L-118 on Contested Procedure, to resolve the conflict of competencies in this legal matter between the Special Chamber of the Supreme Court of Kosovo and the Supreme Court of Kosovo itself."*

36. Finally, the Applicants conclude by requesting the following from the Court:

> "We propose that the Constitutional Court quashes the decision of the Special Chamber of the SCK, AC-L-13-004/A001 of

05.06.2014, and decision SCC-11-0226 of 20.03.2013, and also the decision of the incompetent court – the Supreme Court of Kosovo, Gzz.no.36/2007 of 13.12.2007.
Upholding the final judgment of the Municipal Court in Prishtina, P.no.236/97 of 16.04.2007 [...]."

Admissibility of the Referral

37. The Court has to examine whether the Applicants have met the requirements of admissibility as foreseen by the Constitution and further specified by the Law and Rules of Procedure.

38. In order to address the Applicants' allegations concerning the alleged constitutional violations, the Court considers that they may be summarized and divided as follows:

A) Allegations regarding the alleged unlawful decision of the Supreme Court [Article 31 of the Constitution];

B) Allegations regarding the excessive length of proceedings [Article 31 in relation with Article 46 of the Constitution of the Constitution];

C) Allegation regarding the Appellate Panel of the SCSC not having a regular composition when deciding on Applicants' appeal [Article 31 of the Constitution];

D) Allegation regarding the alleged incompetence of the Public Prosecutor and the Supreme Court to intervene in the Applicant's case [Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution].

***A) As to the Applicants' allegations regarding the unlawful decision of the Supreme Court* [Article 31 of the Constitution]**

39. As stated above, the Applicants allege a violation of Article 31 of the Constitution by claiming that the Supreme Court of Kosovo "*[...] rendered an unlawful decision Gzz. No. 36/2007 of 13.12.2007 which had created a permanent situation that has lasted since today.*"

40. The Court recalls that it has already reviewed the Applicants' allegations regarding the alleged *"unlawfulness"* of the Decision (Gzz. No. 36/2007, of December 2007) of the Supreme Court of

Kosovo when it decided on Applicants' first referral (see case no. KI 18/10, Constitutional Court, Resolution on Inadmissibility of 17 August 2011) by holding that:

> *"36. As to the present Referral, the Court notes that it deals with issues, which happened before 15 June 2008 and, thus, fall outside the Court's jurisdiction. The Court would, therefore, have to reject the Referral as incompatible ratione temporis.*
>
> *37. Even assuming that there might be a continuing situation in the present case, if the violation of the Constitution was caused by an act committed prior to the entry into force of the Constitution and the consequences of that original act still exist, granting the Court jurisdiction to examine the complaint, the Referral is inadmissible.*
>
> *38. At the proceedings on 13 December 2007, where the Applicants were not present, the Supreme Court allowed the State Prosecutor's Request for Protection of Legality, annulled the Judgment of the Municipal Court of 16 April 2006 and returned the case to the Municipal Court for retrial. So far, the Applicants have not submitted any evidence showing that the Municipal Court has already scheduled a hearing and has taken a decision on the matter, let alone that they have raised the same complaints, at least implicitly or in substance, before the Municipal Court as they have done before this Court.*
>
> *39. In this connection, reference is made to Article 113.7 of the Constitution and 47 (2) of the Law, according to which, individuals, who submit a referral to the Court, must show that they have exhausted all legal remedies available under the applicable law."*

41. Therefore, in respect to these allegations, the Court refers to Rule 36 (3) (d) of the Rules of Procedure, which establishes that:

> *"(3) A Referral may also be deemed inadmissible in any of the following cases:*
>
> *[…]*
>
> *(d) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision; […]"*

42. The Court points out that even though, with the present Referral, the Applicants challenge the Decision, AC-I.-13-0041, of the Appellate Panel of the SCSC, the substance of the Applicants' allegations rests upon their dissatisfaction with the Decision (Gzz. No. 36/2007, of 13 December 2007) of the Supreme Court of Kosovo through which the Judgment (P. No. 236/97, of 16 April 2007) of the Municipal Court in Prishtina was quashed and the Applicants' case was remand for retrial.

43. In this regard, the Court observes that the allegations under point A) are the same allegations as made in the Applicants' first Referral and the same have already been dealt by this Court in its Resolution on Inadmissibility in case No. KI 18/10.

44. Consequently, the Court concludes that based on Rule 36 (3) (d) of the Rules of Procedure, it is barred from re-examining the allegations which have been already dealt by the Court.

B) As to the Applicants' allegations regarding the excessive length of proceedings **[Article 31 in relation with Article 46 of the Constitution]**

45. The Applicants alleged a violation of Article 31 of the Constitution in relation with Article 46 of the Constitution because according to them "*a lengthy situation was created during the period 16.04.2007 – 13.12.2007 – 22.06.2012 and further*" due to the "*conduct of the Basic/Municipal Court in Prishtina*".

46. In addition, the Applicants claim that the: *"The Special Chamber of the Supreme Court assigned the case files [...] a new number C-III-12-1095 but since 22.06.2012 and until today, the Chamber has not undertaken any procedural action, again, most likely due to pressure of unlawfully registered owners of the disputed land."*

47. In reviewing these allegations, the Court draws attention to Article 47 (2) of the Law provides that: "*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by law.*"

48. The Court also refers to Rule 36 (1) b) of the Rules of Procedure which provides that: *"(1) The Court may consider a referral only if: (b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted."*

49. For the purpose of addressing the Applicants' allegations on excessive length of proceedings and the impact that such alleged length might have had on the Applicants' other constitutional rights, the Court first recalls its reasoning on case KI 130/11, when it rejected Applicants' allegations in respect to length of proceedings as premature. Back then, the Court stated that:

> *"17. [...] the Applicants' claim, which they are presently making before this Court concerning the excessive length of proceedings, has not been decided yet by the Municipal Court. Therefore, all arguments regarding the alleged excessive length of proceedings should be satisfied by the Applicants' before the Municipal Court in Prishtina and if they are not satisfied, be raised in appeal before the higher Courts, including the Supreme Court.*
>
> *18. It follows, that the Referral is inadmissible pursuant to Rule 36 (3.e) of the Rules of Procedure, however, as stated previously this does not preclude the Applicants from submitting a new Referral complaining about the excessive length of proceedings."*

50. The Court recalls that the European Court of Human Rights regarding the issue of the delay of proceedings before national authorities has established some criteria such as: complexity of the matter, the Applicants' conduct, the conduct of the relevant authorities, what is at stake for the Applicants, status (stage) of the proceedings etc.

51. In this regard, the Court notes that the Applicants are, in substance, complaining about the conduct of the relevant authorities, namely the Municipal Court in Prishtina and the SCSC.

52. As to the criteria of the conduct of the relevant authorities, the Court evaluates that the Supreme Court of Kosovo remanded the case for retrial to the Municipal Court in Prishtina on 13 December 2007. The latter decided to transfer the case for adjudication to the SCSC on 22 June 2012. Currently, as confirmed by the Specialized Panel of the SCSC and the Appellate Panel of the SCSC the case is still pending.

53. Furthermore, the Court also takes note of the letter that it received from the SCSC regarding the allegations raised by the Applicants in regards to excessive length of proceedings. In its letter directed to the Court, the SCSC stated that:

> "*[…] The Specialized Panel of the Supreme Court, on 17 April 2013, based on request of the claimants, made a decision on joinder of the proceedings of these two cases and joined case C-III-12-1100 with case C-III-12-1095.*
>
> *By the same decision, the Registry of the Special Chamber has been ordered to register this case with a new number for the Liquidation Panel of the Special Chamber. […] As this case was highly voluminous and dispersed, it was completed in the Registry and on 19 September 2014 was handed over to the Judge. From now on, as regards to this case, the proceeding shall continue in accordance with the rules of the Law on Special Chamber, whereof the parties will be regularly notified.*"

54. With regards to the time span from 2007 to 2012, the Court recalls that the Municipal Court provided an explanation which was filed on 22 February 2012 when the Court was assessing the admissibility of Applicants' second referral, case no. KI 130/11. In its explanation, the Municipal Court had stated that:

> *"[…] the Court is currently assessing its material jurisdiction considering that the respondent is the Agricultural Cooperative Kosova in all mentioned claims […] and because in the meantime the Law on Special Chamber of the Supreme Court has entered into force.*
>
> *I hereby inform you that the case has been assigned to be on December 2010 and due to the complexity of the case and the vast amount of cases that we are currently working with we did not have the possibility do set the session before 2011 as well as because the claimants addresses are in Republic of Serbia which makes the communication harder."*

55. In this regard, the Court notes that no final court decision has been rendered by the SCSC following the decision of the Municipal Court in Prishtina to transfer the adjudication of the case over to the SCSC. In fact, the Appellate Panel of the SCSC (Decision AC-I.-13-0041 of 5 June 2014) rejected the Applicants' appeal [regarding their parallel claims on the same subject matter] against the Decision (SCC-11-0226 of 23 March 2013) of the Specialized Panel of the SCSC precisely on the reason that the *"claim is still pending"*. More specifically, the Appellate Panel of the SCSC held that:

> *"[...] Initial claim is still pending with the SCSC under the number C-III-13-1095. Subject matter is the same, because claimant wants to proceed with initial claim by confirming original judgment of the Municipal Court in Prishtinë/Priština* [Judgment P. No. 236/97, of 16 April 2007] *and parties are the same [...]. In other words, the Claimants are requesting that same claim is adjudicated by same judgment."*

56. In the concrete case, the Court considers that the Referral is to be deemed as premature because the Applicants' case is still ongoing in a regular judicial procedure and their alleged constitutional violations under point B) are still to be assessed by the regular courts.

57. Under these circumstances and, in particular, in regards to the Applicants' allegations under point B), the Court concludes that the Applicants have not exhausted all legal remedies available to them, therefore the Court rejects this part of the Referral as premature pursuant to Article 47 (2) of the Law and Rule 36 (1) (b) of the Rules of Procedure.

C) *As to the Applicant's allegation regarding the Appellate Panel of the SCSC not having a regular composition when deciding on Applicants' appeal* [Article 31 of the Constitution]

58. In assessing this particular allegation, the Court takes into account Rules 36 (2) d) of the Rules of Procedure which provide that:

> *"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(d) the Applicant does not sufficiently substantiate his claim."*

59. In this respect, the Court notes that the Applicants' merely stated that *"the composition of the Appellate Panel of the SCSC consisted of three national judges and two international judges"*, without substantiating his claim as to how this might have violated their right to a fair trial.

60. Considering the above, the Court concludes that the Applicants' allegations under point C) are to be rejected as manifestly ill-founded considering that they have not sufficiently substantiated their claim in regards to their allegation of a violation of Article 31 of the Constitution.

D) Allegation that the Public Prosecutor and the Supreme Court intervened as incompetent institutions **[Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution]**

61. The Applicants alleged a violation of Article 54 in conjunction with Article 102 and 103, paragraph 7 of the Constitution because according to them: "*In 2007, the Public Prosecutor and the Supreme Court of Kosovo intervened with the dispute as incompetent institutions.*"

62. The Applicants attempt to substantiate their alleged violation by stating that: "*The contested procedure is lead by applicants before the Special Chamber of the Supreme Court on KTA related-matters as the only competent and the highest court in Kosovo on these matters [...].*"

63. In order to put right this alleged constitutional violation, the Applicants request from the Court to "*resolve this conflict of competency in this legal matter between the Special Chamber of the Supreme Court of Kosovo and the Supreme Court of Kosovo itself.*"

64. In this respect, the Court takes into account Rule 36 (3) (e) of the Rules of Procedure which provides that: *"(3) A Referral may also be deemed inadmissible in any of the following cases: e) the Referral is incompatible ratione materia with the Constitution."*

65. In this regard the Court notes that the issue of resolving "*conflict of competencies"* between the SCSC and the Supreme Court or any other conflict of competencies between regular courts does not fall within the jurisdiction of the Constitutional Court.

66. Consequently, the Court shall reject the allegations made under point D) pursuant to Rule 36 (3) (e) because the request of the Applicants is incompatible *ratione materia* with the Constitution.

67. In conclusion, the Court holds that this Referral should be declared inadmissible for the following reasons:

i) With regards to allegations under point A), this part of the Referral should be declared inadmissible pursuant to Rule 36 (3) (d);

ii) With regard to the allegation under point B), this part of the Referral should be declared inadmissible pursuant to Article 47 (2) of the Law and Rule 36 (1) (b) of the Rules of Procedure; and

iii) With regard to the allegation under point C), this part of the Referral should be declared inadmissible pursuant to Rule 36 (2) (d) of the Rules of Procedure;

iv) With regard to allegation under point D), this part of the Referral should be declared inadmissible pursuant to Rule 36 (3) (e) of the Rules of Procedure.

Assessment of the Request for Interim Measure

68. The Applicants also request from the Court to impose an interim measure, namely to prohibit any sale, resale, lease and sublease, construction or placing of any burden on the cadastral parcel that is the main subject of the dispute.

69. *In this regard, the Applicants hold that:*

> "In absence of an Interim Measure on prohibition of ownership charges for the cadastral parcel No. 1536/1, [...] based on the false-null Judgment P. No. 395/96, transferred the ownership rights to M.M. from village Uglare – Municipality of Gracanica and based on null Purchase-Sale Contracts concluded on 19.03.2014 with M.M. and many other natural persons from Prishtina, on 14.05.2012 transferred the ownership rights to new "illegal" buyers. We [...] plead the Court to prevent the resale planned actions and as a matter of urgency, based on our referral-constitutional appeal, logged on 01.07.2014, to impose the proposed:
>
> INTERIM MEASURE
>
> Prohibiting: any sale, resale, lease and sublease, construction and placing of any burden on the cadastral parcel [...] which until 2004 was registered under possession list No. 4011, Prishtina CZ, in the name of the user, AIC "K.E." Socially Owned

Enterprise, whereas from 14.05.2012 it is registered under the name of several illegal private owners, until the final conclusion of this proceeding.

This measure shall be implemented by: the Cadastral office of the Municipality of Prishtina and the competent construction inspectorate of the Municipality of Prishtina."

70. In this connection, the Court notes that the procedure is still ongoing in the regular courts. Therefore, the Court considers that the request for interim measure is not applicable since it does not meet the requirements set forth by the Law and Rules of Procedure.

71. In order for the Court to allow an interim measure, in accordance with Rules 55 (4) and (5) of the Rules of Procedure, it needs to determine that:

"[...]

(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted;

c) the interim measures are in the public interest.

[...]

5) If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".

72. As concluded above, the Referral is inadmissible and, therefore, there is no *prima facie* case for imposing an interim measure. For these reasons, the request for an interim measure is to be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (1) (b), 36 (2) (d), 36 (3) (d), 36 (3) (e), 55 (4) and (5), and 56 (b) of the Rules of Procedure, on 8 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Kadri Kryeziu	Prof. Dr. Enver Hasani

KI116/14, Applicant Fadil Selmanaj, Constitutional review of Judgment AA No. 294/2013 of the Court of Appeal of Kosovo of 4 February 2014

KI 116/14, Resolution on Inadmissibility of 9 December 2014, published on 26 January 2015

Key words: *Individual Referral, administrative proceedings, the right to a fair and impartial trial, non-exhaustion of legal remedies*

The Court of Appeal of Kosovo by Judgment AA no. 294/2013 of 4 February 2014 approved the lawsuit of the Municipality of Mitrovica by which the Applicant was not reappointed to his former job position.

The Applicant alleged inter alia that the Court of Appeal of Kosovo violated his right to a fair and impartial trial as guaranteed by Article 31 of the Constitution because he was denied the right to defend his case.

The Constitutional Court considered that the Applicant did not proceed further with the appropriate legal remedy as prescribed by the applicable law in Kosovo. The Applicant's referral was declared inadmissible on the grounds on non-exhaustion of all legal remedies within the meaning of Article 113.7 of the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case KI116/14
Applicant
Fadil Selmanaj
Constitutional review of
Judgment AA no. 294/2013 of the Court of Appeals of Kosovo
of 4 February 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Fadil Selmanaj (hereinafter, the Applicant) from Mitrovica.

Challenged decisions

2. The Applicant challenges Judgment AA no. 294/2013 of the Court of Appeals of Kosovo of 4 February 2014, which was served on him on 12 March 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment of the Court of Appeals of Kosovo.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 8 July 2014 the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 August 2014 the President of the Court by Decision No. GJR. KI116/14 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI116/14 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 20 August 2014 the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals of Kosovo.

8. On 4 September 2014 the Court notified the Basic Court in Prishtina - Department for Administrative Cases about the registration of the referral and asked for the complete case-file.

9. On 8 September 2014 the Basic Court in Prishtina - Department for Administrative Cases submitted the complete case-file (no. A354/12) to the Court.

10. On 9 December 2014 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. The following is the summary of the facts as presented by the Applicant in his referral and evidenced from the Court file no. A 354/12 of the Basic Court in Prishtina - Department for Administrative Cases.

12. In 2001 the Applicant was employed as director of the Directorate for Geodesy, Cadastre and Property within the Municipality of Mitrovica.

13. On 7 April 2007 the Applicant's work contract was extended and he was reappointed in the same position until 9 March 2008.

14. On 11 January 2008 the Mayor of Mitrovica issued Decision no. 01/49 appointing Directors of Directorates in the Municipality of Mitrovica. However, the Applicant was not reappointed.

15. On 2 October 2008 the Applicant, then filed a complaint with the Independent Oversight Board of the Republic of Kosovo (hereinafter: the IOBK).

16. On 10 February 2009 the IOBK by Decision A. 02/285/2008 approved the complaint of the Applicant and obliged the Municipality of Mitrovica that: *"within the deadline of 15 days from the date of the present decision, to facilitate the fulfillment of appellant's rights deriving from the labor relation in compliance with provisions of Article 11 para 11.1 of the Administrative Directive no 2003/2 on the implementation of regulation no 2001/36 of the Kosovo Civil Service, is reassigned to another post of the same level and degree of payment in harmony with his professional skills and training, if it is not possible to return him to the workplace and job description provided by the employment contract"*.

17. On 24 February 2009 the Municipality of Mitrovica challenged the decision of IOBK before the Supreme Court of Kosovo.

18. On 25 September 2009 the Supreme Court of Kosovo by Judgment A. no. 170/2009 approved the lawsuit of the Municipality of Mitrovica and quashed the IOBK Decision A. 02/285/2008 of 10 February 2009.

19. On 28 October 2010 the Applicant submitted a referral (Case No. KI108/10) with the Court thereby challenging the constitutionality of the aforementioned Judgment of the Supreme Court of Kosovo.

20. On 5 December 2011 the Court rendered Judgment in Case No. KI108/10 and declared the referral admissible. The Court also found a breach of Article 31 [Right to fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 of the European Convention on Human Rights. Consequently, the Court

declared invalid the Supreme Court judgment and remanded it for reconsideration in conformity with its judgment.

21. In its judgment the Court stated, *inter alia*, that "*… the Applicant has never received a copy of the judgment from the Supreme Court. Moreover, the Supreme Court by its letter dated 8 October 2010 effectively did not provide the Applicant with a copy of the judgment and referred him to approach IOBK and then ask for a copy of the judgment. Thus, it seems that the Applicant did not have prescribed remedies at his disposal*"

22. In the reasoning the Court emphasized: "*The Court notes again that, in the Applicant's case, proceedings started and reached a final decision in the Supreme Court, without the Applicant having been present in such proceedings and without him being notified of the Decision taken."*

23. In that respect the Court also invoked the case-law of the European Court of Human Rights thereby stating that: "*The ECtHR further considered that "a litigant's right of access to a court would be illusory if he or she were to be kept in the dark about the developments in the proceedings and the court's decisions on the claim, especially when such decisions are of the nature to bar further examination.* (See *Sukhorubchenko v Russia,* Judgment of 10 February 2005, para. 53.)*".*

24. On 17 October 2012 in relation to case no. KI108/10 the Court was informed by the Supreme Court of Kosovo that: *"… with regards to this matter, we inform you that this case in Supreme Court has taken the registration number A. no. 354/12 and it was allocated to be worked on…".*

25. On 1 January 2013 the Law No. 03/L-199 on Courts entered into force. Pursuant to Article 14. 1 of that Law: *"The Administrative Matters Department of the Basic Court shall adjudicate and decide on administrative conflicts according to complaints against final administrative acts and other issues defined by Law".*

26. On 11 July 2013 the Basic Court in Prishtina - Department for Administrative Cases, following the main hearing at which the Applicant was present, issued Judgment A. no. 354/12 and rejected as unfounded the lawsuit of the Municipality of Mitrovica.

27. On 22 August 2013 the Municipality of Mitrovica filed an appeal with the Court of Appeals of Kosovo against the aforementioned judgment of the Basic Court in Prishtina-Department for Administrative Cases. A copy of the appeal was not sent to the Applicant.

28. On 4 February 2014 the Court of Appeals of Kosovo by Judgment AA no. 294/2013 ruled to: i) approve the lawsuit of the Municipality of Mitrovica, ii) to annul Judgment A. no. 354/2012 of the Basic Court in Prishtina - Department for Administrative Cases dated 11 July 2013, iii) to annul the IOBK Decision A 02/285/2008 dated 10 February 2009, and iv) the Decision no. 01/49 of the Mayor of the Municipality of Mitrovica dated 11 January 2008 remains in force.

29. In the aforementioned judgment, the Court of Appeals of Kosovo reasoned:

> *The panel of the Court of Appeals, grounded on this situation of the case and after assessing the decision of the Mayor of Mitrovica Municipality, the decision of the IOBSCK, the challenged Judgment of the first instance court as well as the rest of the case file finds that, the decision of the IOBCSK, and the challenged Judgment are incomplete in their content and have not included all the evidences and arguments provided by the litigating parties, but are rather grounded only in some evidences and documents, without reviewing completely the case. The first instance court also does not review all the evidences and the claim allegations pursuant to Article 44 of the LAC, overlooking the fact that the claimant in the claim invokes the change of the legislation which corresponded with the organizing aspect of the municipality, abrogating al the previous provisions of selecting and appointing the directors until then in the quality of civil servants.*

30. On 12 March 2014 a copy of the judgment of the Court of Appeals of Kosovo was served to the Applicant.

31. On 21 March 2014 the Applicant filed a request for revision with the Supreme Court of Kosovo against the aforementioned decision of the Court of Appeals of Kosovo.

32. On 30 May 2014 the Supreme Court of Kosovo by Decision Rev. A. no. 6/2014 rejected the revision of the Applicant as inadmissible.

33. In the aforementioned decision, the Supreme Court of Kosovo, inter alia, reasoned:

> *"..., this Court found that against final decisions for administrative cases of the second instance, the party can submit with the Supreme Court a request for extraordinary review of a judicial decision and the public prosecutor can submit a request for protection of legality, which means that against final decisions for administrative cases in the second instance a revision cannot be filed, therefore, this Court rejects the revision filed by Fadil Selmanaj as inadmissible".*

Applicant's allegations

34. The Applicant alleges that: *"... the Court of Appeals of Kosovo via this judgment has committed the same violation previously committed by the Supreme Court...the Court of Appeals did not notify the interested party Fadil Selmanaj".*

35. The Applicant alleges that: "*... The Court of Appeals did not review at all the case of the Applicant...it did not take into account decisions of the IOBK and the Basic Court in Prishtina... by eschewing the full responsibility the Court of Appeals unjustly assessed as if Regulation 2007/30 envisages that positions of Directors as politically appointed positions... and as if previous directors impliedly should automatically be discharged from their positions even though the Applicant was not politically appointed but is a civil servant who was admitted to his position by competition and work contract".*

36. Furthermore, the Applicant claims that the Court of Appeals of Kosovo violated his right to fair and impartial trial as guaranteed by Article 31 of the Constitution because it did not grant him the right to defend his case.

The Law

Law No. 03/L-202 On Administrative Conflicts

Article 24

Against the final form decision of the Competent Court for administrative matters of second instance, the party may submit to the Supreme Court of Kosovo the request for extraordinary review of the legal decision.

The request under paragraph 1 of this Article may be submitted only in case of violation of material right or violation of procedure provisions, that may influence on solving the issue.

On the request for extraordinary review of the court decision shall decide the Supreme Court of Kosovo.

Article 55

Reviewing

The interested party may request reviewing of the decision in effect, when:
...

the interested person was not allowed to take part in the administrative conflict.

Assessment of admissibility

37. The Court observes that, in order to be able adjudicate the Applicants complaint, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

38. In this respect the Court refers to Article 113.7 of the Constitution which provides:

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

39. The Court also refers to Article 47.2 of the Law which prescribes:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

40. The Court also takes into account Rule 36 (1) (b) of the Rules of Procedure which establish:

(1) The Court may consider a referral if:
...
(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted...

41. In the concrete case the Applicant has filed a revision with the Supreme Court against the judgment of the Court of Appeals of Kosovo which was rejected as inadmissible on procedural grounds.

42. Furthermore the Court notes that the Applicant makes reference to case no. KI108/10 whereby he alleges that: *"... the Court of Appeals of Kosovo via this judgment has committed the same violation previously committed by the Supreme Court... the Court of Appeals did not notify the interested party Fadil Selmanaj"*.

43. In relation to case no. KI108/10 this Court had stated that: *"there is no evidence that the Applicant has been either informed of the possibility of reopening the procedure before the Supreme Court or that the Applicant would have the opportunity of appearing at a new procedure to present his arguments"*.

44. The Court notes that while in case no. KI108/10 the Applicant never received a copy of the judgment from the Supreme Court and therefore did not have an opportunity at a new procedure, in the case at issue the Applicant was served with a copy of the judgment of the Court of Appeals and thus, had an opportunity to use prescribed remedies by the Law No. 03/L-202 On Administrative Conflicts.

45. In this respect, the Court notes that the Applicant did not make use of a corresponding and appropriate legal remedy available to him and therefore has failed to observe the forms prescribed by the applicable law in Kosovo. Furthermore, the Court also notes that the Applicant did not do everything that could be reasonably expected of him in relation to exhaustion of legal remedies (See case *D. H. and Others v. the Czech Republic,* No. 57325/00, ECtHR, Judgment of 13 November 2007, para. 116).

46. The Court considers that in order for the Applicant to be absolved from the requirement to exhaust all legal remedies it is incumbent on him to show that: i) the legal remedy was in fact used, ii) the legal remedy was inadequate and ineffective in relation to his case, and iii) there existed special circumstances absolving the Applicant from the requirement to exhaust all legal remedies. From the

documents contained in the Referral there is nothing that suggests that the Applicant meets the criteria to be absolved from exhaustion of all legal remedies to his avail.

47. Furthermore, the Court notes that after its judgment in case no. KI108/10, a new case was developed with its own dynamics and in the new context the Applicant has not exhausted all legal remedies.

48. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see case KI41/09, Applicant *AAB-RIINVEST University L.L.C., Prishtina,* Resolution on Inadmissibility of 21 January 2010, and *mutatis mutandis,* see case ECHR, *Selmouni vs. France,* No. 25803/94, ECtHR, Decision of 28 July 1999).

49. Thus, the Applicant in failing to proceed further with the appropriate legal remedy as prescribed by the applicable law in Kosovo is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation of constitutional rights (See case KI16/12, Applicant *Gazmend Tahiraj,* Resolution on Inadmissibility of 22 May 2012).

50. It follows that the Applicant has not exhausted all effective remedies within the meaning of Article 113.7 of the Constitution in order for the Court to proceed with the allegations about the constitutionality of the Judgment of the Court of Appeals of Kosovo.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rules 36 (1) b) of the Rules of the Procedure in its session held on 9 December 2014 unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI51/14, Applicant Radomir Radosavljević, Constitutional review of Decision Rev. no. 301/2013 of the Supreme Court of Kosovo of 17 December 2013

KI 51/14, Resolution on Inadmissibility of 9 December 2014, published on 3 February 2015

Key words: *Individual Referral, administrative proceedings, the right to a fair trial, the right to work and exercise profession, referral manifestly ill-founded*

The Supreme Court of Kosovo by Decision Rev. no. 301/2013 of 17 December 2013 approved the decision of General Director of the Kosovo Police by which the Applicant's employment with the latter was terminated.

The Applicant alleged inter alia that the Supreme Court denied him the right to a fair trial as guaranteed by Article 31 of the Constitution because it failed to address the object of the claim before it.

The Court noted that the Applicant was afforded ample opportunities to present his case and to contest interpretation of the applicable law before the Supreme Court. The Court reasoned that it did not find that relevant proceedings as a whole were in any way unfair or tainted by arbitrariness. The Court held that the Applicant's referral was not substantiated and declared it inadmissible on the grounds of being manifestly ill-founded pursuant to Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI51/14
Applicant
Radomir Radosavljević
Constitutional review of the Decision of the Supreme Court of Kosovo,
Rev.no.301/2013, dated 17 December 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Radomir Radosavljević. He is represented by Agim Lushta, a lawyer resident in Mitrovica.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo, Rev. no. 301/2013, dated 17 December 2013. This decision was served on the Applicant approximately on 08 February 2014.

Subject matter

3. The Applicant alleges that the aforementioned Decision of the Supreme Court violated his constitutional rights as guaranteed by Article 24 [Right to Equality Before the Law], Article 31 [Right to a Fair Trial], Article 49 [Right to Work and Exercise Profession], and Article 53 [Interpretation of Human Rights Provisions] of the

Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 (b) of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 19 March 2014, the Applicant submitted the Referral to the Court.

6. On 02 April 2014, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Ivan Čukalović and Enver Hasani.

7. On 21 May 2014, the Court notified the Applicant of the registration of the Referral. On the same date, copies of the Referral were communicated to the Supreme Court, to the Ministry of Internal Affairs and to the Kosovo Police.

8. On 06 June 2014, the Ministry of Internal Affairs – Kosovo Police (MIA-KP), through its legal representative, the Division for Legal Representation at the Ministry of Justice, submitted additional observations.

9. On 09 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The facts of the case

10. It appears from the file that the Applicant was employed in the Kosovo Police at police station Zvečan, in the Regional Directorate Mitrovica, in the position of Police Lieutenant. At the time of the events described below he was deployed as Head of Security Unit at the Court in Mitrovica-North.

11. On 13 May 2011, the Applicant was appointed Station Commander of the police station in Zvečan. This decision was to become effective on 16 May 2011, on which date the Applicant was expected

to report for duty in this new function. It appears from the file that the Applicant was on Annual Leave at this time.

12. On 24 May 2011, when the Applicant had still not reported for duty as Station Commander of Police Station Zvečan, an Internal Disciplinary Investigation was started against him, and the Applicant was suspended from duty for 48 hours, effective from 25 May 2011. Apparently, at this time the Applicant reported for duty once again at his previous place of deployment as Head of Security Unit at the Court in Mitrovica-North.

13. On 04 July 2011, the Applicant's employment with the Kosovo Police was terminated by the General Director of the Kosovo Police on the basis of "serious insubordination" under Article 46 (b) of Law No. 03/L-035 (Law on Police) of 20 February 2008, and as further defined in relevant Administrative Instructions. The Applicant submitted an appeal against this decision to the Minister of Internal Affairs.

14. On 19 August 2011, the Minister of Internal Affairs rejected the Applicant's appeal. The Applicant introduced a claim against this decision with the Municipal Court in Mitrovica.

15. On 24 December 2012, by Decision C.no.188/2011, the Municipal Court in Mitrovica quashed the Decision of the Minister of Internal Affairs of 19 August 2011 and the Decision of the General Director of Kosovo Police of 04 July 2011 terminating the Applicant's employment. The Municipal Court of Mitrovica ordered the Ministry of Internal Affairs to re-instate the Applicant in his previous employment and position with the Kosovo Police, and to compensate the Applicant for the costs of the court proceedings.

16. The Municipal Court of Mitrovica based its Decision, *inter alia*, on the following considerations:

"In order to determine the correct and complete factual situation, the Court went into the assessment of the legality of the nomination decision, which was requested also by the [Applicant], while in the case this matter consists as a preliminary matter, because it is tightly connected to the decision on termination of the employment relationship and only in this way the factual situation may be fully determined.

According to the Law on Police [Law No. 03/L-035 of 20 February 2008], Articles 40 and 41 demand as a condition that

the selection or nomination of police station commanders must be performed in cooperation with local government authorities (local communities), particularly in places or locations where the majority belongs to the Serbian community. According to the same law, the local governance proposes three candidates for commanders upon the request of the General Director of Kosovo Police addressed to them. In this case, in case files there is no letter that would prove that the General Director of Kosovo Police addressed a request to local authorities for nomination of respective station commanders and the respondent [i.e. the Ministry of Internal Affairs] was unable to prove otherwise during the proceedings.

[…]

The [Applicant] is accused of serious insubordination (disobeying an order and absence from work without justification for more than three days) which is sanctioned as a serious violation pursuant to the Law on Police and Administrative Instructions.

[…]

It was mentioned above that the decision for nomination is unlawful, precisely because it was conducted without consulting the local authorities of that municipality and this then resulted with the [Applicant's] inability to obey the decision, but not with a refusal to comply. Inability and refusal are diametrically opposed terms, while inability has to do with lack of conditions or danger of obeying a decision despite the [Applicant's] will or desire, while refusal has to do with a rejection or unwillingness for obedience.

[…]

It is clearly determined from the case files that the [Applicant] was unable to exercise the new position, so he went back and continued his previous duties as Head of Security Unit of the Court in the North, meaning that absence without justification also does not exist, […].

In the end, the Court considers that the claimant, anyway, was not obliged to implement the nominating decision as this decision was unlawful, where Article 13, paragraph 2, [of the Law on Police] says: "A Police Officer shall have a duty to refuse such orders when they are clearly unlawful and to report such orders, without fear of sanction."

[…]"

17. On 05 July 2013, by Decision AC.no.419/2013, the Court of Appeal rejected as unfounded the appeal by the Ministry of Internal Affairs, and confirmed the Decision of the Municipal Court of Mitrovica. The Ministry of Internal Affairs submitted a request for Revision at the Supreme Court.

18. On 17 December 2013, by Decision Rev.no.301/2013, the Supreme Court approved the Revision as founded. The Supreme Court considered that the lower courts had correctly determined the facts of the case, but had incorrectly applied the law. In particular, the Supreme Court rejected the argument that the decision to nominate the Applicant to the post of Station Commander of Zvečan was unlawful, and that, therefore, the decision to terminate his employment was unlawful. On this point, the Supreme Court considered that,

"Such a legal stance is unacceptable for this Court considering that the subject matter of this proceeding is not assessing the legality of the decision on nomination of the [Applicant] to the position of Commander of Zvečan Police Station, but it was the decision to terminate the [Applicant's] employment relationship."

19. As a consequence, the Supreme Court concluded that,

"From what was said, the revision allegations are founded, alleging that both Judgments were rendered with erroneous application of material law, therefore these Judgments are amended and the statement of claim of the [Applicant] is rejected."

Applicant's allegations

20. The Applicant claims a violation of his constitutional rights as guaranteed by Article 24 [Right to Equality Before the Law], Article 31 [Right to a Fair Trial], Article 49 [Right to Work and Exercise Profession], and Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

21. The Applicant alleges that the Supreme Court denied him the right to a fair trial because it failed to address the object of the claim before it.

22. The Applicant states that,

"The object of the challenge was the legality of the decision of the Director General of the Kosovo Police of 13 May 2011 that nominates the [Applicant] as Station Commander of Zvečan Police Station. […] The Supreme Court did not express itself whether the decision of the Director General of the Kosovo Police of 13 May 2011 is lawful or not.

[…]

The duty of the Supreme Court of Kosovo […] was to conduct a full judicial investigation in compliance with the Law (Articles 7 and 8 of the Law on Contentious Procedure) in order to clarify if the decision of the Director General of the Kosovo Police is in line with- or in contradiction with- the Law. By not providing a statement on the legality of the Decision of the Director General of the Kosovo Police of 13 May 2011 the Supreme Court left the dispute, object of this trial, unresolved."

23. In particular, the Applicant considers that,

"The Supreme Court of Kosovo, in regards to the enforcement of the decision for nominating commanders in new commanding positions in the northern part of Kosovo, should have taken into consideration that the Kosovo Police, which has about 10,000 members, was unable to penetrate in this region, despite the force which it possesses. In the course of an attempt to take over this region the police officer Enver Zymeri was killed and many others wounded. This shows that the will of the [Applicant] and the likelihood of implementing the decision of the Director General of the Kosovo Police [for the Applicant] to become Station Commander of Zvečan Police Station are equal to zero, because we would face the situation of one person being left alone at the hands of mercy and not assisted by the institutions relevant for enforcement of the decision of the Director General."

24. In addition, the Applicant alleges that he was not treated equally in violation of Article 24 of the Constitution, because, *"[…] the shifting of Station Commanders was conducted selectively, respectively only in regions where the majority of residents belong to Serbian ethnicity, but not in other regions, which clearly shows the political intentions of the decision of the Director General of the Kosovo Police, instigating national discrimination in breach of Articles 2 and 3 of the Law Against Discrimination."*

Admissibility of the Referral

25. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

26. The Court has also to determine whether the Applicant has met the requirements of Article 113 (7) of the Constitution and Article 47 (2) of the Law. Article 113, paragraph 7 provides that,

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

27. The final decision on the Applicant's case is the Decision of the Supreme Court Rev.no.301/2013 dated 17 December 2013. As a result, the Applicant has shown that he has exhausted all legal remedies available under the law.

28. The Applicant must also prove to have met the requirements of Article 49 of the Law concerning the submission of the Referral within the legal time limit. It can be seen from the case file that the final decision on the Applicant's case is the Decision of the Supreme Court Rev.no.301/2013 dated 17 December 2013, which was served on the Applicant on or around 08 February 2014, whereas the Applicant submitted the Referral with the Court on 19 March 2014, meaning that the Referral has been submitted within the four month deadline prescribed by the Law and Rules of Procedure.

29. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance when considering the decisions taken by the regular courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis,* Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

30. The Court can only consider whether the proceedings as a whole, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

31. In the present case the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the applicable law before the Supreme Court. It is within the purview of the Supreme Court to interpret the subject matter of the case before it. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no.17064/06 of 30 June 2009).

32. The Court notes that the Applicant also invokes Article 49 [Right to Work and Exercise Profession] of the Constitution. However, the Court finds that the decision of the Supreme Court contested by the Applicant does not in any way prevent the Applicant from working or exercising a profession. With its decision Rev.no. 301/2013 the Supreme Court merely confirmed that the Applicant's specific employment with the Kosovo Police had been lawfully terminated. This does not in any way prevent or prohibit the Applicant from taking up any other employment which he may choose. As such, there is nothing in the Applicant's claims that justifies a conclusion that his Constitutional right to work has been infringed.

33. Furthermore, the Court observes that the Applicant's claim in relation to discrimination in violation of Article 24 of the Constitution is based on his allegation that at the time of his dismissal new Station Commanders were only being appointed in areas populated in majority by members of the Serbian community. The Applicant has not indicated how this relates to the appointment of Station Commanders in other areas of Kosovo, nor in what way his appointment was different from that of other Station Commanders.

34. The Court finds that the Applicant has not clarified how his appointment and subsequent dismissal constituted unequal treatment with respect to others in similar situations.

35. In conclusion, the Court considers that the Applicant has failed to substantiate his claims on constitutional grounds and did not

provide any evidence that his rights and freedoms have been violated by the regular courts.

36. Rule 36 (2) (d) of the Rules foresees that "*the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (…) the Applicant does not sufficiently substantiate his claim*."

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 and Rules 36 (2) (d), and 56 (b) of the Rules of Procedure, on 9 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI96/14, Applicant Istref Veliçi, Constitutional review of Law No. 04/L-080 on Games of Chance, of 6 April 2012

KI96/14, Resolution on Inadmissibility, of 8 December 2014, published on 3 February 2015

Keywords: *Individual Referral, constitutional review of the Law, right to fair and impartial trial, protection of property, unauthorized party*

The Ministry of Finance through application of the Law No. 04/L-080 on Games of Chance has closed several business premises, which exercised economic activities, including the premise of the Applicant.

The Applicant alleged, *inter alia*, that the Ministry of Finance by closing the business premise has interpreted and applied incorrectly the Law No. 04/L-080 on Games of Chance, thus, it violated his rights guaranteed by the Constitution.

The Constitutional Court found that the Applicant is not an authorized party to challenge the constitutionality of the law *in abstracto, nor* to require interpretation of a law. The Applicant's Referral was declared inadmissible because the Applicant was not an authorized party pursuant to Article 113.1 of the Constitution and Rule 36 (1) (a) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI96/14
Applicant
Istref Veliçi
Request for interpretation of certain provisions of the Law No. 04/L-080 on Games of Chance, of 6 April 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Istref Veliçi, President of the Association of Gambling providers with seat in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant does not challenge any specific decision of any public authority.

Subject matter

3. The subject matter is the request of the Applicant for interpretation of Article 66, paragraph 2, subparagraphs 2.4 and 2.6; Article 70, paragraph 2, subparagraphs 2.7 and 2.8; and Article 81, paragraph 3 of the Law No. 04/L080 on Games of Chance (hereinafter: the Law on Games of Chance).

4. The Applicant claims that the Ministry of Finance of the Government of the Republic of Kosovo (hereinafter: the Ministry)

by applying this law, has violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in respect to *"equality before the law, values, general principles, right to a fair and impartial trial, interpretation of human rights provisions and judicial protection of rights."*

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 2 June 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 4 July 2014 the President by Decision, no. GJR. KI96/14 appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision, no. KSH. KI96/14 appointed the Review Panel composed of judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama Hajrizi.

8. On 7 April 2014 the Applicant submitted additional documents to the Court.

9. On 15 July 2014 the Court notified the Applicant of the registration of the Referral.

10. On 8 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

11. On 6 April 2012 the Law on Games of Chance was adopted and it entered into force fifteen (15) days after the publication on the Official Gazette.

12. According to Applicant's allegations, following the entry into force of the Law on Games of Chance, the Ministry had unjustly closed

some business premises which exercised economic activities regulated by the provisions of this law.

13. According to the Applicant, the abovementioned business premises were closed because the Ministry considered that the criteria in respect to the distance between these business premises and the educational, historical and religious premises and municipality property were not met.

Applicant's allegations

14. The Applicant claims that the Ministry, by applying the Law on Games of Chance, has violated his rights guaranteed by the Constitution, namely, Article 3 [Equality Before the Law] paragraph 1, Article 7 [Values] paragraph 1.1, Article 21 [General Principles], Article 24 [Equality Before the Law] paragraph 1, Article 31 [Right to Fair and Impartial Trial] paragraph 1, Article 53 [Interpretation of Human Rights Provisions] paragraph 1, and Article 54 [Judicial Protection of Rights].

15. The Applicant justifies his request for interpretation of the provisions of the Law on Games of Chance by stating that: *"Members of the Association through no fault of their own have come to an unfavorable and denigrating position, both in economic and moral respect, as a consequence of the erroneous interpretation of the provisions of Law No. 04/L-080 on Games of Chance."*

16. The Applicant addressed to the Court, requesting:

> *"[...] to provide an authentic interpretation of the: provisions of Article 66, paragraph 2, subparagraphs 2.4 and 2.6, Article 70, paragraph 2, subparagraphs 2.7 and 2.8 [...] provisions of Article 66, paragraph 2, subparagraphs 2.4 and 2.6, Article 70, paragraph 2, subparagraphs 2.7 and 2.8 of Law No.04/L-080 on Games of Chance, by specifying whether these provisions are applicable upon the licensing of new entities for games of chance, or the renewal of the time limit of the existing licenses; or whether these provisions are automatically applicable from the day the mentioned law entered into force, despite the fact that the time limit of the licenses issued pursuant to the previous Law No.2004/35 on Games of Chance.*

Furthermore, the provisions of Article 81, paragraph 3 of Law No.04/L-080 on Games of Chance of date 06 April 2012, by specifying-rendering a concrete conclusion whether the Licenses issued for exercising games of chance, pursuant to the previous Law No.2004/35 on Games of Chance, are considered to be invalid upon the entering into force of Law No.04/L-080 on Games of Chance, despite that their time limit has not expired; or whether all the licenses for exercising games of chance issued pursuant to the previous Law No.2004/35 on Games of Chance are valid until their expiration date."

Admissibility of the Referral

17. The Court examines whether the Applicant has fulfilled the admissibility requirements provided by the Constitution and further specified in the Law and the Rules of Procedures.

18. In this regard, the Court refers to Article 113 (1) and 113 (7) of the Constitution, which provide:

"(1) The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

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

19. Furthermore, the Court refers to Article 47 (1) of the Law, which foresees that:

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority".

20. Finally, the Court also refers to Rule 36 (1) (a) of the Rules of Procedure, which provides:

"(1) The Court may consider a referral if:

[...]

(a) the referral is filed by an authorized party".

21. As stated above, the Applicant requests the interpretation of certain provisions of the Law on Games of Chance by claiming that the Ministry has violated his constitutional rights through the alleged erroneous interpretation of such provisions.

22. The Court notes that the Applicant did not raise any allegation for any violation committed by the public authorities, as foreseen by Article 113 (7) and Article 47 (1) of the Law.

23. The Court also notes that the Applicant did not submit any information in relation to any proceeding or legal action that he has initiated with the aim of addressing his complaints on erroneous application of those provisions of the Law on Games of Chance.

24. With regard to the Applicant's right to submit a Referral pursuant to Article 113 (7) of the Constitution and Article 47 (1) of the Law, the Court observes that the Applicant does not refer to any concrete action or decision of a public authority which might have violated his rights constitutional rights. What the Applicant requests is an *"authentic interpretation"* of certain provisions of the Law on Games since, according to him, as a result of an erroneous interpretation given by the Ministry, the Applicant and other members of the Association of the Gambling providers were put in an "*unfavorable and denigrating position, both in economic and moral respect."*

25. The Court recalls that only the authorities explicitly referred to in Articles 113 (2) to 113 (6) of the Constitution are authorized parties to raise with the Court matters of abstract review of the constitutionality of a law.

26. In this respect, the Court also wishes to emphasize that the case of the Applicant is similar to the Case no. KI 230/13 (see Case KI230/13, Applicant *Tefik Ibrahimi*, Constitutional Court, Resolution on Inadmissibility, of 19 May 2014). In that case, the Applicant had challenged, *in abstracto*, the constitutionality of Article 7 (5) of the Law 03/L-072 on Local Elections, considering that this Article is unfair and discriminatory towards him. The Court had rejected the Referral of the Applicant because he was considered as an unauthorized party to challenge the constitutionality of the law *in abstracto*.

27. Therefore, the Court considers that the Applicant is not an authorized party to challenge the constitutionality of the law *in abstracto* nor to request interpretation of a law, and, consequently, his Referral should be declared inadmissible.

28. In conclusion, due to the reasons mentioned above, the Court concludes that the Applicant is not an authorized party and pursuant to Article 113 (1) and (7) of the Constitution, Article 47 (1) of the Law and Rule 36 (1) (a), the Referral should be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, Article 113 (1) and (7) of the Constitution, Article 47 (1) of the Law and Rule 36 (1) (a) of the Rules of Procedure, on 8 December 2014, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI138/14, Applicant Majda Fazli-Neziri, Request to the Court to issue an opinion regarding the employment opportunity with an acquired academic master degree

KI138/14, Resolution on Inadmissibility of 8 December 2014, published on 3 February 2015

Keywords: *Individual Referral, advisory opinion, ratione materiae jurisdiction, inadmissible referral.*

The Applicant was a student of master level studies in the Department of History at the Faculty of Philosophy in Prishtina and after acquiring a master degree she wanted to work as a professor of history in the Bosnian language in the primary school in Prizren.

The Applicant claimed that after an informal conversation with the staff of the Directorate for Education in Prizren she was told that with the acquired master degree, she cannot work in a primary school as a full-time professor of the scold subject of history.

The Applicant requested the Court to declare whether after graduation she will be employed as a professor of history with a primary school.

The Constitutional Court found that the Applicant's Referral was not filed in accordance with Article 113.7 of the Constitution, and as such, is not compatible *ratione materiae* with the provisions of the Constitution. The Referral was declared inadmissible in accordance with Article 113.7 of the Constitution and Rule 36 (3) (f) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI138/14
Applicant
Majda Fazli-Neziri
Request to the Court to issue an opinion regarding the employment opportunity with an acquired academic master degree

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Ms. Majda Fazli-Neziri, village Lubizhda, Municipality of Prizren.

Challenged decision

2. The Applicant does not challenge the decisions of public authorities, but only seeks the Court's opinion regarding the acquired academic title and employment opportunities.

Subject matter

3. The subject matter is related to an advisory opinion of the Court regarding the employment opportunity in the elementary school with the acquired academic master degree.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 15 September 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 7 October 2014, the President of the Court, by Decision no. GJR. KI138/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI138/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 10 October 2014, the Court notified the Applicant on the registration of Referral.

8. On 8 December 2014, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant submitted to the Court a half-page referral, where she stated: *„that she is a student of master studies, Department of History, in the Faculty of Philosophy in Prishtina, that she is a good student and that after acquiring the master degree she would like to work as a professor of history in Bosnian language in the elementary school.“*

10. However, on an unspecified date, in an informal conversation with a staff of the Directorate of Education in Prizren, she was told that with the acquired master degree she cannot work in a primary school as a full-time professor of the school subject of history.

Applicant's allegations

11. In her Referral, the Applicant stated that she passed all her exams with a high average grade and that currently she is working in her master thesis.

12. The Applicant addresses the Court with the request:

> *„I request from the Constitutional Court to declare, to provide an opinion on the following: upon my graduation as a MASTER of HISTORY, in the University of Prishtina – the Department of History, may I work as a professor of the History with a primary school."*

Admissibility of Referral

13. In order to be able to adjudicate the Applicant's Referral, the Court needs to first examine whether she has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

14. Regarding the present Applicant's Referral, the Court refers to Rule 36, paragraph 3, item f) of the Rules of Procedure of the Constitutional Court, which provides:

> *„A Referral may also be deemed inadmissible in any of the following cases: f) the Referral is incompatible ratione materiae with the Constitution".*

15. The court is obliged to examine whether it has jurisdiction *ratione materiae* in each stage of the proceedings. The compatibility with the Constitution and international instruments which are an integral part of the Constitution in accordance with Article 53 of the Constitution, *ratione materiae* of a Referral stems from the core competence of the Court. In order that a Referral is compatible *ratione materiae* with the Constitution, the right invoked by the Applicant, must be protected by the Constitution.

16. Since the Applicant has raised before the Court a matter which is not in accordance with Article 113.7 of the Constitution, it results that the Referral is not compatible *ratione materiae* with the provisions of the Constitution and as such it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (3) f) of the Rules of Procedure, in the session held on 8 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI72/14, Applicant Besa Qirezi, Constitutional review of Decision CA. no. 712/2013 of the Court of Appeal of Kosovo of 21 October 2013

KI 72/14, Judgment of 9 December 2014, published on 4 February 2015

Key words: *Individual Referral, administrative proceedings, admissible referral, finality and enforceability of decisions, the right to a fair and impartial trial, judicial protection of rights, protection of property*

The Court of Appeal of Kosovo by Decision CA. no. 712/2013 of 21 October 2013 quashed Decisions of the Municipal Court in Prishtina and Independent Oversight Board of Kosovo respectively, which had approved the Applicant's proposal for full compensation of salaries after her reinstatement to the work place.

The Applicant alleged inter alia that the Court of Appeal has not respected the finality of Decision of the Independent Oversight Board of Kosovo, and thus, denied her right to a fair and impartial trial, effective legal remedy and enforcement of final and binding decisions and protection of property.

The Court firstly noted that the Applicant's Referral meets all procedural requirements and is therefore admissible. As to the merits of the Referral, the Court stated that its duty is to review and consider constitutional aspects of the referral and not whether the regular courts have correctly applied the applicable law. On the question of compensation of the salaries, the Court held that non-execution of the Independent Oversight Board of Kosovo respectively non-compensation of unpaid salaries to the Applicant constitutes violation of multiple interrelated rights such the right to a fair and impartial trial, the right to enforcement of final and binding decisions, the right to an effective remedy and protection of property. The Court backed up its findings of violation by invoking its own case-law especially in matters related to the Independent Oversight Board of Kosovo in addition to the case-law of the European Court of Human Rights.

JUDGMENT
in
Case No. KI72/14
Applicant
Besa Qirezi
Constitutional Review
of the Decision, CA. no. 712/2013 of Court of Appeal of Kosovo
dated 21 October 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

Applicant

1. The Applicant is Ms. Besa Qirezi with residence in Vushtrri.

Challenged decision

2. The challenged Decision is Decision, CA. no 712/2013 of the Court of Appeal, dated 21 October 2013, which was served on the Applicant on 16 December 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013), by which the Decision of the Basic Court in Prishtina (E. No. 2668/2012 dated 11 February 2013) rendered in the execution procedure regarding compensation of the unpaid salaries by the Ministry for Communities and Return (hereinafter: the MCR) based on Decision (A02 (114) 2008, dated 25 May 2009) of the Independent Oversight Board of Kosovo (hereinafter: IOBK) was annulled.

4. In this regard, the Applicant alleges that the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013) violated her rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR) and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 6 May 2014, the President by Decision GJR. KI72/14 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision KSH. KI72/14 appointed the Review Panel composed of Judges: Robert Carolan (presiding), Ivan Čukalović and Enver Hasani.

8. On 16 May 2014, the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Court of Appeal of Kosovo and the MCR.

9. On 18 September 2014, the President amended Decision (KSH.KI 72/14 dated 6 May 2014) and appointed the Review Panel composed of Judges: Snezhana Botusharova (presiding), Ivan Čukalović and Enver Hasani.

10. On 9 December 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.

Summary of Facts

11. The Applicant was employed in the MCR as an Officer for Gender Equality based on a contract for determined period from 1 June 2007 until 30 May 2009.

12. On 22 January 2008 the Disciplinary Committee within the MCR decided to impose the disciplinary measure: the termination of the employment contract of the Applicant with the MCR (hereinafter: Decision of the Disciplinary Committee).

13. On 24 January 2008 the MCR based on its Decision No. 108 terminated the working relationship (hereinafter: the Decision on termination of the working relationship) with the Applicant.

Administrative procedure

14. On 31 March 2008, following the Applicant's appeal against the Decision of the Disciplinary Committee and the Decision on termination of the working relationship, the Commission for Appeals and Submissions within the MCR based on its Decision, No. 484/1 (hereinafter: the Decision of the Commission for Appeals) rejected the Applicant's appeal.

15. On 11 April 2008, the Applicant filed an appeal with the Independent Oversight Board for Civil Service of Kosovo (hereinafter: the IOBK) against the Decision of the Disciplinary Committee, the Decision on termination of the working relationship and Decision of the Commission for Appeals.

16. On 25 May 2009, the IOBK by Decision A 02 (114) 2008 (hereinafter: the IOBK Decision) decided as following:

> *"I. APPROVED as grounded the Appeal No. 02 114/08 of 11.04.2008 of the Appellant Ms. Besa Qirezi.*
>
> *II. ANNULLED: Decision of Employer No. 484/1 of 31.03.2008* [the Decision of the Commission for Appeals], *Decision No. 108 of 24.01.2008* [the Decision on termination of the working relationship] *and Decision of the Disciplinary Committee of 22.01.2008* [Decision of the Disciplinary Committee].

III. ARE OBLIGED: Employer shall within 15 days, from the day of receipt of this Decision, to return the Appellant to her working place with all rights arising from the employment relationship and renew the employment contract in compliance with procedure as established in the Administrative Instruction No. MPS/DCSA 2003/02.

IV. Responsible for the Enforcement of this Decision is the Permanent Secretary of the Ministry for Communities and Return.

V. The Independent Oversight Board of Kosovo shall be informed on the measures taken to enforce this Decision.

VI. In case of non-enforcement of this Decision, the Independent Oversight Board of Kosovo shall inform the Kosovo Assembly, which shall addresses the report to the Prime Minister of Kosovo in accordance with Article 11, paragraph 11.4 of the Regulation No. 2001/36 on the Civil Service of Kosovo, amended by regulation No. 2008/12."

17. On 6 July 2009, the Applicant informed the IOBK that the MCR did not execute the Decision of the IOBK.

18. On an unspecified date, against the Decision of the IOBK, the MCR had submitted a claim with the Supreme Court.

19. On 24 March 2010, the Supreme Court by Decision, A. No 472/2009 declared itself incompetent to decide on the claim submitted by MCR. The Supreme Court referred the case to the Municipal Court in Prishtina as the competent court in this matter.

20. The Supreme Court in its aforementioned Decision held that:

"As per Article 9, paragraph 1 item 1 of Law on Administrative Conflicts, it is provided that administrative conflict cannot be conducted for issues for which a court defence outside the administrative conflict is ensured.

The Supreme Court evaluates that in present case it is about a dispute arising from employment relationship, for which review according to Article 26, paragraph 1 item 7 of the Law on Regular Courts (Official Gazette of Kosovo 21/78) competent is the Municipal Court.

From what was said above, the Supreme Court as per Article 60 of the Law on Administrative Conflicts (LAC) in conjunction with Article 15 para.1 of Law on Contested Procedure, decided as in the in enacting clause of this Decision."

21. On 17 June 2010, the Applicant informed the Prime Minister on the non-execution of the IOBK Decision and also requested him to undertake the necessary measures for the execution of the IOBK Decision. This Applicant's request was referred to the Assembly of Kosovo on 7 July 2010.

22. On 7 September 2010, the Chair of the Committee for Human Rights, Gender Equality, Missing Persons and Petitions of the Assembly of Kosovo in its Conclusion addressed to the MCR, requested the MCR to undertake the necessary measures for the execution of the IOBK Decision.

Contested Procedure

23. In an attempt to recover her employment relationship it appears that the Applicant was involved in contested proceedings as a claimant. Furthermore, as a result of the above-mentioned Decision of the Supreme Court a contested procedure was also initiated with MCR as a claimant. These two sets of contested proceedings are however not relevant to the allegations made in this Referral.

Decision of MCR on returning the Applicant to her working place

24. On 21 November 2012, the Secretary General of the MCR with the purpose of enforcement of the IOBK Decision rendered the Decision to return the Applicant to a job position in the MCR, but in a different position that of the Officer for receiving requests in the Office for Public Communication within MCR.

25. In the same Decision, the MCR further decided that the compensation for the Applicant will be realized as following: " *[…] compensation of the personal income in monthly salary is made from 22.01.2008, the date when her employment relationship was terminated by the Disciplinary Commission of MCR until 31.05.2009, the date when her employment contract No. 226/2007 expired.[…]*"

26. On 3 December 2012, the Applicant returned to her working place.

27. On 17 December 2012, the General Secretary of the MCR rendered a Decision for the transfer of the Applicant to the Division for Human Rights within MCR in her previous job position of the Officer for Gender Equality.

Execution procedure

28. As a result of the Decision of the MCR on compensation of the salaries only for the period from the date the Applicant's employment relationship was terminated until the date when the Applicant's contract expired (22 January 2008 until 31 May 2009), on 26 December 2012, the Applicant filed a proposal for the execution of the unpaid salaries for the period 1 June 2009, the date when the expiration of her previous employment contract took effect until 3 December 2012, the date of her return to the working place in the MCR.

29. On 11 February 2013, the Basic Court in Prishtina by Decision, E. No. 2668/2012 decided on the execution of the Applicant's proposal for the unpaid salaries for the period between 1 June 2009 and 3 December 2012.

30. On 6 March 2013, based on the MCR's objection against Decision of the Basic Court in Prishtina, (E. No. 2668/2012 dated 11 February 2013), the Basic Court in Prishtina rejected in its entirety the objection filed by the MCR.

31. Consequently, the MCR filed an appeal with the Court of Appeal against the Decision of the Basic Court in Prishtina (E. No. 2668/2012 dated 6 March 2013).

32. On 21 October 2013, the Court of Appeal by Decision, CA. No. 712/2013 approved the appeal filed by the MCR, in its capacity as a debtor and rejected the Applicant's proposal for the execution of the Decision of the IOBK.

33. The Court of Appeal, in its aforementioned Decision held that:

> *"From case file it results that: The procedure of execution for returning the creditor to work according to decision of Independent Oversight Board of Kosovo A 02 (114) 2008 of 25.05.2009 ended on 3.12.2012 according to decision of Ministry for Community and Return no. 2517 of 21.11.2012,*

whereas the creditor filed the proposal for compensation after finalization of execution procedure, thus on 26.12.2012.

The first instance court determined execution by its Ruling E.no.2668/2012 of 11.02.2013. Against this Ruling the debtor filed an objection whereas the first instance court decided as in the enacting clause of the appealed ruling, by evaluating that there are no legal obstacles for implementation of ruling on determination of execution, but previously has not reviewed if the proposal for execution was within legal time-limit.

The legal stance of the first instance court given in the appealed ruling, the panel evaluates as incorrect and not based on law, because as per Article 294 para.2 of Law on Execution Procedure ("Official Gazette of the Republic of Kosovo" no.33/2008) hereinafter LEP is determined: "Proposal for compensation can be attached to the proposal for execution, or can be filed later on up to the finalization of execution procedure." In present case the procedure of execution for returning of creditor to work ended on 03.12.2012, whereas the proposal of creditor filed on 26.02.2012 [26.12.2012], *which means after legal expiry determined by the abovementioned provision of LEP."*

Applicant's allegations

34. As mentioned above, the Applicant alleges that the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013) violates her rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 [Right to a fair trial] of the ECHR and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.

35. Regarding the allegation of violation of Article 24 [Equality Before the Law] of the Constitution, the Applicant argues that "*the Ministry for Communities and Return did not execute in entirety the decision of IOBCS* [IOBK], *because it compensated to me only the salaries for the period during which I had the contract, whereas for the period as long as I was unemployed, it was justified that there are no "financial means." How it can be possible that for me MCR had not monetary means for compensation of lost salaries, whereas for my colleague […], who was dismissed and returned to work at the same time with me,*

was given the compensation?. To me unjustly was denied the right of receiving the lost salaries, meanwhile to my colleague compensated the lost salaries. This proves the best way of unequal treatment of individuals."

36. Regarding the allegation of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR, the Applicant claims that:

> *"[...] according to ECHR practice, that non-execution matters of final decisions res judicata present continuous violations because a right gained should not remain only in paper, or partly implemented, but it should be implemented also in practice, see Judgment of Constitutional Court KI129/11, parts quoted by Strasbourg Court.*
>
> *It is not my fault that MCR does not have money to compensate me. IOB made a decision by which to me should be compensated the lost salaries from the day of my dismissal from work until my return to work. The state should find mechanisms to provide implementation of public authorities' decisions, why should I be victim of absence of these mechanisms?"*

37. Furthermore, as said above, the Applicant also alleges violation of Article 1 [Protection of Property] of Protocol No. 1 to the ECHR. In this regard, the Applicant alleges that: *"As a result of non-execution in entirety of IOB decisions to me the gained rights were denied, since my expectations were legitimate, in this case these were violated."*

38. The Applicant concludes by requesting the Court as follows: *"[...] referring to Judgments of Constitutional Court of the Republic of Kosovo: KI72/12, KI129/11, KI04/12 and facts that were mentioned, I request from Constitutional Court to decide based on merits of my referral, and abrogate the Decision of Court of Appeal CA.no.712/2013 of 21.10.2013."*

Relevant legal provisions relating to procedures for the execution of administrative and court decisions

Law on Executive Procedure (Law no. 03/L-008)

Article 1 [Content of the law]

"1.1 By this law are determined the rules for court proceedings according to which are realised the requests in the basis of the executive titles (executive procedure), unless if with the special law is not foreseen otherwise.

1.2 The provisions of this law are also applied for the execution of given decision in administrative and minor offences procedure, by which are foreseen obligation in money, except in cases when for such execution, by the law is foreseen the jurisdiction of other body."

Article 24, paragraph 1 [Execution title]

"Execution titles are:

a) *execution decision of the court and execution court settlement;*

b) *execution decision given in administrative procedure and administrative settlement, if it has to do with monetary obligation and if by the law is not foreseen something else;*

c) *notary execution document;*

d) *other document which by the law is called execution document."*

Article 26, paragraph 3 [Executability of decision]

"A given decision in administrative procedure is executable if as such is done according to the rules by which such procedure is regulated."

Article 294, paragraph 1 [Reward of payment in case of return of worker to work]

"Execution proposer who has submitted the proposal for return to work, has the right to request from the court the issuance of the decision by which will be assigned that, the debtor has a duty to pay to him, in behalf of salary the monthly amounts which has become requested, from the day when the decision has become final until the day of return to work. By the same

decision, the court assigns execution for realization of monthly amounts assigned."

Law no. 03/L-192 on Independent Oversight Board of Kosovo Civil Service

Article 13 [Decision of the Board]

"Decision of the Board shall represent a final administrative decision and shall be executed by the senior managing officer or the person responsible at the institution issuing the original decision against the party. Execution shall be effected within fifteen (15) days from the day of receipt of the decision."

Article 14 [The right to appeal]

"The aggrieved party, alleging that a decision rendered by the Board is unlawful, may appeal the Board's decision by initiating an administrative dispute before the competent court within thirty (30) days from the date of the service of the decision. Initiation of an administrative dispute shall not stay the execution of the Board's decision."

Article 15 [Procedure in case of non-implementation of the Board's decision]

"Non-implementation of the Board's decision by the person responsible at the institution shall represent a serious breach of work related duties as provided in the Law on Civil Service in the Republic of Kosovo.

Admissibility of the Referral

39. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

40. In that respect, the Court refers to Article 113.7 of the Constitution which provides:

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

41. The Court also refers to Article 48 and 49 of the Law, which provide that:

> *48. In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.*
>
> *49. The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.*

42. The Court also takes into account Rule 36 (1) of the Rules of Procedure, which foresees:

> *The Court may consider a referral if:*
>
> *(a) the referral is filed by an authorized party, or*
>
> *(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted, or*
>
> *(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*

43. Regarding the exhaustion of legal remedies, the Court notes that the Applicant has exhausted all legal remedies within the employment institution and with her appeal in the IOBK, which decision is final in the administrative procedure. Equally, she has used the last legal remedy in the executive procedure, which in the present case is the Decision, Ca. No. 712/ 2013 of the Court of Appeal, dated 21 October 2013, against which no right of appeal is allowed. As a result, the Applicant has exhausted all available legal remedies, according to the legislation in force.

44. The Court further notes that, on 16 December 2013, the Applicant was served with the challenged decision and, on 14 April 2014, filed the Referral with the Court.

45. The Court also notes that the Applicant has specified what constitutional rights she claims to have allegedly been violated and she challenges the concrete decision, Decision of the Court of Appeal (Ca. No. 712/ 2013 dated 21 October 2013).

46. The Court further notes that the Applicant may legitimately claim to be victim of the annulment of the Decision of the Municipal Court in Prishtina (E. No. 2668/2012 dated 6 March 2013) by the Court of Appeal, which was in her favour.

47. The Court considers that the Applicant is an authorized party, has exhausted all legal remedies, submitted the Referral within the legal time limit, and that she has accurately clarified the alleged violation of the rights and freedoms and referred to the decision she challenges.

48. Therefore, the Court concludes that the Referral meets all the requirements for admissibility.

Merits of the case

49. The Applicant mainly alleges a violation of her right to Fair and Impartial Trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, and her right to Protection of Property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No.1 to the ECHR.

50. The Court reviews the merits of each of the Applicant's allegations.

51. The Applicant complains that her right to fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR was violated.

52. Article 31.1 of the Constitution establishes:

> *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

53. In addition, Article 6 (1) of the ECHR establishes:

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

54. The Court refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which establishes:

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

55. The European Court of Human Rights (hereinafter: the ECtHR) has quite often stressed the prominent place of the right to a fair trial in a democratic society. (See, *Perez v. France*, No. 47281/99, ECtHR, Judgment of 12 February 2004).

56. As mentioned in the facts, two different sets of contested proceedings were initiated by the MCR and the Applicant on the other side. In this regard, the Court considers that the contested proceedings do not fall within the scope of the Referral and therefore it will only review the proceedings related to the subject matter of the Referral.

57. In this respect, the Court notes that the Applicant challenges the Decision, CA. No. 712/2013 of the Court of Appeal, dated 21 October 2013, whereby the Decision of the Municipal Court in Prishtina (E. No. 2668/2012 dated 6 March 2013) on execution of the Applicant's proposal for compensation of unpaid salaries was annulled.

58. In this regard, the Court observes that, on 25 May 2009, the IOBK (Decision No. A 02 (114) 2008) approved the appeal of the Applicant, requesting from the MCR that, within the time limit of fifteen (15) days from the date the decision was served on them, to return the Applicant to her job position with all rights and obligations that derive from the employment relationship and renew the employment contract in compliance with procedure as established in the Administrative Instruction No. MPS/DCSA 2003/02. The IOBK Decision states that:

> *The Board Decision presents final administrative decision and is executed by the official senior level or by the responsible person of the institution that has rendered the original decision towards the party.*

59. The Court notes that following the IOBK Decision, the MCR did not return the Applicant to her previous job position within the time limit foreseen in the IOBK Decision.

60. Only on 21 November 2012, more than three (3) years after the IOBK Decision was rendered, the MCR by Decision of its Secretary General decided to return the Applicant to a job position in the MCR and as a result, on 3 December 2012, the Applicant returned to her job position in the MCR.

61. In this respect, the Court referring to its own case law recalls that the IOBK is an independent institution established by law, in accordance with Article 101.2 of the Constitution. Therefore, all obligations arising from decisions of this institution, regarding the matters that are under its jurisdiction, produce legal effects for other relevant institutions, where the status of employees is regulated by the Law on Civil Service of the Republic of Kosovo. The decision of the IOBK provides final and binding decisions, and that the appeal filed against the IOBK decision does not stay the execution of the Decisions of IOBK (See Case KI129/11, Applicant *Viktor Marku*, Constitutional Court, Judgment of 17 July 2012).

62. However, regarding the compensation of unpaid salaries, the MCR in its Decision of 11 November 2012 decided that: *"[...] compensation of the personal income in monthly salary is made from 22.01.2008, the date when her employment relationship was terminated by the Disciplinary Commission of MCR until 31.05.2009, the date when her employment contract No. 226/2007 expired.[...]"*. Thus meaning that the MCR decided not to compensate the Applicant for the period of 1 June 2009, the date when the expiration of her previous employment contract took effect until 3 December 2012, the date of her return to her working place in the MCR. As such the Decision of MCR is not in compliance with the IOBK Decision.

63. The Court further observes that as a result of the non-execution of the Decision of the IOBK in its entirety, the Applicant decided to initiate an execution procedure and propose the compensation of the unpaid salaries for the aforementioned period from 1 June 2009 until 3 December 2012. The Basic Court in Prishtina, by its Decision (E. No. 2668/2012 dated 11 February 2013) and based on the IOBK Decisions approved the Applicant's proposal for compensation of unpaid salaries for the aforementioned period.

64. However, as a result of the appeal filed by the MCR against the Decision of the Basic Court, the Court of Appeal approved the appeal filed by the MCR and rejected the Applicant's proposal for the execution of the IOBK Decision, respectively the proposal for

compensation of the unpaid salaries and replaced the IOBK Decision with its own Decision.

65. In this respect, the Court wishes to clarify that it is not its task to consider whether the Court of Appeal with its Decision correctly interpreted the applicable law but shall review and consider whether the Court by its aforementioned Decision infringed individual rights and freedoms protected by the Constitution (constitutionality).

66. As a result of the annulment of the Decision of the Basic Court in Prishtina by Decision of the Court of Appeal (CA.No.712/2013 dated 21 October 2013), the Applicant alleges that the non-execution of the IOBK Decision in its entirety, respectively the non-compensation of the unpaid salaries for the aforementioned period constitutes violation of Article 31 of the Constitution and Article 6 of the ECHR.

67. In this regard, the Court referring to its case law (See among others Constitutional Court Case KI04/12 Applicant *Esat Kelmendi*, Judgment dated 20 July 2012), reiterates that a decision issued by an administrative body established by law, produces legal effects for the parties and, therefore, such a decision is a final administrative and executable decision.

68. Based on the above, the Court confirms that the final decision, respectively the decision considered to be subject of the execution procedure is the IOBK Decision. The IOBK Decision obliged the MCR to return the Applicant to her previous working place with all rights deriving from the employment relationship and renew the employment contract, which expired on 31 May 2009. Therefore, the Court concludes that the IOBK Decision was final and executable. This implies that the Applicant is entitled to be reinstated to her previous working place with the MCR and to recover all unpaid salaries from the moment of her dismissal until her return to the previous working place.

69. In addition, the Court considers that the execution of a final and binding decision must be considered as an integral part of the right to a fair trial, a right guaranteed by Article 31 of the Constitution and Article 6 of ECHR. The above-mentioned principle is of greater importance within the administrative procedure regarding a dispute, which result is of special importance for the civil rights of the party in dispute (See *mutatis mutandis,* Case *Hornsby v. Greece*, ECtHR, Judgment of 19 March 1997, paras. 40-41, see also

case KI112/12 *Applicant Adem Meta*, Constitutional Court, Judgment of 5 July 2013).

70. It follows from the above that the Court of Appeal, when annulling the Decision of the Basic Court in Prishtina to execute a final and executable administrative IOBK decision, violated the Applicant's right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

71. The Court also refers to Article 54 of the Constitution and Article 13 of the ECHR.

72. Article 54 [Judicial Protection of Rights] establishes that:

> *Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.*

73. In addition, Article 13 of the ECHR states that:

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

74. In that respect, the Court notes that the Applicant exhausted all legal remedies available regarding the execution of the IOBK Decision. However, despite her efforts, that Decision was not executed either by the MCC, or by the Court of Appeals.

75. The Court reiterates that the inexistence of legal remedies or of other effective mechanisms for the execution of the IOBK Decision affects the right guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution, and Article 13 of the ECHR.

76. Furthermore, *"the competent authorities have the obligation to organize an efficient system for the implementation of decisions which are effective in law and practice, and should ensure their application within a reasonable time, without unnecessary delays"*. (See Case Constitutional Court case KI50/12, Applicant *Agush Lolluni*, Judgment of 16 July 2012, par. 41. See also *Pecevi v. Former Yugoslavian Republic of Macedonia*, No. 21839/03, ECtHR, Judgment of 6 November 2008).

77. Therefore, the Court concludes that the impossibility to bring any further legal actions for the non-execution of the IOBK Decision also constitutes a violation of Article 54 of the Constitution and Article 13 of ECHR.

78. The Applicant also alleges a violation of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No.1 of the ECHR.

79. The Applicant argues that: *"As a result of non-execution in entirety of IOB decision my gained rights were denied, since my expectations were legitimate, in this case these were violated."*

80. Article 46 [Protection of Property] of the Constitution establishes:

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

81. Article 1 of Protocol No. 1 of ECHR provides:

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

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

82. As stated above, the Court recalls that the IOBK Decision was final and executable.

83. Therefore, the Constitutional Court considers that the Applicant has a "legitimate expectation" to receive the compensation for the unpaid salaries for the period as mentioned above in accordance with the IOBK Decision, which was final and executable. (See *mutatis mutandis* Case *Pressos Compania Naviera SA and Others v. Belgium*, ECtHR, Judgment of 20 November 1995, para. 31).

84. Such legitimate expectation is also guaranteed by Article 1 of Protocol No. 1 to the Convention. (See *mutatis mutandis* Case *Gratzinger and Gratzingerova v. the Czech Republic*, No. 39794/98, ECtHR, Decision of 10 July 2002, para 73).

85. For the foregoing reasons, and based on the above conclusion that the Applicant's right to a fair and impartial trial was violated, the Court further concludes that non execution of the IOBK Decision in relation to the unpaid salaries constitutes also a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR.

86. In addition, the Applicant also alleges a violation of Article 24 [Equality before the Law] of the Constitution.

87. Ultimately, the Court does not consider it necessary to deal further with the allegation of a violation of Article 24 of the Constitution, in particular as it has found violations of relevant Articles 31, 54 and 46 of the Constitution and Articles 6 and 13 of the ECHR and Article 1 of Protocol No. 1 to the ECHR.

Conclusion

88. In conclusion, the Court finds that the non-execution of the IOBK Decision in its entirety by the competent administrative authorities and the regular courts for the part of compensation of unpaid salaries constitutes a violation of Articles 31 and 54 of the Constitution and Articles 6 and 13 of the ECHR. As a result of this violation, the Applicant was deprived from her right to receive

compensation for the unpaid salaries. Thus, the right to protection of property guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR was violated. Therefore, the Decision of the IOBK for the part of compensation of the unpaid salaries from the moment of her dismissal until the moment of her return to the working place in the MCR, namely for the period from 1 June 2009 until 3 December 2012 is still to be executed.

89. The Court further reiterates that this conclusion only relates to the alleged Constitutional violations. In fact, the conclusion does not relate to whether the decision of the regular courts or the IOBK Decision correctly interprets the applicable law, because the Constitutional Court cannot act as a court of fourth instance with respect to what is the proper interpretation of the law.

90. In sum, in accordance with the Rule 74 (1) of the Rules, the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013) is invalid and the case is remanded to the Court of Appeal for reconsideration.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 56 (a) and 74 (1) of the Rules of Procedure, unanimously, on its session held on 9 December 2014,

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR;

III. TO HOLD that there has been violation of Article 54 of the Constitution, in conjunction with Article 13 of the ECHR;

IV. TO HOLD that there has been violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR;

V. TO DECLARE INVALID the Decision of the Court of Appeal, CA.No.712/2013 dated 21 October 2013, AND REMAND the case to the to the Court of Appeal for reconsideration in conformity with the Judgment of the Constitutional Court, namely for taking into account that the IOBK Decision must be executed in its entirety;

VI. TO REMIND the competent authorities of their obligations under Article 116 [Legal Effect of Decisions] of the Constitution and Rule 63 [Enforcement of Decisions] of the Court's Rules of Procedure;

VII. TO ORDER the Court of Appeal, pursuant to Rule 63 (5) of the Rules of Procedure, to submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court;

VIII. TO NOTIFY this Judgment to the Parties;

IX. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20 (4) of the Law;

X. TO DECLARE this Judgment effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI60/14, Applicant Tomë Krasniqi, Constitutional Review of Judgment, Rev. no. 35/2014, of the Supreme Court of Kosovo, of 12 February 2014

KI60/14, Resolution on Inadmissibility, of 17 September 2014, published on 5 February 2015.

Key words: *Individual referral, civil proceedings, right to fair and impartial trial, non-disclosure of identity, referral manifestly ill-founded.*

The Supreme Court of Kosovo, by Judgment Rev. no. 35/2014, of 12 February 2014, rejected the Applicant's request for revision, and concluded that the judgments of lower instance courts were not rendered by substantial violations of the contested procedure provisions, as alleged by the Applicant.

The Applicant alleged among the other that the Supreme Court of Kosovo violated his right to fair and impartial trial, as guaranteed by Article 31 of the Constitution, because he was denied the right to pension.

The Constitutional Court found that the Applicant has not substantiated and justified his allegation for violation of the Constitution and that the decision of the Supreme Court was reasoned on the facts of the case and its findings. The Applicant's Referral was declared inadmissible as manifestly ill-founded, as provided by Rule 36 (1) and (2) of the Rules of Procedure. The Court also rejected the Applicant's request for not having his identity disclosed as ungrounded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI60/14
Applicant
Tomë Krasniqi
Constitutional Review of Judgment, Rev. no. 35/2014 of the Supreme Court of 12 February 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Tomë Krasniqi (hereinafter, the Applicant) residing in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no. 35/2014 of 12 February 2014, which was served on the Applicant on … .

Subject matter

3. The subject matter is constitutional review of the challenged decision, which has allegedly violated the Applicant's rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely *Article 23 [Human Dignity, Article 24 [Equality Before the Law] , Article 46 [Protection of Property], Article 31 [Right to Fair and Impartial Trial], Article 145 [Continuity of International Agreements and Applicable Legislation]* and by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR),

Article 1 [Obligation to respect human rights], Article 3 [Prohibition of torture], Article 14 [Prohibition of discrimination], Article 1 Protocol 1 [Protection of Property] and Article 9 of the International Covenant on Economic, Social and Cultural Rights (hereinafter, ICESCR).

4. Furthermore, the Applicant requests the Court not to have his identity disclosed. The applicant referes to Article 36 [Right to Privacy] of the Constitution, Article 17 [Principle of Publicity] of the Law and Articles 1 [Obligation to respect Human Rightd] and 14 [Prohibition of Discrimination] of the ECHR, without providing any reason for such request.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 31 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 3 April 2014 the President of the Court by Decision, GJR. KI60/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI60/14 appointed the Review Panel composed of Judges, Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

8. On 13 May 2014 the Court informed the Applicant on the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 15 September 2014, the President by Decision No. GJR. KI60/14 appointed Judge Ivan Čukalović as member of the Review Panel replacing Judge Robert Carolan.

10. On 17 September 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. The factual basis of the referral KI60/14 is the same as the one of the referral KI39/11 also filed with the Court by the Applicant. This referral was rejected as inadmissible for non-exhaustion of all legal remedies (see, Resolution on Inadmissibility KI39/11 of 15 January 2013).

12. On 11 June 1998 the Pension and Disability Insurance Fund of Kosova (decision no. 181-1/98) recognized the Applicant's right to pension as of 3 May 1998.

13. The Applicant enjoyed the right to retirement pension until November 1998, but due to the circumstances in Kosovo in early 1999, the Applicant's right to retirement pension was terminated without any legal ground.

14. On 4 May 2007 the Applicant submitted a claim to the Basic Court in Prishtina (formerly known as Municipal Court) against the Ministry of Labour and Social Welfare claiming that the former is obliged to compensate and continue with the payments in accordance with decision no. 181-1/98 of 11 June 1998.

15. On 17 January 2013 the Basic Court (Judgment C. no. 1155/2007) rejected the claim submitted by the Applicant as ungrounded and held that:

> *"The Court considers that the respondent, the Republic of Kosovo – Ministry of Labour and Social Welfare, Prishtina, lacks passive legitimacy in this civil case also due to the fact that the claimant, as per case files, has not entered into any legal relationship with the respondent, and that there is no legal provision on the obligation of the respondent to accept the obligations of the pre-war institutions, which operated in accordance with the legislation of the Republic of Serbia, ultimately until June 1999. According to Article 1.1 of UNMIK Regulation no. 1999/1 on authorizations of the Interim Administration in Kosovo (entering into force on 10 June 1999), all legislative and executive powers in Kosovo were assumed by UNMIK, as lead by the SRSG. Upon such regulation, Provisional Institutions of Self-Government of Kosovo were established to ensure autonomous and democratic governance at municipal and central levels".*

16. The Applicant filed an appeal to the Court of Appeals in Prishtina *"due to substantial violation of the provisions of the law on contested procedures"*.

17. On 7 October 2013, the Court of Appeal (decision CA. no. 1144/2013) rejected the appeal submitted by the Applicant as ungrounded and upheld the Judgment of the Basic Court C. no. 1155/2007 of 17 January 2013.

18. The Court of Appeals held that:

> *"This Court also approves the legal stance of the first instance court to be regular and grounded upon law, since the challenged judgment is not rendered by a substantial violation of contested procedure provisions as per Article 182, item 2 of the LCP, violations which are reviewed by the second instance court ex officio, as per Article 194, of the LCP. Due to regular application of provisions, and full and fair ascertainment of the factual situation, which cannot be put to question by any of the appellate allegations, the first instance judgment contains no substantial violation".*
>
> *[…]*
>
> *"The UNMIK Regulation no. 200/10 had established an Administrative Department of Health and Social Welfare, a department which did not succeed any of the institutions operating in Kosovo before the war, which means that this institution is neither a successor of the Self-Governing Interests Union for Pension and Invalidity Insurance of Kosovo, a decision by which the claimant had enjoyed his rights to pension. It is a notorious fact that the respondent had created the Kosovo Social Security fund no. 3/2001. Nevertheless, the Pension Fund before the war, and the current Kosovo Pensions Fund have no succession in between, and therefore, the respondent has no obligation to pay the pensions from a fund was taken by the Serbian state, an issue which will be subject to agreements between the Kosovo and the Serbian state, since the funds mentioned by the claimant is a fund belonging to Kosovo citizens, since all citizens contributing to such a fund are entitled to be compensated by such a fund."*

19. The Applicant filed a request for revision with the Supreme Court against the Judgment of the Court of Appeals.

20. On 12 February 2012 the Supreme Court (Judgment Rev. no. 35/14) rejected as ungrounded the Applicant's request for revision by concluding that:

> *"The lower instance courts have properly applied contested procedure provisions and the material law when concluding that the claim suit of the claimant is ungrounded, and that the judgments mentioned do not contain any substantial violation of contested procedure provisions, which are reviewed ex officio by the court within the bounds of Article 215 of the LCP".*
>
> *[…]*
>
> *"According to UNMIK Regulation no. 2001/35, the Pension Administration of Kosovo was established as an administrative unit within the Interim Department of Labour and Social Welfare, thereby determines the competency and responsibilities of the Pension Administration as a new and independent authority, which administers the base pensions, according to which Regulation, the Kosovo Pension Administration is not mandated with any responsibility related to the pre-war period pensions. Regulation no. 2005/20 of 29 April 2005, amending the UNMIK Regulation no. 2001/35 on Pensions in Kosovo, Article 39, provides that this regulation supersedes any applicable legislative provision in contradiction with it, and entering into force on 29 April 2005, and the Law amending UNMIK Regulation 2005/20, amending UNMIK Regulation no. 2001/35 on the Kosovo Pension Fund, by which the Law on Pension Funds of Kosovo was approved, provided on an independent legal entity, and such law does not provide that this fund is a legal successor of the former Republican Fund for Pension and Invalidity Insurance – Branch in Prishtina, which had operated until June 1999, and with the deployment of international administration, ceased to operate within the Kosovo territory, and therefore, according to the findings of this Court, the respondent had no material civil relations with the claimant, and this means that the respondent lacks passive legitimacy in this legal matter, since the respondent bodies are new legal entities, and not linked with the ones operating before the war in Kosovo, and meanwhile, the claim suit of the claimant is related to the relations created according to the former Pension Fund, and therefore, the lower instance courts have properly found that the claim suit is ungrounded, and as such,*

they rejected the claim since the respondent lacks passive legitimacy to be party in this dispute".

Applicant's allegations

21. The Applicant alleges that *"he has obtained his right for pension on the basis of the applicable Law on Pension and Disability Insurance, as published in the Official Gazette of the SAPK, no. 26/83, of 30 June 1983, which is also applicable pursuant to UNMIK Regulation no. 1999/24".*

22. Furthermore the Applicant claims that *"UNMIK Authorities, and later also the authorities of the Republic of Kosovo were bound, immediately after the war, to ensure that the Applicant regularly receives his pension payments, as obtained before 1999, but so far, the authorities of the Republic of Kosovo have not observed or enforced the legal obligation".*

23. Thus, based on the abovementioned, the applicant alleges that the judgments of the lower instance courts have violated the following rights:

a) Violation of rights guaranteed by the Constitution:

Article 23 [Human Dignity, Article 24 [Equality Before the Law] , Article 46 [Protection of Property], Article 31 [Right to Fair and Impartial Trial], Article 145 [Continuity of International Agreements and Applicable Legislation]

b) Violation of rights according to international law:

ECHR

Article 1 [Obligation to respect human rights], Article 3 [Prohibition of torture], Article 14 [Prohibition of discrimination], Article 1 Protocol 1 [Protection of Property].

ICESC

Article 9

24. In conclusion, the Applicant requests from the Court that *"that his pension, as obtained on the basis of paid contributions, be paid in proportion with the contributions paid during his working years, on the basis of the labour legislation and years of experience".*

Admissibility of the Referral

25. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.

26. In this respect, the Court refers to Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure, which provide that:

> *"(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.*
>
> *(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,*
>
> *[...]"*

27. The Court notes that the Applicant's referral alleges violation of Article 23 [Human Dignity, Article 24 [Equality Before the Law], Article 46 [Protection of Property], Article 31 [Right to Fair and Impartial Trial], Article 145 [Continuity of International Agreements and Applicable Legislation] of the Constitution, Article 1 [Obligation to respect human rights], Article 3 [Prohibition of torture], Article 14 [Prohibition of discrimination], Article 1 Protocol 1 [Protection of Property] of the ECHR and Article 9 of the ICESC.

28. Nevertheless, the Court also notes that the Applicant has failed to clarify how and why these constitutional rights were violated by the challenged decision. The dissatisfaction with the decision or a mere mentioning of articles and provisions of the Constitution are not sufficient to raise an allegation of a constitutional violation. When alleging constitutional violations, the Applicant must provide convincing and well-reasoned argument in order for the referral to be grounded.

29. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).

30. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.

31. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

32. The Court considers that the proceedings before the regular courts, including before the Supreme Court, have been fair and reasoned (See, *mutatis mutandis, Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).

33. The Judgment of the Supreme Court has provided reasoning on the facts of the case and their findings.

34. The Court finds that the Applicant has not substantiated and justified its allegation for violation of the Constitution by the challenged decision.

35. Therefore, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rules 36 (1) c) of the Rules of Procedure.

36. Furthermore, the Applicant's request for not having his identity disclosed should be rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c), and 56 (2) of the Rules of Procedure, on 17 September 2014, unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI91/14, Applicant Rexhep Sagdati, Constitutional review of the Judgment no. AC-I-12-0115 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 25 April 2013

KI91/14, Resolution on Inadmissibility, of 25 November 2014, published on 5 February 2015

Key words: *Individual Referral, civil procedure, discrimination on national basis, manifestly ill-founded referral*

The Appellate Panel of the Special Chamber of the Supreme Court, by Judgment No. AC-I-12-0115, of 25 April 2013, approved the appeal of the Independent Trade Union and the Managing Committee of SOE Cooperative, of 17 October 2012, while the Applicant had not been recognized the right to 20% share of proceeds from the privatization of "SOE Cooperative Prizrenkop".

The Applicant alleged among other things that the Appellate Panel of the Special Chamber of the Supreme Court discriminated him against because he was a member of the minority community and violated the rights guaranteed by the Constitution.

The Constitutional Court found that the decision of the Appellate Panel of the Special Chamber was clearly substantiated and that the proceedings were not unfair or arbitrary. The Applicant failed to show how the challenged decision violated his rights guaranteed by the Constitution. The Applicant's Referral was declared inadmissible as manifestly ill-founded, in accordance with Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI91/14
Applicant
Rexhep Sagdati
Request for constitutional review of the Judgment no. AC-I-12-0115 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 25 April 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Rexhep Sagdati, village of Recane, Municipality of Prizren, who is represented by lawyer Mr. Salim Rexha.

Challenged decision

2. The Applicant challenges Judgment no. AC-I-12-0115 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the Special Chamber), of 25 April 2013, which was served on the Applicant on 2 May 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment [no. AC-I-12-0115] of the Appellate Panel of the Special Chamber, of 25 April 2013, which according to the Applicant, violates his

rights from employment relationship and fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo.

Legal basis

4. Article 113.7 of the Constitution, Article 49 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 June 2014, the President of the Court, by Decision no. GJR. KI91/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI91/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 30 September 2014, the Court notified the Applicant and the Appellate Panel of the Special Chamber on the registration of Referral. At the same time the Court requested that the Applicant, pursuant to Article 22.4 of the Law, submit all relevant evidence, by which would justify his allegation that the challenged Judgment [no. AC-I-12-0115] of the Appellate Panel of the Special Chamber, of 25 April 2013, was served on him on 02 May 2014.

8. On 10 October 2014, the Applicant submitted a return receipt, as an evidence that the challenged Judgment [no. AC-I-12-0115] of the Appellate Panel of the Special Chamber, was served on him on 2 May 2014.

9. On 25 November 2014, after having considered the report of the Judge Rapporteur, Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 10 March 1977, the Applicant established employment relationship with the socially owned enterprise „SOE Cooperative

Prizrenkop“ (hereinafter: SOE Cooperative) where he used to work until 9 June 1999.

11. On 6 June 2008, the SOE Cooperative was privatized.

12. On 30 June 2009, the Privatization Agency of Kosovo (hereinafter: PAK) published the provisional list of employees who at that time were entitled to a share of 20% from the privatization of the enterprise SOE Cooperative, where the Applicant was not included.

13. On 19 August 2009, the Applicant filed an objection against the provisional list of 30 June 2009, published by PAK, in which he requested that his legitimate right to a share of 20% from privatization be recognized.

14. On 16 December 2010, the PAK published the final list of the employees who were entitled to a share of 20% from the privatization of the enterprise SOE Cooperative, where the Applicant was not included.

15. On 23 December 2010, the Applicant filed an appeal with the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber), in which he claimed to be a victim of the discriminatory policy of the management of the SOE Cooperative.

16. On 26 September 2012, the Special Chamber rendered the Judgment [SCEL- 10-0040], by which the Applicant's appeal was approved as grounded.

17. On 17 October 2012, the Independent Trade Union and the Managing Committee of SOE Cooperative filed an appeal with the Appellate Panel of the Special Chamber against the Judgment [SCEL-10-0040] of the Special Chamber of 26 September 2012, by which they challenged the Applicant’s right to 20% share. They also submitted evidence that supported the ground of their allegations that the Applicant is not the victim of a discriminatory policy.

18. On 25 April 2013, the Appellate Panel of the Special Chamber rendered the Judgment [no. AC-I-12-0115] by which the appeal of the Independent Trade Union and the Managing Committee of SOE Cooperative, of 17 October 2012, was approved whereas the Judgment [SCEL- 10-0040] of the Special Chamber, of 26 September 2012, was rejected as ungrounded.

19. In the conclusion of the Judgment of the Appellate Panel of the Special Chamber, it was stated that: *„the Appellate Panel finds that the appeal of 17 October 2012 is grounded, because the Applicant did not prove that he had been discriminated. On the contrary, the Independent Union and the Steering Committee substantiated their allegations by the fact that the brother of the Applicant and many other employees from minority communities worked at this enterprise until its privatization [...] therefore, the respondent's appeal is rejected as ungrounded".*

Applicant's allegations

20. In his Referral, the Applicant stated that based on the above, it can be concluded that he was discriminated and is still being discriminated as a member of the minority community in Kosovo.

21. The Applicant addresses the Court with the request:

> *„that the Court declares unconstitutional Judgment [nr. AC-I-12-0115] of the Appellate Panel of the Special Chamber of 25 April 2013, since his constitutional rights as a member of national community are violated to him."*

Admissibility of the Referral

22. The Court notes that in order to be able to adjudicate the Applicants' referral, it needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

23. In this respect, Article 113, paragraph 7, of the Constitution provides:

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

24. The Court emphasizes that the Applicant's Referral is considered from the aspect of violation of the rights and freedoms guaranteed by the Constitution and the ECHR, however, the Court notes that the Applicant has not specified in his Referral what constitutionally guaranteed rights and freedoms were violated by the Judgment

[no. AC-1-12-0115] of the Appellate Panel of the Special Chamber, although Article 48 of the Law provides:

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

25. In this case, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

> *"(1) The Court may only deal with Referrals if:*
>
> *[...]*
>
> *c) the Referral is not manifestly ill-founded."*

26. Furthermore, the Court notes that the Appellate Panel of the Special Chamber in the Judgment [no. AC-I-12-0115] of 25 April 2013, declared inadmissible the Applicant's appeal, with the reasoning*: „The Appellate Panel cannot accept as correct the approval of the discrimination aspect just because somebody is not a member of majority community without any credible indicator regarding the possibility that the employee was really discriminated."*

27. The Court also recalls that pursuant to Article 8.1 of the Anti Discrimination Law [Law no. 2004/3], is provided that:

> Article 8.1 "*When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment."*

28. Accordingly, the court holds that the explanation given by the Appellate Panel of the Special Chamber in Judgment [no. AC-I-12-0115] is clearly and legally substantiated, and that the proceedings before the Appellate Panel of the Special Chamber were not unfair or arbitrary (see, *mutatis mutandis, Shub v. Lithuania*, no. 17064/06, ECHR Decision of 30 June 2009).

29. The Court points out that the mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution (see, *Mezotur Tiszazugi Tarsulat v. Hungary,* Appl. No. 5503/02, ECHR, Judgment of 26 July 2005).

30. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, since the Applicant failed to prove that the challenged decision violates his rights guaranteed by the Constitution.

31. It follows that the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, on 25 November 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI102/14, Applicant Arben Ademi, Constitutional review of Judgment Pkl. no. 150/2012 of the Supreme Court of the Republic of Kosovo, of 30 January 2013

KI102/14, Resolution on Inadmissibility, of 21 October 2014, published on 5 February 2015.

Keywords*: Individual Referral, criminal procedure, the right to fair and impartial, aggravated murder, out of time referral*

The Supreme Court of Kosovo, by Judgment PKL. no. 150/2012 rejected the Applicant's request for protection of legality with respect to his imprisonment sentence of 35 years for committing the criminal offense of aggravated murder.

The Applicant did not refer to any specific constitutional provision but claimed that the application of the criminal law by the Supreme Court constitutes violation of justice because his case does not have to do with murder.

The Constitutional Court found that the Applicant has submitted his Referral to the Court after the expiry of the legal deadline of 4 (four) months. The Referral was declared inadmissible because it was out of time as provided by Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI102/14
Applicant
Arben Ademi
Constitutional review of Judgment Pkl. no. 150/2012 of the Supreme Court of the Republic of Kosovo, of 30 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was filed by Mr. Arben Ademi from Prishtina (hereinafter: the Applicant), represented by Mr. Alban Ademi.

Challenged decision

2. The Applicant challenges Judgment Pkl. no. 150/2012 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 30 January 2013, served on the Applicant on 25 March 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, by which the Supreme Court rejected the Applicant's request for protection of legality.

4. The Applicant does not specify any right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) which might have been violated.

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 16 June 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 19 June 2014 the Applicant submitted additional documents to the Court.

8. On 20 June 2014 the Applicant submitted the power of attorney for Mr. Alban Ademi.

9. On 7 July 2014 the President of the Court by Decision no. GJR. KI102/14 appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision no. KSH. KI102/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

10. On 25 July 2014 the Court notified the Applicant of the registration of the Referral and sent a copy of it to the Supreme Court.

11. On 2 October 2014 the Court notified the Basic Court in Prishtina of the registration of the Referral and requested from it to submit to the Court the return receipt, showing the date when the Applicant was served with the Judgment (Pkl. no. 150/2012, dated 30 January 2013) of the Supreme Court.

12. On 8 October 2014 the Court received the response from the Basic Court in Prishtina.

13. On 21 October 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

14. On 22 December 2008 the District Court in Prishtina (Judgment P. No. 728/2005) sentenced the Applicant to a long-term imprisonment of thirty five (35) years for the commission of the criminal offence of aggravated murder.

15. The Applicant filed an appeal with the Supreme Court against the Judgment of the District Court in Prishtina.

16. On 7 September 2011 the Supreme Court (Judgment Pkl. no. 351/2009) rejected as ungrounded the Applicant's appeal by reasoning that:

> *"[...] The first instance court analyzed and assessed the evidence in compliance with the provision of Article 387 of the PCPCK, while regarding contradictory evidence it acted in accordance with the provisions of Article 396 paragraph 7 of the PCPCK, by presenting completely, what facts and for what reasons takes as proved or unproved, by making assessment of contradictory evidence. Therefore, the conclusions drawn by the first instance court, based on administered evidence, which are not put into question by any evidence, as fair and lawful, are approved by this court too."*

17. The Applicant filed a request for protection of legality with the Supreme Court alleging *"substantial violations of the criminal procedure and incomplete and erroneous determination of facts"*.

18. On 30 January 2013 the Supreme Court (Judgment Pkl. no. 150/2012) rejected the Applicant's request for protection of legality by reasoning that:

> *"[...] the Supreme Court of Kosovo admits in entirety the legal stance of the first instance court upheld by the second and the third instance judgment, with regards to criminal liability of the convict Arben Ademi that in the actions of the convict are constituted all objective and subjective elements of criminal offence of aggravated murder [...] for which he was found guilty and was convicted."*

Applicant's allegations

19. In his Referral, the Applicant states that *"Article 147 par. 1 and par. 3 in conjunction with Article 23 of CCK is completely violation of justice, since in this case we do not have to deal with murder, but our only weakness is that we do not know how to prove, reveal, show that it is not like he is accused and convicted based on this Article"*.

20. The Applicant addresses the Court with the following request:

> *"The only thing we want and try is to move forward to the extent that the justice is revealed, hoping that this court will make possible that the justice is revealed. We ask only to help us to reveal the case as it was, respectively as it happened and not as it was presented."*

Admissibility of the Referral

21. The Court examines whether the Applicant has met the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

22. In this respect, the Court refers to Article 49 of the Law, which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision [...]"*.

23. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure:

> *"(1) The Court may consider a referral if:*
>
> [...]
>
> *c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, [...]"*.

24. Based on the case file, the Court notes that the Applicant submitted his Referral on 16 June 2014. In addition, based on the case file, the Court determined that Judgment Pkl. no. 150/2013 of the Supreme

Court was served on the Applicant on 25 March 2013. Consequently, it results that the Applicant submitted his Referral to the Court after the expiry of the legal deadline provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

25. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty, by ensuring that the cases raising issues under the Constitution are dealt with within a reasonable time and that the past decisions are not continually open to challenge (See case *O'Loughlin and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

26. For the foregoing reasons, it follows that the Referral is out of time and it must be rejected as inadmissible pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 21 October 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI129/14, Applicant Faik Azemi, Constitutional review of Decision Rev. no. 270/2013 of the Supreme Court of Kosovo dated 4 February 2014

KI129 / 14, Resolution on Inadmissibility, of 25 November 2014, published on 5 February 2015.

Keywords*: Individual referral, administrative procedure, right to fair and impartial trial, out of time referral*

The Supreme Court of Kosovo, by Decision no. 270/2013 had annulled the decision of the Court of Appeal of Kosovo and remanded the case for retrial regarding the unpaid Applicant's salaries.

The Applicant claimed among other that the Supreme Court had violated his right to fair trial.

The Constitutional Court found that the Applicant's referral was filed four months after the legal deadline and therefore was out of time. The Referral was declared inadmissible because it was out of time as provided by Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INAMDISSIBLITIY
in
Case No. KI129/14
Applicant
Faik Azemi
Constitutional review of
Decision Rev. no. 270/2013 of the Supreme Court of Kosovo
dated 4 February 2014

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Faik Azemi from Prishtina (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges Decision Rev. No. 270/2013 of the Supreme Court of Kosovo dated 4 February 2014. The challenged decision was served on the Applicant on 20 March 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision which allegedly *"violates his right to a fair and impartial trial"*.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the

Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 13 August 2014, the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 5 September 2014, the President of the Court by Decision No. GJR. KI129/14 appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI129/14 appointed the Review Panel composed of judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 16 September 2014, the Court notified the Applicant about the registration of the referral and asked him to submit evidence on the date of service of the challenged decision. On the same date, a copy of the Referral was sent to the Supreme Court of Kosovo.

8. On 25 September 2014, the Applicant submitted additional documents with the Court.

9. On 7 October 2014, the Basic Court in Prishtina was asked to submit evidence pertinent to the date of service of the challenged decision on the Applicant.

10. On 10 October 2014, the Basic Court in Prishtina submitted the requested evidence.

11. On 25 November 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 29 December 2008, the Municipal Court in Prishtina (Judgment C1.no. 515/2007) approved the Applicant's statement of claim that his employment relationship was terminated unlawfully and ordered the Municipality of Prishtina to recognize all the rights enjoyed by the Applicant for the period of 1 October 2003 until 31 December 2007 as a Secretary of High School of Agriculture "Avdyl Frashëri" in Prishtina.

13. On 23 November 2011, the Municipal Court in Prishtina (Judgment C. no. 1816/2009) obliged the Municipality of Prishtina to pay to the Applicant the unpaid salaries for the period 1 October 2003 until 31 December 2007 including the interest rate.

14. On 25 June 2012, the Municipal Court in Prishtina rejected as inadmissible the complaint filed by the Municipality of Prishtina due to non-payment of the judicial taxes.

15. On 12 August 2013, the Court of Appeals of Kosovo (Decision CA. no. 3581/2012) rejected as ungrounded the appeal of the respondent party Municipality of Prishtina and upheld the Decision (C. no. 1816/09) of the Municipal Court in Prishtina.

16. On 9 October 2013, the Basic Court in Prishtina (Decision E. no. 1220/2013) allowed the enforcement of the decision. The Municipality of Prishtina filed an objection against that enforcement decision. The Basic Court rejected as ungrounded the objection.

17. On an unspecified date, the Municipality of Prishtina filed a revision with the Supreme Court of Kosovo thereby challenging Decision (CA. no. 3581/2012 of 12 August 2013) of the Court of Appeals of Kosovo...

18. On 4 February 2014, the Supreme Court of Kosovo (Decision Rev. no. 270/2013) approved the revision filed by the Municipality of Prishtina, quashed the decision of the Court of Appeals of Kosovo and remanded the case for retrial.

19. The Supreme Court of Kosovo reasoned:

> *"It results by the case file that the respondent paid the court fees for the appeal submitted against the judgment of the Municipal Court in Prishtina, C. no. 1816/2009 dated 23.11.2011, on 04.06.2012, which is also confirmed by the payment order with fiscal no. 600365226. This payment order was with the second instance court, in its case file. The warning on payment of the court fee of the respondent by the Municipal Court in Prishtina was sent on 02.05.2012, which was served on the respondent on 04.05.2012, whereas the final warning was received by the respondent on 01.06.2012. Pursuant to Article 3, 2, item (c) of Administrative Direction on Unification of Court Fees No. 2008/02, it is provided that the claimant shall be provided a date by which the amount is to be*

paid. According to the final warning on payment of the fee for the respondent, the timeframe was 7 days. Given that the respondent received the final warning on 01.06.2012, and that the commitment payment order on behalf of court fee on appeals was done by the respondent on behalf of Kosovo Judicial Council on 06.06.2012, means that the transfer of the amount on behalf of court fee was done on timely manner.

In this legal matter, the Court of Appeal must assess the overall appealed allegations of the respondent and then render a meritorious decision regarding the appeal of the respondent".

20. On 8 April 2014, the Court of Appeals of Kosovo by Decision AC. no. 3779/13 rejected the appeal of the debtor Municipality of Prishtina and upheld Decision E. no. 1220/13 of the Basic Court in Prishtina dated 12 November 2013.

Applicant's allegations

21. The Applicant claims that: *"... the Decision of the Supreme Court violates the right to a fair and impartial trial of article 31 of the Constitution and articles 6.5, 6.6, and 6.7 of the Administrative Instruction 2008/02 on unification of judicial taxes".*

22. The Applicant alleges that: *"... the Decision of the Supreme Court violates the right to a fair trial because the lower instance courts have rejected the appeal of the respondent party for non-payment of judicial taxes".*

23. Furthermore, the Applicant requests the Court to quash the decision of the Supreme Court of Kosovo and to oblige the Basic Court and the Court of Appeals of Kosovo to enforce Decision no. 3581/2012 as well as the enforcement order E. no. 1220/2013 dated 30 April 2014.

Admissibility of the Referral

24. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

25. In this respect, the Court refers to Article 113 of the Constitution which establishes:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> *(...)*
>
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

26. The Court also refers to Article 49 of the Law which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision."*.

27. The Court further takes into account Rule 36 (1) c) of the Rules of Procedure which establish:

> *"(1) The Court may consider a referral if:*
>
> ...
>
> *(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant..."*.

28. The Court notes that the Applicant challenges the Supreme Court decision which was served on him on 20 March 2014. The deadline of four months expired on 20 July 2014. The Referral was submitted to the Court on 13 August 2014.

29. Therefore, the Court considers that the Referral was submitted after the four months deadline prescribed by Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure

30. Moreover, the Court notes that the Applicant was given an opportunity to explain why the referral was not submitted within the legally prescribed deadline. In spite of the Court's request, he has not provided any explanation.

31. Consequently, the referral is out of time and must be declared inadmissible in accordance with Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 25 November 2014, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI128/14, Applicant Fillim Guga, Constitutional review of Judgment ASC-II-0073, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 24 July 2014

KI128/14, Resolution on Inadmissibility, of 9 December 2014, published on 9 February 2015

Keywords*: Individual Referral, civil procedure, right to fair and impartial trial, protection of property, manifestly ill-founded referral.*

On 24 July 2014, the Appellate Panel of the Supreme Court of Kosovo, by Decision ASC-11-0073 rejected as inadmissible the Applicant's request for repetition of proceedings, reasoning that all judgments and decisions of the Appellate Panel are final and against it cannot be filed appeal or request for repetition of procedure.

The Applicant claimed, *inter alia*, that the Appellate Panel of the Supreme Court of Kosovo violated his right to fair and impartial trial, as guaranteed by Article 31 of the Constitution because he was denied the right to repetition of procedure.

The Constitutional Court held that the decision of the Appellate Panel of the Supreme Court was clear and based on the law and that the proceedings were not unfair or arbitrary. The Applicant did not substantiate how the challenged decision violates his rights guaranteed by the Constitution. The Referral was declared inadmissible as manifestly ill-founded pursuant to Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI128/14
Applicant
Fillim Guga
Request for constitutional review of Judgment ASC-11-0073, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 24 July 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Fillim Guga from Gjakova, who is represented by lawyer Mr. Teki Bokshi.

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0073, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatization Agency Related Matters (hereinafter: the Appellate Panel of the Special Chamber), of 24 July 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment [ASC-11-0073] of the Appellate Panel of the Special Chamber, of 24 August 2014, which according to the Applicant's allegation, has violated Article 22 [Direct Applicability of International

Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial] Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo, as well as Articles 1, 4, 6, 7, 12 and 13 of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 6 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 September 2014, the President of the Court, by Decision no. GJR. KI128/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI128/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 22 September 2014, the Court notified the Applicant and the Appellate Panel of the Special Chamber on the registration of Referral.

8. On 9 December 2014, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant established a permanent employment relationship in the period from 20 June 1980 until 23 March 1999, with ,,KNI Dukagjini-BP IMG Tjegulltorja“ (hereinafter: the IMG).

10. On 31 July 2006, the enterprise IMG was privatized.

11. On 10 April 2007, Kosovo Trust Agency (hereinafter: the KTA) published temporary list of employees eligible to 20% from

privatization of the enterprise IMG, in which the Applicant was not included.

12. On 19 April 2007, the Applicant filed a request with the KTA, requesting to be included on the temporary list, claiming that he returned to Kosovo in 2001, when he appeared to work, but his request was rejected by the management of the enterprise.

13. On 26 March 2008, the KTA published the final list of employees, not including the Applicant.

14. On 11 April 2008, the Applicant filed an appeal with the Special Chamber of the Supreme Court of Kosovo against KTA Decision of 26 March 2008, claiming that he is a victim of discrimination since he belongs to the minority community of Kosovo.

15. On 29 April 2008, the Special Chamber of the Supreme Court forwarded to the Applicant the KTA response to his appeal of 11 April 2008. The KTA in its response explicitly stated that: "*that there are no indications that the complainant had lodged any claim against the decision to terminate his employment, or that he intended to return to his previous position*". On the Applicant's allegations that he is a victim of discrimination, the KTA stated: *"...there is no evidence that the complainant had suffered any discrimination within the meaning of Section 10.4 of UNMIK Regulation No. 2003/13 of 9 May 2003 on the Transformation of the Right of Use to Socially-Owned Immovable Property".*

16. On 12 May 2008, the Applicant responded to the KTA allegations of 29 April 2008, where he stated *„that he is a political refugee who had to leave Kosovo and fled to Montenegro".*

17. On 17 June 2008, the Special Chamber of the Supreme Court rendered the Decision [SCEL-08-0001], by which rejected the Applicant's appeal as ungrounded.

18. In the conclusion of the Decision, the Special Chamber of the Supreme Court stated: *„The complainants claiming discrimination are required to submit facts from which it may be presumed that there has been direct or indirect discrimination, pursuant to Section 8.1 of the Anti-Discrimination Law. In addition, once the complainant presents a prima facie case of direct or indirect discrimination, the respondent is obliged to disprove discrimination.*

...

The Special Chamber has reviewed all the evidence and agrees with the analysis of the Respondent [the KTA]. Thus, the Special Chamber rejects the complainant's request to be included in the list of eligible employees."

19. On 14 July 2008, the Applicant filed an appeal against the Decision [SCEL-08-0001] of the Special Chamber of the Supreme Court, of 17 June 2008, referring to UNMIK Regulation no. 2008/4 of 5 February 2008.

20. On 10 September 2008, the Special Chamber of the Supreme Court rendered a decision, by which rejected the Applicant's appeal. In the conclusion of the decision, it is stated: *"The Special Chamber found that UNMIK Regulation No. 2008/4 was subsequently amended by another UNMIK Regulation no. 2008/29, postponing entrance into force of UNMIK Regulation No. 2008/4 until 31 October 2008. Therefore, no appeal was possible against the Judgment of 17 June 2008."*

21. On 15 July 2011, the Applicant filed a request with the Appellate Panel of the Special Chamber, by which requested the repetition of procedure.

22. On 24 July 2014, the Appellate Panel of the Special Chamber rendered the Decision [ASC-11-0073], by which the Applicant's appeal was rejected as inadmissible, with the reasoning: „*The Appeals Panel observed that according to Article 10 paragraph 14 of the Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (LSC), all judgments and decisions of the Appeals Panel are final and not subject to any further appeal or request for repetition of procedure. Moreover, LSC and Annex, envisage no other extraordinary legal remedy against such final decisions of Appeals Panel (such extraordinary remedy is neither envisaged by UNMIK Regulation 2008/4, nor by UNMIK Administrative Direction 2008/6). [...] Therefore, claimant's motion for repetition of procedure is inadmissible, therefore it shall be dismissed ".*

Applicant's allegations

23. In his Referral the Applicant stated that by decisions of the Special Chamber were violated his human rights and fundamental freedoms, guaranteed by the Constitution and the European Convention on Human Rights, and that:

- *„The rights provided by Article 22 of the Constitution of the Republic of Kosovo,*

- *Right to fair and impartial trial, from Article 31 of the Constitution of the Republic of Kosovo,*

- *The rights guaranteed by European Convention on protection of human rights and fundamental freedoms, accompanied by Protocols no. 1, 4, 6, 7, 12 and 13.“*

24. The Applicant addresses the Court with the following request:

> *“To annul Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, ASC-11-0073 of 24.07.2014, as well as the challenged decisions in my request for repetition of procedure – Judgment SCEL-08-0001, of 17.06.2008, Decision of 10.09.2008 and that the PAK be obliged to pay the 20% from the proceeds of privatization of the SOE IMN in Gjakova.“*

Admissibility of the Referral

25. In order to be able to adjudicate the Applicants' Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

26. In this respect, Article 113 paragraph 7, of the Constitution provides:

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

27. In this case, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which provides*:*

> *(1) “The Court may only deal with Referrals if:*
>
> *[...]*

c) the Referral is not manifestly ill-founded."

28. The Court notes that the Applicant filed Referral with the Constitutional Court on 27 July 2009, whereby requesting the constitutional review of the Decision [SCEL-08-0001] of the Special Chamber of the Supreme Court of Kosovo, of 17 June 2008 and the Decision [SCEL-08-0001] of 10 September 2008.

29. On the same date, the Court registered the Applicant's Referral under the number KI33/09.

30. On 18 October 2010, the Court rendered the Resolution on Inadmissibility of Referral KI33/09, pursuant to Article 49 of the Law.

31. Regarding this, the Court notes that in Case KI128/14, it will exclusively deal with the constitutional review of the Judgment [ASC-11-0073] of the Appellate Panel of the Special Chamber of 24 July 2014, whereas it will not review again the decisions that have already been the subject of review in Case KI33/09.

32. As regards the Applicant's Referral KI128/14, the Court considers that the Applicant has not submitted new evidence to justify his claims that the Judgment [ASC 11-0073] of the Appellate Panel of the Special Chamber violated his rights and freedoms, set forth in paragraph 22 of this Resolution.

33. Moreover, the Court is of the opinion that the Appellate Panel of the Special Chamber in the Judgment [ASC-11-0073] of 24 July 2014, responded to the Applicant's request, when it stated: *„that in the case at hand, request for repetition of procedure is filed against Judgment of Special Chamber SCEL-08/0001 of 17.06.2008, which has already been decided by decision of 10.09.2008, which is final. Therefore, the claimant's motion of 15 July 2011, for repetition of procedure is inadmissible"*.

34. Based on this, the Court holds that the explanation given by the Appellate Panel of the Special Chamber in the Judgment [ASC 11-0073] is clear and legally supported, and that the proceedings before the Appellate Panel of the Special Chamber have not been unfair or arbitrary (See, *mutatis mutandis, Shub v. Lithuania*, no. 17064/06, ECHR Decision, of 30 June 2009.).

35. The Constitutional Court reiterates that under the Constitution, it is not its task to act as a court of fourth instance, when considering

the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis, Garcia Ruiz v. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999, see also case 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

36. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, case *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).

37. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005).

38. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, since the Applicant failed to substantiate that the challenged decision violates his rights guaranteed by the Constitution.

Accordingly, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, in the session held on 9 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI133/14, Applicant Xhelil Neziri, Constitutional review of Judgment Rev. no. 253/2012 of 7 May 2013, and Decision CPP. no. 3/2014 of3 June 2014, of the Supreme Court of the Republic of Kosovo

KI 133/14, Resolution on Inadmissibility of 5 November 2014, published on 9 February 2015

Keywords*: Individual Referral, administrative procedure, right to fair and impartial trial, right to work and exercise profession, non-extension of employment contract, composition and impartiality of the courts, repetition of procedure, manifestly ill-founded referral*

The Supreme Court rejected the Applicant's requests for revision and for repetition of procedure, and upheld the decisions of the lower instance courts regarding non-extension of the employment contract.

The Applicant alleged, *inter alia,* that his employer and the regular courts violated the right to equality before the law, his right to fair and impartial trial and the right to work and exercise profession as provided for in Articles 3, 31 and 49 of the Constitution, because they had not based their findings on the relevant facts and that in the first and second instance the same judge participated in the adjudication of the case.

The Constitutional Court reviewed in entirety the course of the regular procedure and of extraordinary procedure and considered that the Applicant's allegations do not constitute sufficient grounds for violation of the rights guaranteed by the Constitution. The Referral was declared inadmissible as manifestly ill-founded pursuant to Rule 36 (1) (d) of the Rules of Procedure

RESOLUTION ON INAMDISSIBILITY
in
Case no. KI133/14
Applicant
Xhelil Neziri
Constitutional review of Judgment Rev. no. 253/2012 of 7 May 2013, and Decision CPP. no. 3/2014 of 3 June 2014, of the Supreme Court of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Xhelil Neziri, from village Velekinca, Municipality of Gjilan.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 253/2012 of 7 May 2013, and Decision CPP. no. 3/2014 of 3 June 2014, of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

3. According to the Applicant, the final Decision of the Supreme Court, CPP. no. 3/2014, of 3 June 2014, was served on him on 15 August 2014.

Subject matter

4. The subject matter is the constitutional review of the Judgment Rev. no. 253/2012, of 7 May 2013, and Decision CPP. no. 3/2014, of 3 June 2014 of the Supreme Court, regarding the alleged

violations of the rights guaranteed by Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], and Article 49 [Right to Work and Exercise Profession] of the Constitution.

Legal basis

5. Legal basis for this case is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 29 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 September 2014, the President of the Court, by Decision no. GJR. KI133/14 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and on the same date by Decision no. KSH. KI133/14 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 5 September 2014, the Court notified the Applicant and the Supreme Court on the registration of Referral.

9. On 5 November 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

Facts according to the regular legal remedies

10. On 1 September 2007, the Applicant concluded the employment contract with the Municipal Directorate of Education in Gjilan (hereinafter: MDE in Gjilan), as a teacher of the law subjects, in the secondary economic school “Marin Barleti” in Gjilan.
11. On 20 August 2008, the MDE in Gjilan rendered the Decision 05. no. 519/08, by which decided to not extend the Applicant’s employment contract. Against this Decision of MDE in Gjilan, the Applicant filed an appeal with the same authority, in order to find out the reasons for termination of his employment contract.

12. On 17 December 2008, the MDE in Gjilan, rejected the Applicant's appeal and left in force its own Decision 05. no. 519/08. Against these decisions, the Applicant filed a statement of claim with the Municipal Court in Gjilan.

13. On 10 January 2012, the Municipal Court in Gjilan (Judgment, C. no. 480/2008), rejected the Applicant's statement of claim, filed against the MDE of Gjilan. The abovementioned court concluded as it follows:

> *"By hearing the claimant in the capacity of the party, the court determined the fact that the claimant, pursuant to the employment contract concluded between him and the Municipal Directorate of Education in Gjilan of 03.09.2007, he established employment relationship with the Secondary Economic School "Marin Barleti" in Gjilan as a teacher of the law subjects with a monthly salary of 214 Euros per month, and that he worked in this position until 31.08.2008, namely until the expiration of the employment contract, and that he was paid until July 2008 for the work done, whereas he was not paid at all for August 2008.*
>
> *Upon analyzing all the evidence collectively, the court rejected the statement of claim of the claimant as lawfully ungrounded, since the respondent respected legal provision of Regulation No. 2001/27 on Essential Labor Law entirely upon terminating the employment relationship".*

14. On 16 January 2012, the Applicant filed an appeal with the District Court in Gjilan against the first instance court judgment. The appeal is based on erroneous determination of factual situation, erroneous application of the material law and violation of UNMIK Regulation No. 2001/27, on Essential Labor Law in Kosovo.

15. On 15 June 2012, the District Court in Gjilan (Judgment, AC. no. 25/2012) rejected as ungrounded the Applicant's appeal, and upheld the Judgment of the first instance court. The abovementioned Court found that the first instance court had correctly and completely determined the factual situation and correctly applied the material law.

Facts according to extraordinary legal remedies

16. On 23 July 2012, the Applicant filed a revision with the Supreme Court against the Judgment of the District Court, due to erroneous

determination of factual situation, erroneous application of the material law and violation of provisions of Article 188 of the Law on Contested Procedure (LCP).

17. On 7 May 2013, the Supreme Court (Judgment, Rev. no. 253/2012), rejected the revision filed by the Applicant and upheld as fair the judgment of the second instance court.

18. In addition, the Supreme Court, held: *"According to the assessment of the Supreme Court, the lower instance courts have correctly decided when they rejected the statement of claim of the claimant, due to the reason that the claimant established employment relationship with the respondent for fixed term within the meaning of Article 10.1, item (b) of UNMIK Regulation No. 2001/27 on Essential Labor Law in Kosovo and that the contract was established for fixed term pursuant to Article 11.1, item (d) the employment relationship is terminated following the expiration of the term of the contract. The lower instance courts have correctly applied the substantive law when they rejected the statement of claim of the claimant on compensation of personal income since after the expiration of the term of employment, all rights and obligations between the employer and the employee are terminated.*
[...]
The claimant was admitted to work with the respondent as a teacher for law subjects and based on the vacancy, however N.G. has been in this position previously and she was reinstated to the position of a teacher of legal subjects which the claimant had, and this was the reason that the claimant's employment contract of fixed term was not renewed."

Facts regarding repetition of procedure

19. On 3 July 2013, the Applicant filed a request for the repetition of procedure with the Court of Appeal of the Republic of Kosovo against the Judgment of the Supreme Court, Rev. no. 253/2012, of 7 May 2013, and the Judgment of the District Court in Gjilani, AC. no. 25/2012 of 15 June 2012, by which he requested that the matter be remanded to the first instance court for retrial and reconsideration.

20. Even though the request for repetition of proceedings was addressed to the Court of Appeals in Prishtina, it appears from the case file that such request was reviewed by the Supreme Court.

21. On 3 June 2014, the Supreme Court (Judgment, CPP. no. 3/2014) rejected as ungrounded the Applicant's request for repetition of procedure, filed against the Judgment of the Supreme Court, Rev. no. 253/2012 of 7 May 2013.

22. Furthermore, the Supreme Court, justifies its decision as it follows:

> *"The proposal for the repetition of procedure is ungrounded.*
>
> *The Supreme Court of Kosovo assesses that by legal provision of Article 232, paragraph 1, item (e) of LCP, it is provided that the procedure may be reiterated upon the proposal of the party if the party gains the possibility to use the courts verdict of the absolute decree, which was earlier issued in the procedure developed among the same parties for the same charge claim. It results by the reasoning of the proposal for reiteration of the procedure that the claimant regarding the abovementioned provision reasoned that the judge B. S. adjudicated in the contentious matter according to the claim of the claimant Xhelil Neziri in case C. No. 480/2008 and participated as a member of the panel in the second instance in the contentious matter according to the claim of claimant N. G. in case Ac. No. 228/2008. Therefore, in this case we deal with different claimants and unique statements of claim, and such a fact mentioned in the proposal for reiteration of the procedure could eventually deal with exclusion of the judge from the procedure, Chapter III of the Law on Contested Procedure. This Court notes that other allegations mentioned in the proposal for reiteration of the procedure on procedural violation by Article 67 of the noted law also have to do with the mentioned Chapter.*
>
> *According to the assessment of the Supreme Court, the claimant did not propose any circumstance by which would be fulfilled the requirements of Article 232 of LCP in order for the procedure to be reiterated, therefore, the latter is rejected as ungrounded".*

Applicant's allegations

23. The Applicant alleges that the MDE in Gjilan and regular courts violated his rights guaranteed by Article 3 of the Constitution because in the first and in the second instance courts the same judge participated in the adjudication of the matter; Article 31 of the Constitution, because the Municipal Court in Gjilan did not

take into account the fact that the Applicant had more relevant facts that his employment is extended than his colleague, whose claim for reinstatement to work was approved; and by Article 49 of the Constitution, because the MDE of Gjilan and regular courts rendered unfair decisions, by leaving the Applicant jobless.

Admissibility of the Referral

24. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution in the Law and the Rules of Procedure.

25. In this respect, the Court refers to Article 48 of the Law, which provides:

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

26. In addition, Rule 36 (1) d) of the Rules of Procedure provides:

> *(1) The Court may consider a referral if:*
>
> *(Amended 28 October 2014)*
> *[...]*
> *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(Amended 28 October 2014)*

27. In the case at hand, the Court notes that the Applicant alleges that the MDE in Gjilan and regular courts violated his rights, guaranteed by Articles 3, 31 and 49 of the Constitution, due to the fact that the authorities that rendered the decisions on his case did not base their conclusions on relevant facts, and as a consequence, the decisions of those courts were rendered by erroneous application of material and procedural law, and that in the first and in the second instance courts the same judge participated in the adjudication of the matter.

28. In this case, the Court reviewed in entirety the course of the regular procedure and of extraordinary procedure and considers that the allegations raised do not constitute sufficient constitutional ground in any stage of their development, that would result in violation of

fundamental rights guaranteed by the Constitution and the European Convention of Human Rights (ECHR).

29. The Court notes that during the regular court procedure, the appeals of the Applicant are based on law (legality), regarding the non-extension of the employment contract by the MDE in Gjilan.

30. Regarding this regular procedure, the Supreme Court, ex-officio assessed the legality of the second instance court judgment and after examination in entirety of case file, it concluded that the revision filed by the Applicant is ungrounded. In this respect, the Court considers that the Judgment of the Supreme Court does not contain elements of constitutional violation of the Applicant's rights, since the decision is substantiated, reasoned and cannot be concluded by any evidence that the judgment is unclear or arbitrary.

31. The Court also notes that in the stage of filing the request for repetition of the procedure against decisions of the second and the third instance courts, the Applicant addresses and supports his appeal, always on the ground of legality and is focused mainly on the violation of the procedural law.

32. In this respect, the Court notes, that the Supreme Court, in the Decision CPP. no. 3/2014, of 3 June 2014, clearly argued that the Applicant's request for repetition of procedure is addressed mainly for the issues, dealing with the participation of the same judge in two court instances, on which issue the Supreme Court responded to the Applicant, by stating "*in this case we deal with different claimants and unique statements of claim, and such a fact mentioned in the proposal for repetition of procedure could eventually deal with exclusion of the judge from the procedure, Chapter III of the Law on Contested Procedure",* therefore the abovementioned court assessed that the Applicant did not present any new fact, new factual circumstance that would allow the approval of the request for repetition of procedure.

33. Therefore, the Supreme Court bases its reason for rejection of the request for repetition of procedure, on the procedural law, which provisions have clearly provided in which cases the parties are allowed to use this legal remedy. Even in this respect, the Applicant failed to substantiate that the Decision on the rejection of the request for repetition of procedure is not reasoned, unclear or arbitrary.

34. The Court further reiterates that it is not a fact finding court and does not adjudicate as the fourth instance court. The Court in principle does not adjudicate the fact whether the regular courts have correctly and completely determined factual situation, or as it is the present case, to determine whether the Applicant's employment was terminated on lawful or unlawful grounds, since this is a jurisdiction of the regular court. For the Constitutional Court the key questions are those, on which existence depends the assessment on possible violations of the rights guaranteed by the Constitution (constitutionality) and not the issues that are clearly legal (legality) (see*, mutatis mutandis, i. a., Akdivar v. Turkey, of* 16 September 1996, R.J.D, 1996-IV, para. 65).

35. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for violation of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECHR, the Judgment of 26 July 2005 or the Resolution of the Constitutional Court, Case KI128/12, of 12 July 2013, of the Applicant *Shaban Hoxha,* request for constitutional review of Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).

36. In these circumstances, the Court finds that the facts presented by the Applicant in any way do not justify his allegation for violation of the right to equality before the law, fair and impartial trial and the right to work.

37. Therefore, the Court concludes that the Applicant's Referral, in accordance with Rule 36 (1) d) of the Rules of Procedure, is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rules 36 (1) d) and 56 (2) of the Rules of Procedure, on 5 November 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI140/14, Applicant Abdurrahman Nazifi, Constitutional review of Decision KP. no. 416/2014 of the Basic Court in Prishtina, of 10 June 2014

KI140/14, Resolution on Inadmissibility of 25 November 2014, published on 9 February 2015.

Keywords*: Individual referral, criminal procedure, criminal offenses of false content, criminal offense of fraud, imprisonment sentence, the principle of subsidiarity, the right to fair and impartial trial, right to legal remedies, non-exhaustion of legal remedies.*

The Basic Court in Prishtina, by Decision Kp. No. 416/2014 rejected as ungrounded the Applicant's request for reopening of criminal proceedings regarding his imprisonment sentence to 3 years for the criminal offenses of false content and fraud respectively.

The Applicant claimed, *inter alia*, that the Basic Court in Prishtina has not correctly applied the provisions of the criminal law and thus violated his rights to fair and impartial trial and to legal remedies guaranteed by Articles 31 and 32 of the Constitution.

The Constitutional Court found that the Applicant had not exhausted all the possibilities in regular court procedure based on the principle of subsidiarity. The Referral was declared inadmissible for non exhaustion of all legal remedies as provided by Article 113.7 of the Constitution and further specified in Rule 36 (1) (b) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case no. KI140/14
Applicant
Abdurrahman Nazifi
Constitutional review of Decision KP. no. 416/2014 of the Basic Court in Prishtina, of 10 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Abdurrahman Nazifi from village Sallabajë, Municipality of Podujeva (hereinafter: the Applicant), represented by Mr. Safet Krasniqi, lawyer from Prizren.

Challenged decision

2. The Applicant challenges Decision KP. no. 416/2014 of the Basic Court in Prishtina, of 10 June 2014, by which his request for reopening the criminal proceedings was rejected.

Subject matter

3. The subject matter is the constitutional review of Decision KP. no. 416/2014 of the Basic Court in Prishtina, of 10 June 2014, which allegedly violated Applicant's rights guaranteed by Article 30 paragraph 5 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 22 and 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 16 September 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 22 September 2014 the Applicant submitted additional (supplemental) documents to the Court.

7. On 7 October 2014 the President of the Court, by Decision no. GJR. KI140/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI140/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 20 October 2014 the Court notified the Applicant of the registration of Referral.

9. On 20 October 2014 the Court sent a copy of the Referral to the Basic Court in Prishtina and the Supreme Court of Kosovo.

10. On 5 November 2014 the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

11. On 18 April 2011 the Municipal Court in Prishtina by Judgment P. no. 279/2006 found the Applicant guilty of the criminal offence of Legalisation of False Content and of the criminal offence of Fraud, by imposing on him a punishment of imprisonment of 3 years.

12. The Applicant filed an appeal within the legal time limit with the Court of Appeals of Kosovo against the Judgment (P. no. 279/2006) of the Municipal Court in Prishtina.

13. On 16 May 2013 the Court of Appeals, by Judgment PA1. No. 766/12 partly approved the Applicant's appeal and modified the Judgment (P. no. 279/2006), of the Municipal Court in Prishtina, by imposing a punishment of imprisonment of 2 years.

14. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against the Judgment (P. no. 279/2006 of 18 April 2011) of the Municipal Court in Prishtina and the Judgment (PA1. No. 766/12 of 16 May 2013) of the Court of Appeals of Kosovo.

15. On 3 April 2014 the Supreme Court of Kosovo, by Judgment PML. no. 58/2014 rejected the Applicant's request for protection of legality as unfounded, reasoning that his allegations were untenable, because *"[...] the challenged judgments do not contain substantial violations of the criminal procedure provisions, since the challenged judgments are understandable, there are no contradictions with themselves and neither with reasons given in them. The challenged judgments contain the necessary factual and legal reasons on all relevant facts of this criminal matter, including the intent of the convict to commit criminal offence [...]"*.

16. On 16 May 2014 the Applicant filed a request for reopening the criminal proceedings with the Basic Court in Prishtina against the Judgment (P. no. 279/2006) of the Municipal Court in Prishtina, modified by the Court of Appeals of Kosovo, by Judgment (PA1. no. 766/12).

17. On 10 June 2014 the Basic Court in Prishtina, by Decision Kp. no. 416/2014 rejected as unfounded the Applicant's request for reopening the criminal proceedings, thereby providing legal advice that against the Decision (Kp. no. 416/2014) an appeal is allowed with the Court of Appeals in Prishtina, within the time limit of 3 days from the day the decision was served.

Applicant's allegations

18. The Applicant alleges: "*that the courts have not correctly applied the provisions of CC and CPC*".

19. The Applicant further alleges that the following articles have been violated:

> *"Article 30, Rights of the Accused, para 5 related to the right to have assistance of legal counsel of his/her choosing, to freely*

communicate with counsel and if she/he does not have sufficient means, to be provided free counsel.

Article 31 [Right to Fair and Impartial Trial] para 1 by which, everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers".

Article 32 Right to Legal Remedies] […]."

20. The Applicant also alleges that: *"The three judgments have not taken into consideration the fact that the sale-purchase contract and supporting documentation has been certified and legalized by the competent and responsible person. At the same time the convict has been damaged due to the fact that he paid the amount of money according to sale-purchase contract of immovable property".*

Admissibility of the Referral

21. The Court first examines whether the Applicant has fulfilled the procedural criteria of admissibility laid down in the Constitution, the Law and the Rules of Procedure.

22. In the present case, the Applicant is a natural person who is basing his Referral on Article 113.7 (Individual referrals) of the Constitution.

23. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

24. In addition, Article 47.2 of the Law provides:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

25. The Court also refers to Rule 36 (1) a) of the Rules of Procedure, which provides:

(1) The Court may consider a referral if:
(Amended 28 October 2014)

[...]

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted, or

(Amended 28 October 2014)

26. In the present case, the Court finds that the Applicant has not exhausted all legal remedies in accordance with Article 113.7 of the Constitution, since the challenged decision (Kp. no. 416/2014) allowed him to file an appeal with the Court of Appeals.

27. Therefore, in this regard, the Court considers that the Applicant's Referral does not meet the procedural criteria of admissibility, as required by Article 113.7 of the Constitution.

28. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of the fundamental rights. Otherwise, the Applicant is liable to have his case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. (See Resolution on Inadmissibility, KI41/09, of 21 January 2010, *AAB-RIINVEST L.L.C. Prishtina v. Government of the Republic of Kosovo,* and *mutatis mutandis,* ECHR, *Selmouni v. France,* no. 25803/94, Decision of 28 July 1999).

29. Consequently, the Referral is inadmissible due to non-exhaustion of legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 25 November 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI148/14, Applicant Driton Kelmendi, Constitutional review of Judgment PML. no. 101/2014, of the Supreme Court of Kosovo, of 6 June 2014

KI148/14, Resolution on Inadmissibility, of 9 December 2014, published on 9 February 2015.

Keywords: *Individual Referral, criminal proceedings, right to fair and impartial trial, interim measure, manifestly ill-founded referral.*

The Supreme Court of Kosovo by Judgment PML. no. 101/2014 rejected as ungrounded the request for protection of legality of the Applicant filed against the decisions of lower instance courts, by which the Applicant was sentenced to 23 years of imprisonment for aggravated murder and unauthorized possession of weapons.

The Applicant alleged among the other that the Supreme Court of Kosovo violated his right to fair and impartial trial as guaranteed by Article 31 of the Constitution, because it rejected and disregarded the Applicant's proposal regarding the presentation of new evidence. The Applicant also requested the imposition of interim measure and suspension of the decision of the Supreme Court of Kosovo.

The Constitutional Court found that regular courts provided in detail a response to the Applicants' allegations and that he had not submitted any evidence of violation of his rights by the regular courts. The Court also rejected the request for the imposition of interim measures because there was no *prima facie* case justified. The Referral was declared inadmissible as manifestly ill-founded, as provided by Rules 36 (2) (b) and 55 (4) and (5) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI148/14
Applicant
Driton Kelmendi
Constitutional review of the Judgment PML. no. 101/2014, of the Supreme Court of Kosovo, of 6 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Driton Kelmendi (hereinafter: the Applicant) from Peja, who is currently serving the imprisonment sentence in the Correctional Centre in Dubrava, who, before the Constitutional Court of Kosovo, is represented by lawyers Mr. Ramë Dreshaj and Mr. Halil Palaj from Prishtina.

Challenged decision

2. The Applicant challenges Judgment PML. no. 101/2014, of the Supreme Court of Kosovo, of 6 June 2014, which was served on the Applicant on 12 June 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment, PML. no. 101/2014, of the Supreme Court, of 6 June 2014, which according to the Applicant's allegations, violated Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the

European Convention on Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

4. The Applicant requests at the same time the imposition of interim measure, by which would be suspended the execution of the final Judgment PML. no. 101/2014, of the Supreme Court of Kosovo, of 6 June 2014.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of the Law on Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 7 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 8 October 2014, the President of the Court, by Decision no. GJR. KI148/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI148/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 10 October 2014, the Court notified the Applicant and the Supreme Court of Kosovo of registration of the Referral.

9. On 9 December 2014, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 14 November 2012, the District Court in Peja by Judgment P. no. 181/12 found the Applicant guilty of the criminal offence of aggravated murder under Article 147, paragraph 4 and 9 of the CCK, and the criminal offense of unauthorized ownership, control, possession or use of weapons under Article 328, paragraph 2 of the Criminal Code of Kosovo, and sentenced him by imposing an

aggregate punishment of a long-term imprisonment to 23 (twenty three) years.

11. On 16 January 2014, the Court of Appeal of Kosovo by Judgment PAKR. no. 134/2013 modified the Judgment P. no. 181/12, of the District Court in Peja, regarding the legal qualification of the criminal offense and regarding the decision on punishment, so that this Court qualified the offense of the aggravated murder under Article 147, paragraph 1, subparagraph 4 of CCK as a criminal offence of murder under Article 146 of the CCK, and for this criminal offence imposed the imprisonment sentence to 17 (seventeen) years, while it upheld the imprisonment sentence imposed by the first instance court to 2 (two) years for the criminal offense of unauthorized ownership, control, possession or use of weapons under Article 328, paragraph 2 of the Criminal Code of Kosovo, and for two criminal offenses, pursuant to Article 71 of CCK imposed the aggregate punishment of imprisonment to 18 (eighteen) years.

12. On 10 May 2014, the Applicant's defense counsels filed a request for protection of legality, by which they allege significant doubt with regard to the accuracy of the decisive facts, determined in the challenged judgments, with a proposal that the Supreme Court of Kosovo annul the challenged judgments, by remanding the case for retrial and proposed the suspension of execution of the imprisonment sentence.

13. On 22 May 2014, the State Prosecutor of Kosovo, by submission KMLP. II. no. 73/14 proposed that the request for protection of legality of the convict's defense counsels is rejected as ungrounded.

14. On 6 June 2014, the Supreme Court by Judgment PML. no. 101/2014 rejected as ungrounded the request for protection of legality of the defense counsels of the convict Driton Kelmendi filed against the Judgment P. no. 181/12, of the District Court in Peja, of 14 November 2012, and the Judgment PAKR. no. 134/2013, of the Court of Appeal of Kosovo, of 16 January 2014, with a detailed reasoning of all allegations filed by the defense counsels.

Applicant's allegations

15. The Applicant alleges that *"...the challenged judgments and the criminal proceedings conducted prior to the judgments have one thing in common: the insistence to not consider the numerous proposals of the defense for processing new evidence. These new*

proposals were either rejected by the same unsound justification, or were completely disregarded, starting from the criminal investigation until the hearing session in the Court of Appeal, respectively, from the judgment of the first instance court, the judgment of the second instance and that of the Supreme Court of Kosovo".

16. The Applicant further alleges that the „*Rejection of evidence proposed by the defense, by disregarding them, had certainly, exceeded the limit to which the Court, pursuant to its free conviction, assessed the evidence and the facts. The fact that the evidence of the defense was rejected by repeated, unsound and unlawful justifications or were completely disregarded – with an unprecedented insistence, but also even if one would not like to, it was impossible to escape from the thought that this was taking place for no good purposes".*

17. The Applicant in the submission before the Constitutional Court further lists a number of proposals on the presentation of evidence that were an integral part of the request for protection of legality filed before the Supreme Court and concerning the factual situation and a series of violations of the Law on Criminal Procedure, which were also argued before the Supreme Court of Kosovo and also before the Court of Appeal.

18. The Applicant requests from the Constitutional Court the following:

"To impose interim measure, to suspend the execution of the final Judgment - serving the imprisonment sentence - as an unconstitutional Judgment, rendered in violation of Article 31 of the Constitution, since he considers that it would cause irreparable damage to the Applicant and leave him to unlawfully serve a non-deserved sentence".

"To hold that there has been violation of Article 31 of the Constitution, Right to Fair and Impartial Trial and Article 6 of the ECHR, Right to a Fair Trial".

"To declare the Judgment PML. no. 101/2014 of the Supreme Court of Kosovo, of 06 June 2014, as null and void".

Admissibility of the Referral

19. The Court observes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

20. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

21. The Court refers also to Article 48 of the Law, which provides:

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

22. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

> *„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> ...
>
> *b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights ".*

23. Considering the Applicant's allegations regarding violation of the Criminal Procedure Code, the Constitutional Court reiterates that is not a court of appeal, when reviewing the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis, Garcia Ruiz v. Spain* [GC), no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1).

24. Considering the Applicant's allegations in respect of claims that the evidence requested and proposed by the defense of the Applicant

was not presented, the Court notes that the Court of Appeal, by Judgment, PAKR. no. 134/2013 of 16 January 2014, taking into account such claims, modified the Judgment P. no. 181/12, of the District Court in Peja, of 14 November 2012, and justified in detail the manner in which it accepted and rejected the evidence, and the manner in which it assessed the evidence.

25. The Judgment PAKR. no. 134/2013 of the Court of Appeal of Kosovo, of 16 January 2014, and the Judgment of the Supreme Court of Kosovo PML. no. 101/2014, of 6 June 2014, in the reasoning provide in detail a response to the Applicant's allegations regarding the reason of applying the relevant rules of procedural and substantive law as well as the reasons of presenting or rejecting the presentation of certain evidence that the Applicant now repeats before the Constitutional Court.

26. The Court emphasizes that the Applicant has not provided any *prima facie* evidence which would point to a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).

27. In this case, the Applicant was afforded opportunities to present the case and to challenge the interpretation of the law, which he considers is wrong, before the District Court in Peja, the Court of Appeal in Prishtina and the Supreme Court of Kosovo. After the review of the proceedings in entirety, the Constitutional Court has not found that the respective procedures were in any way unfair or arbitrary (see, *mutatis mutandis, Shub against Lithuania*, ECHR Decision on admissibility of Referral no. 17064/06, of 30 June 2009)·

28. Finally, the admissibility requirements were not met in this submission. The Applicant failed to show and support by evidence the allegation that his constitutional rights and freedoms were violated by the challenged decision.

29. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) b) of the Rules of Procedure.

Request for interim measure

30. As it was stated above, the Applicant also requests from the Court *"To impose interim measure, to suspend the execution of final*

Judgment - serving the imprisonment sentence - as an unconstitutional Judgment, rendered in violation of Article 31 of the Constitution, since he considers that it would cause irreparable damage to the Applicant and leave him to unlawfully serve a non-deserved sentence".

31. In order that the Court imposes interim measure, pursuant to Rule 55 (4 and 5) of the Rules of Procedure, it is necessary that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
>
> *(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and (...)*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".*

32. As stated above, the Applicant's Referral is inadmissible and for this reason, there is no *prima facie* case for granting interim measure. Therefore, the request for interim measure must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law, and Rules 36 (2) b) and 55 (4) and (5) of the Rules of Procedure, on 9 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the request for Interim Measure;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI77/14, Applicant Alban Rexha, Constitutional review of Judgment Pkl. no. 1/2010, of the Supreme Court of Kosovo, of 3 December 2010

KI 77/14, Resolution on Inadmissibility, of 16 September 2014, published on 10 February 2015

Key words: Individual referral, criminal proceedings, long-term imprisonment, reduced liability, criminal offenses of robbery and unauthorized possession of arms, right to fair and impartial trial, out of time referral

The Supreme Court of Kosovo, by Judgment Pkl. no. 1/2010, of 3 December 2010, rejected the Applicant's request for protection of legality as ungrounded with regard to long-term imprisonment sentence for committing the criminal offenses of robbery and of unauthorized possession of arms.

The Applicant claimed, among the other, that the regular courts have violated his right to fair and impartial trial guaranteed by Article 31 of the Constitution.

The Constitutional Court found that the Referral was submitted after expiry of deadline, and moreover, noted that based on the documents submitted, the proceedings conducted before the regular courts had not been unfair or arbitrary. The Referral was declared inadmissible because it was submitted out of legal time limit as stipulated in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI77/14
Applicant
Alban Rexha
Constitutional review of the Judgment Pkl. no. 1/2010 of the Supreme Court of Kosovo, of 3 December 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Alban Rexha from Peja (hereinafter: the Applicant), represented by Mr. Mahmut Halimi, a practicing lawyer.

Challenged decision

2. The Applicant challenges the Judgment, Pkl. No. 1/2010 of the Supreme Court of Kosovo of 3 December 2010 which rejected his request for protection of legality.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly infringed the right to a fair and impartial trial as well as general principles of the judicial system, guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), the European Convention of Human Rights and Freedoms and the International Covenant on Civil and Political Rights.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 30 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 March 2014 the President of the Court by Decision, No. GJR. KI77/14 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and by Decision, No. KSH. KI77/14 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 23 May 2014 the Court notified the Applicant and the Supreme Court of the registration of the Referral.

8. On 18 June 2014 the Court also notified the Basic Court in Prishtina of the registration of the Referral and requested that it submits to the Court the return receipt as evidence, confirming the date when the Judgment Pkl. No. 1/2010, of 3 December 2010 of the Supreme Court was served on the Applicant.

9. On 10 July 2014 the Court received the reply from the Basic Court in Prishtina.

10. On 16 September 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 26 June 2007, the District Court in Prishtina, by Judgment P. No. 667/06 sentenced the Applicant to a long-term imprisonment of 23 (twenty three) years for committing in co-perpetration, the criminal offence of theft in nature of robbery, robbery and unauthorized ownership, control, possession or use of weapons.

12. The Applicant filed a request for protection of legality with the Supreme Court against the Judgment, P. No. 667/06 of the District Court of 26 June 2007, Judgment, Ap. No. 488/2007 of the Supreme Court of 11 June 2008 and Judgment, API. No. 5/2008 of the Supreme Court of 11 June 2009. The Applicant requested the Supreme Court to: *"remand the case for retrial to the first instance court or to impose a much more lenient sanction on him* [the Applicant]*"*.

13. On 3 December 2010, the Supreme Court of Kosovo by Judgment, Pkl. No. 1/2010 rejected the Applicant's request for protection of legality as ungrounded and held that:

> *"[…] sufficient factual and legal reasons have been provided, which are recognized by this court as fair and lawful. The first instance court assessed the evidence pursuant to Article 387, paragraph 2 CPCK* [Criminal Procedure Code of Kosovo], *while for the contradictory evidence it acted pursuant to provisions of Article 396, paragraph 7 CPCK, by fully presenting which facts and for what reasons it considers them as proven or unproven. Upon considering the contradictory evidence, it analyzed all the evidence processed during the main hearing and in this regard it has presented its conclusions, which, the second instance court approved as correct, objective and lawful, so did the third instance and as such are also approved by this court.*
>
> *It is true that a neuropsychiatric expertise against the convict Alban Rexha has not been conducted. The reasons for not doing so have been provided in the last paragraph of Judgment Ap. no. 488/2007 of 11.06.2008. Except for the proposal to conduct such expertise, no evidence was presented to the court which would show the psychical illness of the convict.*
>
> *[…]*
>
> *Considering the above, this court finds that there is no essential violation of the criminal procedure provisions pursuant to Article 403, paragraph 1, items 8, 12 and paragraph 2, item 1 of the CPCK, the provisions of the material law have been correctly applied, thus the requests for protection of legality have been rejected as ungrounded".*

Applicant's allegations

14. In his Referral, the Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial] and Article 102 [General Principles of the Judicial System], paragraph 2 and 3 of the Constitution; Article 6 [Right to a Fair Trial], paragraph 3, item d) of the European Convention on Human Rights; as well as Article 14, paragraph 1, item b) of the International Covenant on Civil and Political Rights.

15. The Applicant alleges that these rights have been violated because the regular courts have not approved his request, to undergo: *"a neuropsychiatric examination in order to obtain a professional scientific report whether the latter* [Applicant] *acted in a state of substantially diminished competence in the moment of the commission of the criminal offence."*

16. Finally, the Applicant concludes by requesting the Court to: *"annul all cited Judgments and remand the case for retrial"*.

Admissibility of the Referral

17. The Court has to examine beforehand whether the Applicant has met the necessary requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

18. In this respect, the Court refers to Article 49 of the Law which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. […]".*

19. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure:

> *"(1) The Court may only deal with Referrals if:*
>
> *[…]*
>
> *c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant […]".*

20. Based on the evidence of the case file, the Court notes that the Applicant filed his Referral on 30 April 2014, while the challenged decision, respectively Judgment Pkl. No. 1/2010 of the Supreme Court has been issued on 3 December 2010.

21. The Applicant, in the Referral form submitted to the Court, emphasizes that the Judgment (Pkl. No. 1/2010, of 3 December 2010) of the Supreme Court "*has not been yet served on the convicted (the Applicant*)". The Applicant did not reason at all this allegation in his Referral, nor he did presented any argument or evidence to prove that the courts did not deliver the said Judgment; he merely states so in the Referral form without any further explanation.

22. Furthermore, the Court notes that the Applicant, exactly on the same date when he submitted his Referral to the Court, i.e. on 30 April 2014, he addressed the Basic Court in Prishtina requesting to be served with the Judgment (Pkl. No. 1/2010, of 3 December 2010) of the Supreme Court, by claiming that he did not receive a copy of the said Judgment.

23. In this respect, the Court notes that even though the Applicant claims that the Judgment (Pkl. no. 1/2010, of 3 December 2010) of the Supreme Court was not served on him, he submitted the same to the Court together with his Referral.

24. Based on the foregoing, the fact that the Applicant is currently serving his sentence because the regular court decisions became final, the fact that the Applicant has submitted to the Court the Judgment which he claims that was not served to him, the Court will consider the date when the Judgment was adopted as the date of service on the Applicant, respectively 3 December 2010.

25. According to this, it results that the Applicant submitted his Referral to the Court after the expiry of legal deadline of four months, as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, respectively about three (3) years and four (4) months after the legal deadline.

26. The Court recalls that the objective of the four months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case *O'LOUGHLIN and Others v. United Kingdom*,

No. 23274/04, ECtHR, Decision of 25 August 2005).

27. However, even if it is presumed that the Applicant has submitted the Referral within the time limit as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments applicable in the Republic of Kosovo. As a result, the Constitutional Court cannot therefore act as a "fourth instance court (see case, *Garcia Ruiz v. Spain*, No.30544/96, ECtHR, Judgment of 21 January 1999; see also case. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

28. As mentioned above, in substance, the Applicant alleges that the regular courts have violated his rights with regard to a fair and impartial trial by not approving his request for "*a neuropsychiatric examination*". The Applicant alleges that such an examination was necessary to prove "*whether he was under the condition of substantially diminished capacity at the moment of the commission of the criminal offence"*

29. From the evidence submitted together with the Referral it can be seen that the Applicant has exhausted all legal remedies available and that the regular courts considered and responded to his complaints regarding his request. In this respect, the Court recalls the reasoning of the Supreme Court on the request of the Applicant for a neuropsychiatric examination. In that case the Supreme Court stated:

> *„It is grounded the fact that a neuropsychiatric expertise against the trialed Alban Rexha has not been conducted. […]Except one proposal, no evidence is presented to the court which would show the injury of the convict due to psychological illness. On the contrary the convict during all the stages of the procedure provides a logical defense, aimed at easing his situation during the criminal procedure, by claiming that he was constrained by the co-perpetrators."*

30. In this respect, the Constitutional Court reiterates that it can only consider whether the evidence has been presented in a correct manner and whether the proceedings in general viewed in their

entirety have been conducted in such a way that the Applicant had a fair trial (see inter alia case *Edwards v. United Kingdom,* Application no. 13071/87, Report of the ECHR adopted on 10 July 1991).

31. In this regard, the Court notes that the reasoning referring to the Applicant's allegations that he was not allowed a neuropsychiatric expertise, in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court also found that the proceedings before the District Court have not been unfair or arbitrary (see case *Shub v. Lithuania*, No.17064/06, ECHR Decision of 30 June 2009).

32. For the foregoing reasons, it results that the Referral is out of time and must be declared inadmissible pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rules 36 (1) (c) and 56 (b) of the Rules of Procedure, on 16 September 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI87/14, Applicant Ismail Guri, Constitutional review of Notification KMLC. no. 7/14 of the Office of the Chief State Prosecutor, dated 10 February 2014

KI 87/14, Resolution on Inadmissibility of 8 December 2014, published on 10 February 2015

Key words: *Individual referral, civil procedure, right to fair and impartial trial, right to judicial protection of rights, right to pre-emption, immovable property, repetition of proceedings, referral manifestly ill-founded*

The State Prosecutor, by Notification KMLC. no. 7/14 rejected the Applicant's request for protection of legality holding that he did not find any legal ground to file extraordinary legal remedy. The essence of the complaint had to do with the right to pre-emption and annulment of the sale contract with respect to immovable property.

The Applicant alleges among the other that the District Court, the Court of Appeal and the State Prosecutor, by rejecting his request to repeat the proceedings, have violated his rights to fair and impartial trial, to judicial protection of rights, namely his rights guaranteed by Articles 31 and 54 of the Constitution.

The Constitutional Court found that the Applicant did not accurately clarify how and why the challenged decisions which rejected his request to repeat the proceedings entailed a violation of his individual rights and freedoms guaranteed by the Constitution. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Rule 36 (2) (d) of the Rules of Procedures.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI87/14
Applicant
Ismail Guri
Constitutional review of the
Notification KMLC. no. 7/14 of the Office of the Chief State Prosecutor,
dated 10 February 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Ismail Guri, from Kaçanik (hereinafter, the Applicant), who is represented by Ms. Vahide Braha, a lawyer practicing in Prishtina.

Challenged Decisions

2. The Applicant challenges the Notification (KMLC. no. 7/14 dated 10 February 2014) of the State Prosecutor, by which the Applicant's request for protection of legality was rejected. This decision was served on the Applicant on 3 March 2014.

3. The Applicant also challenges the Decision (Ca. no. 5315/2012, dated 5 November 2013) of the Court of Appeal in relation to the Decision (Ac. no. 534/09, dated 4 April 2011) of the District Court which rejected his request to repeat the proceedings regarding his claim.

Subject Matter

4. The subject matter is the constitutional review of the challenged decisions, which allegedly *"violated the Applicant's rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution); Article 6 [Right to a Fair Trial] and Article 14 [Prohibition of Discrimination] of the European Convention on Human Rights (hereinafter, ECHR)".*

5. The Applicant also requested the Court to hold a public hearing in his case.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 15 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. On 10 June 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kyeziu and Arta Rama-Hajrizi.

9. On 8 July 2014, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Office of the Chief State Prosecutor and to the Court of Appeal.

10. On 8 December 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 13 May 2004, the Applicant filed a claim with the Municipal Court in Kaçanik, requesting confirmation of his right to pre-emption as well as the annulment of the sales contract regarding an immovable property.

12. On 23 November 2004, the Municipal Court (Judgment C. no. 95/2004) rejected as ungrounded the Applicant's claim and confirmed the sales contract regarding the immovable property.

13. The Applicant appealed to the District Court in Prishtina against the Judgment of the Municipal Court.

14. On 10 December 2007, the District Court (Judgment Ac. no. 65/2005) rejected as ungrounded the appeal of the Applicant and confirmed the Judgment of the Municipal Court.

15. The Applicant filed a request for revision with the Supreme Court against the Judgments of the District Court and Municipal Court.

16. On 18 December 2008, the Supreme Court (Judgment Rev. I. no. 95/2008) rejected the Applicant's request for revision, holding that *"[…] the lower court's Judgments correctly applied the material provisions and the mentioned Judgments do not consist of essential violations of contested procedures as presented in the revision"*.

17. On 29 April 2009, the Applicant filed a request to repeat the proceedings with the District Court in Prishtina, arguing that he had found new evidence which allegedly confirmed that *"the Judge […] was not impartial and decided in his disfavor because he is the nephew of respondent […]."*

18. On 4 April 2011, the District Court in Prishtina (Decision Ac. no. 534/2009) rejected as ungrounded the Applicant's request to repeat the proceedings by holding that

> *"[…] The allegation of the claimant that after the decision of the Supreme Court of Kosovo, he did some research and found out that the Judge of the matter at the first instance Court was not impartial and decided against him, since he was the nephew of respondent […] is ungrounded, unproven and at the same time unsustainable and as such rejected, with the reasoning that the*

claimant, respectively litigants, during the first hearing of the main trial, the Presiding Judge notified them with the composition of the panel and the claimant made no objections.

[…] the claimant did not present convincing evidence on the level of closeness between the Judge and as it is said his nephew on this case, since it is not enough only to state that "he is the nephew" without providing any explanation.

Due to the fact that the claimant in his proposal to repeat the proceedings did not provide any persuasive evidence that was not presented during the previous contested proceedings, which would impact on rendering a decision on claimant's favor, the Judge assessed that this situation does not meet the legal requirements from Article 232 paragraph 1 item g) in conjunction with Article 233 paragraph 2 of LCP for repetition of contested proceedings, which was concluded with the final Judgment of the Supreme Court of Kosovo Rev. I. no. 85/2008 on 18.12.2008."

19. The Applicant appealed to the Supreme Court against the Judgment of the District Court due to *"erroneous and incomplete determination of the factual situation and erroneous application of the material law"*. He requested the Supreme Court *"to quash the appealed Decision or to amend it and to approve the proposal to repeat the proceedings."*

20. Following the reorganization of the judicial system in Kosovo on 2013, the Supreme Court transferred the Applicant's case for adjudication to the Court of Appeal as the competent second instance court.

21. On 5 November 2013, the Court of Appeal (Decision CA. no. 5315/2012) rejected as ungrounded the Applicant's appeal and confirmed the Decision of the District Court. The Court of Appeal reasoned its decision as follows:

"[…] While examining the allegations of the appeal that point to the erroneous determination of the factual situation, the panel of this Court found that the same are ungrounded because the first instance Court determined the same based on the provided evidence, while the burden of proof fell on the claimant […] to justify the allegations presented in the proposal for repetition of the proceedings with respective evidence and prove the same in respective manner".

22. The Applicant filed a request for protection of legality with the State Prosecutor against the Decision of the District Court and the Decision of the Court of Appeal.

23. On 10 February 2014, the State Prosecutor (Notification KMLC. no. 7/14) rejected the Applicant's request for protection of legality, holding that *"[…] after having reviewed both Decisions as well as the case files delivered by the Court, I confirm that I did not find legal grounds in order to exercise the extraordinary legal remedy, request for protection of legality".*

Applicant's allegations

24. The Applicant claims that *"[…] in case an impartial judge was to adjudicate on this case the evidence would have been taken into consideration and as such the claim of the Applicant would have been evidently stronger."*

25. The Applicant further claims that *"[…] the Court did not mention at all the proposed evidence as new evidence submitted to the court."*

26. Thus, the Applicant alleges that the District Court, the Court of Appeal and the State Prosecutor, by rejecting his request to repeat the proceedings, have violated his rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] and his rights guaranteed by the ECHR, namely Article 6 [Right to a Fair Trial] and Article 14 [Prohibition of Discrimination].

27. The Applicant further alleges that the regular courts have violated *"Article 19 of the Law on Transfer of Real Estate, Articles 458, 527, 528 and Article 533 of LOR* [Law on Obligations Relationship] *[…]"* when they rejected his request to reopen his case.

28. The Applicant concludes by requesting the Court:

> *"[…] to restitute the Applicant's lost right on pre-emption due to arbitrary and unlawful application of regular court decisions, Decision Ac.no539/09 of 04.04.2011, Court of Appeal CA.no.5315/2012 of 05.11.2013 and the State Prosecution KMLC.no.7/14 of 10.02.2014 and to annul all those challenged decisions based on presented evidence.*

We propose to the Court to invite the judge of the Basic Court of Kaçanik […] in the main hearing session or beforehand, to provide a statement in regards to Applicant's allegations […]. The Court can then officially in written request from civil status office to provide the evidence that the maiden name of his mother […]."

Admissibility of the Referral

29. The Court has first to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

30. In that respect, the Court refers to Article 113 of the Constitution which establishes

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[…]

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

31. In addition, Article 49 of the Law provides

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision".

32. The Court notes that the Applicant, in regards to his request to repeat the proceedings in his case, has sought to protect his rights before the District Court, the Court of Appeal and the Office of the Chief State Prosecutor.

33. The Court also notes that the Applicant was served with the Notification of the Office of the Chief State Prosecutor on 3 March 2014 and filed his Referral with the Court on 15 May 2014.

34. Consequently, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies afforded to him

by the applicable law and the Referral was submitted within the four months time limit.

35. However, the Court also must take into account Article 48 of the Law and Rule 36 of the Rules of Procedure.

Article 48 of the Law

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*

Rule 36 of the Rules of Procedure

> *"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: d) the Applicant does not sufficiently substantiate his claim".*

36. The Applicant, as said above, challenges the Notification of the State Prosecutor (KMLC. no. 7/14, dated 10 February 2014), the Decision (CA. no. 5315/2012, dated 5 November 2013) of the Court of Appeal, as well as the Decision (Ac. no. 534/2009, dated 4 April 2011) of the District Court alleging a violation of his right to fair and impartial trial as guaranteed by the Constitution and the ECHR.

37. In fact, the Applicant argues that the District Court, the Court of Appeal and the Office of the Chief State Prosecutor rejected his request to repeat the proceedings *"even though the evidence provided by him was a strong basis to order the repeat of the proceedings".*

38. In that respect, the Court notes that both the District Court and the Court of Appeal reasoned their decisions in respect to the allegations of the Applicant, whereas the State Prosecutor notified him that there was no legal ground for a request for protection of legality to be filed.

39. In this regard, the Court refers to the reasoning of the District Court which addresses the allegations raised by the Applicant before the Constitutional Court. The District Court held that:

> *"[...] Proposal for repetition of proceedings due to receiving new facts may be requested only if a party, not by his fault,*

was unable to submit these circumstances before the conclusion of the previous proceedings with a final Court decision, which on this case we do not have such a situation. Furthermore, during the repetition of proceedings the Court does not examine the already determined factual situation by a final Court decision, since they are definite, but only determines new facts and evidence, if they exist and are may impact the taken decision, in which case the repetition of proceedings would be admissible, but in this case the proposal submitted by the claimant do not meet the legal requirements, since they do not specify circumstances that would lead to a conclusion that there are legal grounds for the Judge to be excluded, as provided for by Article 68.4 of the LCP [Law on Contested Procedure]."

40. Furthermore, the Court also refers to the reasoning of the Court of Appeal, stating that *"[…] the claimant did not provide and did not deliver to the first instance Court any evidence that would justify the allegations presented in the proposal for repetition of proceedings, which would present grounds for this proposal. The claimant simply presents his allegations, claims few of his acknowledgments but does not justify the same with any evidence that would present grounds for such allegation."*

41. Finally, the Court refers to the response of the State Prosecutor stating that *"[…] I did not find legal grounds in order to exercise the […] request for protection of legality."*

42. Moreover, the Applicant has neither accurately clarified how and why the challenged decisions which rejected his request to repeat the proceedings entailed a violation of his individual rights and freedoms guaranteed by the Constitution nor has he presented evidence justifying the allegation of such a violation.

43. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

44. The Constitutional Court also reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts or other public authorities, when applicable; to interpret and apply the pertinent rules of both procedural and

substantive law. (See, *mutatis mutandis*, *García Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

45. The Constitutional Court can only consider whether the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, *Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

46. The Court considers that the proceedings before the District Court, the Court of Appeal and the rejection of his proposal to submit a request for protection of legality by the Office of the Chief State Prosecutor have been fair and reasoned (See, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009).

47. In the present case, the Court also notes that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred articles of the Constitution support his claim, as required by Article 113 (7) of the Constitution and Article 48 of the Law.

48. Lastly, the Court notes that the Applicant requests the Court to hold a public hearing in his case. The Court considers that there is no matter of fact or of law related with his constitutional complaint to be clarified. Therefore, the Court concludes that the request does not meet the conditions foreseen by Rule 39 [Right to hearing and waiver] of the Rules of Procedure and thus it is rejected.

49. In sum, the Applicant's allegations of a violation of his rights and freedoms under the Constitution and the ECHR are unsubstantiated and not proven and, thus, are manifestly ill-founded.

50. For the foregoing reasons, the Court considers that, in accordance with Article 48 of the Law and Rule 36 (2) d), the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, Rules 36 (2) d) and 56 (b) of the Rules of Procedure, on 8 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI130/14, Applicant Fidan Hyseni, Constitutional Review of Judgment, Pml. no. 107/2014 of the Supreme Court of the Republic of Kosovo, of 30 May 2014

KI 130/14, Resolution on Inadmissibility of 9 December 2014, published on 10 February 2015

Keywords*: Individual Referral, criminal procedure, right to legal remedies, criminal offense of endangering public safety, manifestly ill-founded referral*

The Supreme Court of Kosovo, by Judgment Pml. no. 107/2014 of 30 May 2014, rejected the Applicant's request for protection of legality as ungrounded regarding his sentence to 6 months imprisonment for the criminal offense of endangering public safety.

The Applicant alleged, *inter alia*, that the Court of Appeal and the Supreme Court violated his right to legal remedies guaranteed by Article 32 of the Constitution because he was not served with the Judgment of the Basic Court in Mitrovica.

The Constitutional Court found that the regular courts had reasoned their decisions when rejected the Applicant's appeal as out of time and that the conducted proceedings were not unfair or arbitrary. The Applicant did not in any way justify his allegations of constitutional violations and, therefore, in accordance with Rule 36 (2) (b) of the Rules of Procedure, the Applicant’s Referral was declared inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI130/14
Applicant
Fidan Hyseni
Constitutional Review of Judgment, Pml. no. 107/2014 of the Supreme Court of the Republic of Kosovo, dated 30 May 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Fidan Hyseni residing in Mitrovica (hereinafter: the Applicant). He is represented by Mr. Gani Rexha, lawyer from Mitrovica.

Challenged decision

2. The Applicant challenges the Judgment, Pml. no. 107/2014 of the Supreme Court of the Republic of Kosovo (hereinafter, the Supreme Court) of 30 May 2014 in relation with the Decision, PA1. no. 320/2014 of the Court of Appeal of the Republic of Kosovo (hereafter, the Court of Appeal) of 27 March 2014.

3. The last decision (Judgment, Pml. no. 107/2014 of 30 May 2014) was served on the Applicant on an unspecified date.

Subject matter

4. The subject matter is the request for constitutional review of the challenged Judgment and the challenged Decision which have

allegedly violated the Applicant's rights guaranteed by Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereafter: the Constitution), Article 14, paragraph 5, of the International Convention on Civil and Political Rights and Article 2 [Right to Education] of the Protocol to the European Convention on Human Rights (hereafter: the Protocol to the ECHR).

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 18 August 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 September 2014 the President of the Court by Decision, GJR. KI130/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI130/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

8. On 15 September 2014 the Court notified the Applicant of the registration of the Referral and requested that he files a power of attorney for the representative that he had announced in his Referral.

9. On 22 September 2014 the Applicant submitted the requested document to the Court.

10. On 15 October 2014 the Court notified the Supreme Court and the Court of Appeal of the registration of the Referral and sent a copy of it to them.

11. On 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

12. On 5 December 2012 the Municipal Public Prosecution in Mitrovica filed a criminal charge against the Applicant based on the suspicion that he had committed the criminal offence of Endangering the Public Safety.

13. On 29 January 2014 the Basic Court in Mitrovica (Judgment, P. no. 168/2012) sentenced the Applicant to imprisonment of six (6) months for having committed the criminal offence as charged by the Municipal Public Prosecution. The Municipal Court also imposed an accessory punishment on the Applicant whereby he was prohibited from driving a motor vehicle for one (1) year.

14. The Applicant filed an appeal against the Judgment of the Basic Court with the Court of Appeal due to *"substantial violations of the provision of criminal procedure, erroneous and incomplete ascertainment of the factual situation, violation of material law, decision on sanction and decision on accessory punishment."*

15. On 27 March 2014 the Court of Appeal (Decision, PA1. no. 320/2014) rejected the appeal of the Applicant as out of time. In its Decision, the Court of Appeal held:

> *"[…] The appeal of the defendant's lawyer […] is out of time.*
>
> *The case file, respectively delivery note for personal service indicated that the Judgment rendered by the first instance court P.no.168/2012 dated 29.01.2014 is served on the defendant on 30.01.2014 and the defendant confirmed receiving the challenged judgment by signing it. The defendant's lawyer filed an appeal with the Court against the challenged judgment on 24.02.2014. Given that an appeal against the judgment is allowed within 15 days when the defendant is served with the judgment, in this case it turns out that the appeal of the defendant was submitted after the deadline therefore it is decided as in the enacting clause of this decision."*

16. The Applicant filed a request for protection of legality with the Supreme Court due to *"substantial violations of the provision of criminal procedure"*. In his request, the Applicant claimed that

> *"[…] the first instance Judgment was not served on the defendant nor did the defendant confirm that he was served with it by his signature. Case files, especially delivery note for personal service confirms that it is not the defendant's personal signature, but of someone else who signed the judgment service instead of him."*

17. On 30 May 2014 the Supreme Court (Judgment, Pml. no. 107/2014) rejected the Applicant's request for protection of legality and held as follows:

> *"[…] the request for protection of legality is ungrounded. […] the delivery note for serving the sentenced person with the Judgment of the Basic Court in Mitrovica […] can be found in case files. This delivery note contains the name, surname and address of the sentenced person, number and date of judgment, signature of the sentenced person. This delivery note has no note for eventual remarks. Therefore, this Court concluded that all legal rules for personal service of judgment were considered when the judgment of the first instance was served on the convicted person."*

Applicant's allegations

18. The Applicant alleges that the Court of Appeal and the Supreme Court violated his rights as guaranteed by Article 32 [Right to Legal Remedies] of the Constitution, Article 14, paragraph 5 of the International Convention on Civil and Political Rights, and Article 2 [Right to Education] of the Protocol to the ECHR.

19. The Applicant states that *"the defendant was not served with the first instance Judgment at all."* In this regard, he claims that his right to *"file an appeal against the Judgment of the first instance"* was violated because according to him *"the Court of Appeal should have […] determined the fact whether the defendant was personally served with the first instance Judgment and then observe the timelines of the appeal."*

20. Furthermore, the Applicant claims that *"the ascertainment of the Supreme Court in Prishtina that all legal rules for personal service of the Judgment were considered when the first instance Judgment was served on the sentenced person is also ungrounded."*

21. *The Applicant concludes by requesting the following from the Court:*

> *"[...] to declare the Judgment of the Supreme Court, Pml. no. 107/2014 of 30.05.2014 and the Decision of the Court of Appeal in Prishtina, PA1. no. 320/2014 of 30.05.2014, as invalid as a result of violating the right to a legal remedy and remand the matter to the Supreme Court of Kosovo in Prishtina for retrial."*

Admissibility of the Referral

22. *The Court examines whether the Applicant has met the admissibility requirements which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.*

23. *In this respect, the Court refers to Rule 36 (2) (b) of the Rules of Procedure, which provide that:*

> *"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,*
>
> *[...]"*

24. As mentioned above, in substance, the Applicant complains that his right to a legal remedy has been violated by the Court of Appeal and the Supreme Court because allegedly he did not receive nor sign the receipt form for the delivery of the Judgment of the Basic Court.

25. The Court takes note of the Applicant's allegations that his right a legal remedy has been violated following an alleged failure of the Court of Appeal and the Supreme Court to fully respect the provisions of the criminal procedure law when serving him the Judgment of the Basic Court.

26. However, the Court also notes that the Court of Appeal reasoned its Decision when it rejected the Applicant's appeal as out of time by referring to provisions of law. Furthermore, the Court also notes that in the procedure for the review of protection of legality, the

Supreme Court reasoned its decision regarding these particular allegations of the Applicant.

27. In this respect, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

28. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegation of violation of the criminal procedure law allegedly committed by the Court of Appeal when it rejected his appeal as out of time. The Supreme Court stated that:

> *"[...] this appeal was dismissed as out of time by the decision of the Court of Appeal [...] since the time limit for filing an appeal by the defence of the sentenced person stems out from the day when the judgment was served on the sentenced person and in this case, the defence filed an appeal after legal time limit had expired."*

29. Furthermore, the Court also recalls the reasoning of the Supreme Court in regards to Applicant's allegations on "possible misuse when serving the Judgment". The Supreme Court held as follows:

> *"However, the issue highlighted within the request for protection of legality, is not an issue which can be reviewed by this Court. Other remedies should be used in order to confirm any possible misuse when serving the Judgment."*

30. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).

31. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case Garcia Ruiz vs. Spain, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to

an arguable claim of a violation of his rights as protected by the Constitution.

32. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see inter alia case Edwards v. *United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

33. In relation to this, the Court notes that the reasoning in the Judgment of the Supreme Court referring to Applicant's allegations that he was not served with the Judgment of the Basic Court in compliance with provisions of the criminal procedure law is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal and the Basic Court have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

34. In the present case, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violations of the constitutional rights invoked by the Applicant.

35. Consequently, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rules 36 (2) b) and 56 (b) of the Rules of Procedure, on 9 December 2014, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI80/14 and KI 93/14, Applicants Gazmend Musollaj and Nezir Kerrellaj, Constitutional review of Judgment Pml. no. 166/13 of the Supreme Court of the Republic of Kosovo, dated 6 November 2013

KI 80/14_KI 93/14, Resolution on Inadmissibility, of 25 November 2014, published on 11 February 2015

Key words*: Individual Referral, criminal procedure, long-term imprisonment, criminal offenses of aggravated murder and unauthorized possession of weapons, right to fair and impartial trial, equality before the law, the applicability of international law, out of time referral*

The Supreme Court of Kosovo, by Judgment Rml. no. 166/13, of 6 November 2013, rejected as ungrounded the Applicants' requests for protection of legality, holding that the lower instance courts have correctly applied the criminal law when they found the Applicants guilty of committing criminal offenses of aggravated murder in co-perpetration and of unauthorized possession of weapons.

The Applicant Gazmend Musollaj (KI80/14) claimed violation of paragraph 4 of Article 33 of the Constitution on the Principle of Legality and Proportionality in Criminal Cases, whereas the Applicant Nezir Kerrellaj (KI93 / 14) claimed violation of Article 3 Equality Before the Law, Article 19 Applicability of International Law and Article 31 on the Right to Fair and Impartial Trial of the Constitution.

The Constitutional Court found that the Applicants' Referrals were filed after expiry of legal deadline of 4 months. The referrals were declared inadmissible because they were not submitted within the time limit prescribed by Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Cases No. KI80/14 and KI93/14
Applicants
Gazmend Musollaj and Nezir Kerrellaj
Constitutional review of Judgment Pml. no. 166/13 of the Supreme Court of the Republic of Kosovo, dated 6 November 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicants

1. The Referrals were submitted by Mr. Gazmend Musollaj from village Gurakoc, Municipality of Istog and Mr. Nezir Kerrellaj from village Serbobran, Municipality of Istog (hereinafter, the Applicants). Mr. Gazmend Musollaj (KI80/14) is represented by Mr. Zenel Mekaj, lawyer from Peja, whereas Mr. Nezir Kerrellaj (KI93/14) is represented by Mr. Zeqir Berdynaj, lawyer from Peja.

Challenged Decision

2. The Applicants challenge the Judgment Pml.no.166/13 dated 6 November 2013 of the Supreme Court of the Republic of Kosovo (hereinafter, the Supreme Court), which rejected as ungrounded their request for protection of legality.

3. The challenged Judgment was served on the Applicants on 23 December 2013.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court.

5. The Applicant Gazmend Musollaj (KI80/14) claims that the challenged Judgment "*has violated his constitutional right guaranteed by Article 33 [The Principle of Legality and Proportionality in Criminal Cases] paragraph 4 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).*"

6. The Applicant Nezir Kerrellaj (KI93/14) claims that the challenged Judgment "*has violated his rights guaranteed by the Constitution, namely Article 3 [Equality before the Law], Article 19 [Applicability of International Law] and Article 31 [Right to Fair and Impartial Trial].*"

Legal basis

7. The Referral is based on Article 113.7 of the Constitution, Article 22 and 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

8. On 8 May 2014, the Applicant Gazmend Musollaj submitted the Referral (KI80/14) to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court). On 22 May 2014, the Applicant Nezir Kerrellaj filed the Referral (KI93/14) with the Court.

9. On 10 June 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

10. On 18 June 2014, in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered that the Referral KI93/14 to be joined to the Referral KI80/14 and that the Judge Rapporteur and the Review Panel for both cases (KI80/14 and KI93/14) be the same as it was decided in the Referral KI80/14.

11. On 20 June 2014, the Court notified the Applicants on the registration of Referrals KI80/14 and KI93/14 and the joinder of these two Referrals. The Court also requested from the Applicants to submit a power of attorney for Mr. Zenel Mekaj and for Mr. Zeqir Berdynaj as well as to complete their Referrals. On the same date, the Court sent a copy of these Referrals to the Court of Appeal.

12. On 30 June 2014, the Applicant Gazmend Musollaj (KI80/14) submitted the additional documents requested by the Court.

13. On 4 September 2014, the Court requested from the Basic Court in Peja to provide a copy of the return paper, indicating the date on which the Applicants were served with the challenged Judgment of the Supreme Court.

14. On 12 September 2014, the Applicant Nezir Kerrellaj (KI93/13) submitted the additional documents requested by the Court.

15. On 16 September 2014, the Basic Court in Peja submitted the additional information requested by the Court.

16. On 18 September 2014, the Court sent a copy of the Referrals KI80/14 and KI93/14 to the Supreme Court.

17. On 25 November 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

18. On 29 March 2012, the District Court in Peja (Judgment, P. no. 473/11) found the Applicants guilty for committing in co-perpetration the criminal offence of aggravated murder. The Applicant Gazmend Musollaj (KI80/14) was also found guilty for having committed the criminal offence of unauthorized ownership, control or possession of weapons.

19. The Applicant Gazmend Musollaj (KI80/14) was sentenced with twenty-seven (27) years of long-term imprisonment, while the Applicant Nezir Kerrellaj (KI93/14) was sentenced with fifteen (15) years imprisonment.

20. The Public Prosecutor of the District Court in Peja and the representative of the injured Z. A. filed an appeal with the Supreme

Court against the Judgment of the District Court in Peja regarding the length of the sentence.

21. On 12 December 2012, the Supreme Court (Judgment Ap. no. 391/2012) replaced the previous sentence of the Applicant Gazmend Musollaj (KI80/14) with thirty-two (32) years of long-term imprisonment, whereas the previous sentence of the Applicant Nezir Kerrelaj (KI93/14) was replaced with thirty (30) years of long-term imprisonment.

22. The Applicants filed an appeal with the Supreme Court against the Judgment of the Supreme Court (Ap. no. 391/2012, of 12 December 2012).

23. On 21 March 2013, the Supreme Court (Judgment Pa. II. no. 1/2013) rejected as ungrounded the Applicants' appeals and upheld the Judgment of the Supreme Court.

24. The Applicants filed a request for protection of legality with the Supreme Court against that Judgment.

25. On 6 November 2013, the Supreme Court (Judgment Pml. no. 166/2013) rejected as ungrounded the Applicants' requests for protection of legality, by holding that *"[...] the court of first instance, second instance and that of the third instance, have correctly applied the criminal law when they concluded that the actions of the convict constitute elements of criminal offense for which the convicts were found guilty [...]"*.

Applicants' allegations

26. The Applicant Gazmend Musollaj (KI80/14) claims a violation paragraph 4 of Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution. He alleges:

> *"[...] the general principle is violated, since it should be acted on his favor, whereas by the first instance court, the convict Musollaj for the aforementioned criminal offences is sentenced to long-term imprisonment in duration of 27 years, however the second instance court modifies the decision of the first instance court and imposes the sentence of 30 years imprisonment, before the entrance into force of the new Criminal Code, whereas the third instance court rejects the appeals of the defense counsels and upholds the Judgment of the second instance court in the hearing, following the entrance*

into force of the new Criminal Code, which means that the decision was not final yet".

27. The Applicant Nezir Kerrellaj (KI93/14) claims a violation of Article 3 [Equality before the Law], Article 19 [Applicability of International Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution. He alleges:

"[...] in the present case should be respected the law that is more favorable for the accused, i.e. the law which was in force at the time of commission of the criminal offence and the imposed sentence was 15 years and maximum 20 years could be imposed, and not 30 years of imprisonment as the courts acted [...]"

Admissibility of the Referral

28. The Court examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. In this respect, the Court refers to Article 49 of the Law, which provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. [...]".

30. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure, which foresees:

"(1) The Court may consider a referral if: [...] (c) the referral is filed within four months from the date on which the decision on which the decision on the last effective remedy was served on the Applicant [...]".

31. The Court notes that the challenged Judgment was served on the Applicants on 23 December 2013.

32. The Court observes that the Applicant Gazmend Musollaj (KI80/14) filed his Referral on 8 May 2014, while the Applicant Nezir Kerrellaj (KI93/14) filed his Referral on 22 May 2014.

33. Therefore, the Court considers that the Applicants have submitted their Referrals to the Court after the deadline of four months

provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

34. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that the cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case *O'Loughlin and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

35. Consequently, the Referral is out of time and must be rejected as inadmissible, pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 49 of the Law, Rules 36 (1) (c) and 56 (b) of the Rules of Procedure, on 25 November 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI97/14, Applicant Velibor Jokić, Constitutional review of Decision PN. no. 610/2013, of the Court of Appeal of Kosovo, dated 23 October 2013

KI 97/14, Resolution on Inadmissibility, of 8 December 2014, published on 11 February 2015

Key words: *Individual Referral, civil and criminal proceedings, right to fair and impartial trial, right to judicial protection of rights, protection of property, subsidiary claimant, ratione materiae (subject matter jurisdiction)*

The Court of Appeal of Kosovo, by Judgment PN. no. 610/2013, of 23 October 2013, decided that the first instance court acted correctly when it rejected the Applicant's indictment as ungrounded - as a subsidiary claimant – filed against the director of the administration of the Municipality of Viti.

The Applicant alleged, *inter alia*, that the rejection of his indictment by the regular courts had denied him access to justice and, therefore, he was denied the peaceful enjoyment of the property. The Applicant referred to the violation of the right to fair and impartial trial, right to legal remedies and the right to protection of property provided by Articles 31, 32 and 46 of the Constitution and the relevant Articles of the European Convention on Human Rights .

The Constitutional Court found that the Applicant's complaints regarding the criminal proceedings against the director of administration of the Municipality of Viti do not come within the scope of the right to fair trial under Article 31 of the Constitution, and moreover, those proceedings had no bearing whatsoever on his rights to peaceful enjoyment of the property. The Referral was declared inadmissible pursuant to Rule 36 (3) (e) of the Rules of Procedure because the Referral was incompatible *ratione materiae* with the Constitution

RESOLUTION ON INADMISSIBILITY
in
Case no. KI97/14
Applicant
Velibor Jokić
Constitutional review of the Decision of the Court of Appeals of Kosovo,
PN. no. 610/2013, dated 23 October 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Velibor Jokić, resident in Serbia.

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeals of Kosovo rejecting his indictment as subsidiary prosecutor, PN.no. 610/2013, dated 23 October 2013. This decision was served on the Applicant on 04 February 2014.

Subject matter

3. The Applicant alleges that the aforementioned Decision of the Court of Appeals violated his constitutional rights as guaranteed by Article 24 [Right to Equality Before the Law], Article 31 [Right to a Fair Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant also invokes Articles 6, 13 and 14

of the European Convention on Human Rights (hereinafter: ECHR), as well as Article 1 of Protocol 1 to the ECHR.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 (b) of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 04 June 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 04 July 2014, the President appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 18 November 2014, Court notified the Applicant of the registration of the Referral. On the same date, a copy of the Referral was communicated to the Court of Appeals of Kosovo.

8. On 08 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The facts of the case

As to the Applicant's property claims

9. It appears from the file that the Applicant claims ownership of two parcels of land located in the Municipality of Viti. Apparently, the Applicant's ownership was confirmed by the Municipal Court of Vitina in 1994.

10. On 11 March 2004, the Applicant submitted a petition to the Directorate of Urbanism, Cadastre and Environmental Protection of the Municipality of Viti requesting registration of his ownership of these two parcels in the municipal cadastre. However, this request was not implemented. The Applicant requested the Municipal Court of Viti to force the execution of his request.

11. On 11 January 2008, the Municipal Court of Viti apparently approved the request for forced execution. However, on 24 September 2008, the Director of Administration of Viti Municipality, X. S., apparently rejected the Applicant's request to register the properties. It appears that, on 06 March 2008, with Decision no. 01-013/838, the Municipal Assembly of Viti had ordered the temporary suspension of the transfer of registration of properties that were currently registered in the names of Socially-Owned Enterprises or Publicly-Owned Enterprises to become registered in the names of private individuals.

12. The Applicant has apparently undertaken various legal steps against the refusal to register the properties in his name. It appears that these various proceedings are still pending, but those proceedings are not the object of this referral.

As to the Applicant's criminal prosecution

13. In 2009, the Applicant filed criminal charges against the Director of Administration of the Municipality of Viti. The Applicant constituted himself as "subsidiary prosecutor" under Chapter V of the Kosovo Code of Criminal Procedure (UNMIK/REG/2003/26, as amended by Law no. 03/L-003 of 06 November 2008). The Applicant charged the Director of Administration with the criminal offense of "Abusing official position or authority", under Article 339, paragraph 1, of the Criminal Code of Kosovo (UNMIK/REG/2003/25, as amended by Law no. 03/L-002 of 06 November 2008).

14. On 12 October 2012, by decision UO.no.48/2009, the Municipal Court in Viti ruled to reject the indictment of the Applicant against the Director of Administration because the action of which he was accused did not constitute a criminal offense. The Municipal Court considered that the accused Director of Administration was merely implementing the decision of the Municipal Assembly of 06 March 2008.

15. The Applicant submitted an appeal against this Ruling to the full panel of the court. The Applicant argued that he had submitted his request for registration of the properties on 11 March 2004, whereas the Municipal Assembly of Viti had not decided to temporarily suspend the registration of properties until 06 March 2008. The Applicant alleged that the failure to register the properties in his name during the four years prior to the decision of

the Municipal Assembly constituted the criminal offense of abuse of position.

16. On 15 May 2013, by decision UO. no. 48/2009, the Basic Court of Gjilan, Branch in Viti, ruled to reject as ungrounded the Applicant's appeal. The Basic Court considered that the Director of Administration was simply executing the decision of the Municipal Assembly and had not in any other way abused his position or authority. The Applicant submitted an appeal against this ruling.

17. On 23 October 2013, by decision PN. no. 610/2013, the Court of Appeals ruled that the Applicant's appeal was not grounded. The Court of Appeals stated that:

> *"This court found that, in this particular case, the appeal was not grounded and that the first instance court acted correctly when it rejected as not grounded the appeal of [the Applicant], which proposed the annulment of the Ruling of the Municipal Court in Viti, [...] because [the Director of Administration], in the quality of responsible person, had acted pursuant to the decision of the Municipal Assembly of Viti [...], which had temporarily suspended the transfer of immovable properties registered under the name of former public enterprises under the name of private persons."*

Applicant's allegations

18. The Applicant claims a violation of his constitutional rights as guaranteed by Article 24 [Right to Equality Before the Law], Article 31 [Right to a Fair Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], and Article 54 [Judicial Protection of Rights] of the Constitution. The Applicant also invokes Articles 6, 13 and 14 of the European Convention on Human Rights (hereinafter: ECHR), as well as Article 1 of Protocol 1 to the ECHR.

19. The Applicant alleges that his right to the peaceful enjoyment of his property has not been protected by the public authorities and the courts. Furthermore, he alleges that, by rejecting the indictment of his subsidiary prosecution, the courts have denied to the Applicant the right of access to justice.

20. In addition, the Applicant alleges that the courts have failed to provide reasons for their decisions, in violation of the Applicant's right to a fair trial. He claims that he was denied the right to

equality with the other party to the proceedings and that he has not benefitted from a trial within a reasonable time.

Admissibility of the Referral

21. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

22. The Court has also to determine whether the Applicant has met the requirements of Article 113 (7) of the Constitution and Article 47 (2) of the Law. Article 113, paragraph 7 provides that,

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

23. The final decision on the Applicant's case is the Ruling of the Court of Appeals PN. no. 610/2013 dated 23 October 2013, against which no further appeal is possible. As a result, the Applicant has shown that he has exhausted all legal remedies available under the law.

24. The Applicant must also prove to have met the requirements of Article 49 of the Law concerning the submission of the Referral within the legal time limit. It can be seen from the case file that the final decision on the Applicant's case is the Ruling of the Court of Appeals PN. no. 610/2013 dated 23 October 2013, which was served on the Applicant on 04 February 2014, whereas the Applicant submitted the Referral with the Court on 04 June 2014, meaning that the Referral has been submitted within the four month deadline prescribed by the Law and Rules of Procedure.

As to the access to judicial remedies

25. The Applicant alleges that he has been denied access to judicial remedies for the protection of his property rights. The Applicant claims that he has been denied his right to the free enjoyment of his property as protected by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR.

26. The Court notes that various legal and judicial procedures are mentioned in the file, but that none of these proceedings are

explained or elaborated. No copies of decisions in such proceedings are included in the file. Indeed, it appears that at least some of these proceedings may still be pending. Furthermore, the Court notes that the proceedings which are the object of this Referral have no bearing on the Applicant's right to the free enjoyment of his property, but instead concern a criminal accusation brought against a public official for abuse of position.

27. As such, the Court considers that the Applicant has failed to substantiate on constitutional grounds his claims in relation to his right to judicial protection of his rights and to a legal remedy, and did not provide any evidence that his rights and freedoms have been violated in this regard by the regular courts.

28. Rule 36 (2) (d) of the Rules foresees that "*The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: […] the Applicant does not sufficiently substantiate his claim;"*

As to the right to a fair trial and the enjoyment of property

29. The Applicant claims that he has not benefitted from a fair trial, in violation of Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR.

30. Article 31 of the Constitution, in the relevant part of its second paragraph, provides that,

"Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges […]"

31. Article 6, paragraph 1, of the ECHR, in its relevant part, provides that,

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing […]"

32. Furthermore, Article 53 of the Constitution provides that,

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

33. The Court notes that the Applicant's complaints in relation to a fair trial relate exclusively to criminal proceedings against a third party in which the Applicant had constituted himself as subsidiary prosecutor. The Applicant's indictment of the third party was rejected by the trial court and by the Court of Appeals on the grounds that the accusations against this third party did not constitute a criminal act.

34. The Court notes that, if these criminal proceedings had been allowed to continue, the outcome of these criminal proceedings could only have resulted in a determination of the criminal charges brought against this third party. There were no criminal charges brought against the Applicant.

35. When reading Article 31 of the Constitution, in the light of Article 6, paragraph 1, of the ECHR, the Court finds that the phrase *"as to any criminal charges",* as used in Article 31, must be understood to mean *"as to any criminal charges brought against the Applicant"*. As such, the Applicant's claim a violation of his right to a fair trial could not come within the scope of the heading *"as to any criminal charges*" contained in Article 31 of the Constitution.

36. Furthermore, with respect to rights and obligations, the Court recalls the Judgment of the European Court of Human Rights in the case of *Perez v. France* (no. 47287/99, Judgment of 12 February 2004), which states, in paragraphs 70 and 71, that,

> *"70. [The European Court of Human Rights] notes that the Convention does not confer any right, as demanded by the applicant, to "private revenge" or to an actio popularis. Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" [...].*
>
> *71. The [European] Court concludes that a civil-party complaint comes within the scope of Article 6 § 1 of the Convention,* ***except in the cases referred to in the previous paragraph.*** [Emphasis added]"

37. In contrast with the case of *Perez v. France*, the Applicant was not a civil party to a criminal prosecution, but had himself instituted criminal proceedings as subsidiary prosecutor. It appears from the file that that these criminal proceedings did not include a claim for

compensation for any damages suffered by the Applicant. Furthermore, these criminal proceedings could not have influenced the outcome of any other legal proceedings regarding the Applicant's property rights. As such, the outcome of the criminal prosecution of the Director of Administration of the Municipality of Viti would not have affected the Applicant's enjoyment of any rights, nor would it have determined any obligations of the Applicant.

38. As quoted above from the Judgment of Perez v. France, the ECHR does not provide a right to have a third party prosecuted or sentenced for a crime. The Constitution also does not confer such a right.

39. Given that the proceedings complained of do not concern a determination of any rights and obligations of the Applicant, it follows that the Applicant's allegation of a violation of his right to a fair trial also does not come within the scope of the heading *"as to any rights and obligations",* contained in Article 31 of the Constitution.

40. In conclusion, the Court finds that the Applicant's complaints in relation to the criminal proceedings against the Director of Administration of Viti Municipality do not come within the scope of the right to a fair trial under Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR.

41. In addition, the Court notes that the Applicant complains that his right to the free enjoyment of his property was violated because of the refusal of the regular courts to allow his subsidiary prosecution of the Director of Administration of Viti Municipality. However, as outlined above, these proceedings had no bearing whatsoever on the Applicant's property rights.

42. As such, the Court finds that the Applicant's allegation of a violation of his property rights does not come within the scope of Article 46 of the Constitution and Article 1 Protocol 1 of the ECHR, because the enjoyment of his property rights could not in any way have been affected by these proceedings.

43. Therefore, the Court considers that the Applicant's complaints in relation to his right to a fair trial and to his right to protection of property are incompatible *ratione materiae* with the Constitution.

44. Rule 36 (3) (e) of the Rules foresees that *"A Referral may also be deemed inadmissible in any of the following cases: [...] the Referral is incompatible ratione materiae with the Constitution."*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (2) (d), 36 (3) (e) and 56 (b) of the Rules of Procedure, on 8 December 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI112/14, Applicant Srboljub Krstić, Constitutional review of Decision Rev. no. 63/2014, of the Supreme Court of Kosovo, of 3 April 2014

KI 112/14, Resolution on Inadmissibility, of 22 October 2014, published on 12 February 2015

Keywords: Individual Referral, civil procedure, equality before the law, protection of property, manifestly ill-founded referral

The Supreme Court of Kosovo, by Decision Rev. no. 63/2014, of 3 April 2014 rejected the Applicant's request for revision filed against lower instance courts regarding the failure to complete the statement of claim in the form required by law.

The Applicant alleged, *inter alia*, that the Decision of the Supreme Court on rejection of the revision as inadmissible has violated his right to equality before the law provided by Article 3 of the Constitution.

The Constitutional Court found that the explanations of the regular courts were clear and legally grounded and that the proceedings were not unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded pursuant to Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI112/14
Applicant
Srboljub Krstić
Request for constitutional review of the Decision of the Supreme Court of Kosovo, Rev. no. 63/2014, of 3 April 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Srboljub Krstić, village of Preoce, Municipality of Gračanica, who is represented by lawyer Mr. Isak Islami from Prishtina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo, Rev. no. 63/2014, of 3 April 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision [Rev. no. 63/2014] of the Supreme Court of Kosovo, of 3 April 2014, by which according to the Applicant's allegation, was violated Article 3 (Equality Before the Law) of the Constitution of the Republic of Kosovo.

Legal basis

4. Article 113. 7 of the Constitution, Article 49 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 3 July 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 August 2014, the President of the Court by Decision no. GJR. KI112/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, President of the Court, by Decision no. KSH. KI112/14, appointed Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 29 September 2014, the Court notified the Applicant and the Supreme Court on the registration of Referral.

8. On 22 October 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 10 October 2012, the Applicant filed the claim with the Basic Court in Prishtina, Branch in Gračanica (hereinafter: the Basic Court) against Mr. A. N., residing in Smedereva, Republic of Srbija, by which he requested the confirmation of the property right over the parcel with surface area of 712 m2, which is registered in the cadastre under the number P-73414058-00353-2.

10. The Applicant stated in his statement of claim that the value of the dispute in this legal matter is 300 (three hundred) euro.

11. On 15 July 2013, the Basic Court rendered the Decision [P. no. 2673/12] requesting from the Applicant to complete the Referral within 3 days upon the service of this Decision and to specify the accurate address of the respondent.

12. On 31 July 2013, the Basic Court rendered Decision [P. no. 2673/12] by which the Applicant's claim is considered withdrawn, pursuant to Article 102.3 and Article 112 of the Law on Contested Procedure (hereinafter: the LCP).

13. On the same date (31 July 2013), the Applicant filed an appeal with the Court of Appeal against the Decision of the Basic Court of 31 July 2013.

14. On 25 October 2013, the Court of Appeal rendered the Decision [Pž. no. 2882-2013], by which the Applicant's appeal was rejected as ungrounded and the Decision of the Basic Court [P. no. 2673/12] of 31 July 2013, was upheld in entirety. In the conclusion of the Decision, the Court of Appeal stated: „*...that the Applicant's appeal is not based on legal grounds, since by appealed reasons, the Applicant did not challenge the factual situation on which is based the first instance decision".*

15. On 7 February 2014, the Applicant submitted the request for revision to the Supreme Court of Kosovo.

16. On 3 April 2014, the Supreme Court of Kosovo rendered the Decision [Rev. no. 63/2014], by which the Applicant's request for revision was rejected as inadmissible, pursuant to Article 211.3 of LCP.

Relevant law

Law on Contested Procedure (LCP) No. 03/L- 006

Article 102.3: *"It will be considered that the submission is withdrawn if not returned to the court within the specified period. If returned uncorrected or not supplemented, the submission shall be rejected."*

Article 112: *"If the addressee, the adult member of his family, authorized person, the employee of the state body or legal person, refuses to accept the document without any legal justification, the person effecting the service shall leave the document at home or workplace of the addressee or attach it on the door of the home or workplace. The person effecting the service shall note on the receipt the date, hour and reason for refusal and the place where the document is left. Service is thereby effected."*

Applicant's allegations

17. In the Referral, the Applicant stated that the challenged Decision [Rev. no. 63/2014], of the Supreme Court violated his constitutionally guaranteed rights, and that: Article 3 of the Constitution of the Republic of Kosovo, which provides that the Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.

18. The Applicant addresses the Court with the following request:

> *"By this referral, we want to achieve the respect of law and avoidance of violations, by seeking the approval of the revision of 03.04.2014, of the Supreme Court of Kosovo, which is in contradiction with the requested revision and also in contradiction to legal rules, where based on the revision we have not presented the amount lower than 3000 euro. Therefore, the Supreme Court of Kosovo should have considered the request for the revision, filed within legal time limit and not to reject it by Decision 63/2014."*

Admissibility of Referral

19. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure of the Court.

20. In this respect, Article 113, paragraph 7 of the Constitution, provides:

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

21. In the present case, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

"(1) The Court may only deal with Referrals if:

[...]

(c) the Referral is not manifestly ill-founded".

22. As stated above, the Applicant claims that the Decision of the Supreme Court of Kosovo [Rev. no. 63/2014], of 3 April 2014, violated his rights guaranteed by Article 3 (Equality before the Law) of the Constitution.

23. In this regard, the Court notes that the Applicant did not explain in his Referral how and why the Decision of the Supreme Court [Rev. no. 63/2014], violated his rights guaranteed by the Constitution, but he tried to justify his claims on alleged violations of Article 3 of the Constitution, by the stance: *„[...] that Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions. "*

24. The Court reiterates that it is not its task under the Constitution, to act as a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and substantive law (See, *mutatis mutandis, Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28; see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).

25. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in entirety, have been conducted in such a way that the Applicant had a fair trial (See, *inter alia, Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

26. Moreover, the Court notes that the Supreme Court by Decision [Rev. no. 63/2014] of 3 April 2014 rejected the Applicant's request for revision, pursuant to Article 211.3 of LCP.

27. In this connection, the Court recalls that Article 211.3 of LCP provides*: "Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the*

value of the object of contest shown in the charge doesn't exceed 3,000 €."

28. Accordingly, the Court holds that the explanation given by the Supreme Court in Decision [Rev. no. 63/2014] is clear and legally grounded and that the proceedings before the Supreme Court and other regular courts were not unfair or arbitrary (See, *mutatis mutandis, Shub v. Lithuania,* no. 17064/06, ECHR Decision of 30 June 2009).

29. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005).

30. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant has failed to prove that the challenged decision violates his rights guaranteed by the Constitution.

31. Therefore, the Referral is manifestly ill-founded and should be declared inadmissible, pursuant to Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 22 October 2014, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama Hajrizi	Prof. Dr. Enver Hasani

KI122/14, Applicant Adem Berisha, Constitutional review of Decision Plk. No. 72/14 of the Conditional Release Panel, of 19 June 2014

KI122 / 14, Resolution on Inadmissibility, of 25 November 2014, published on 13 February 2015

Keywords: Individual Referral, criminal procedure, the right to fair and impartial trial, imprisonment sentence, conditional release, manifestly ill-founded referral.

The Conditional Release Panel of the Kosovo Judicial Council, by Decision Plk. no. 72/14, of 19 June 2014 had rejected the Applicant's request for conditional release for the remainder of his imprisonment sentence.

The Applicant claimed that the challenged decision violated the rights guaranteed by the Constitution, Article 22 [Direct Applicability of International Agreements and Instruments], paragraph 1 and 2, Article 31 [Right to Fair and Impartial Trial] and Article 34 [Right not to be Tried Twice for the Same Criminal Act].

The Constitutional Court found that the decision of the Conditional Release Panel was reasoned and that the Applicant has not accurately clarified nor to substantiate how and why the challenged decision entails a violation of his rights and freedoms guaranteed by the Constitution. The Referral was declared inadmissible as manifestly ill-founded as provided by Article 48 of the Law and further specified in Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI122/14
Applicant
Adem Berisha
Constitutional review of the
Decision Plk. No. 72/14 of the Conditional Release Panel,
dated 19 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Adem Berisha, from village Grashticë, Municipality of Prishtina (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Decision Pkl. No.72/14 of the Conditional Release Panel of the Kosovo Judicial Council (hereinafter, the Conditional Release Panel), dated 19 June 2014, which rejected the Applicant's request for conditional release for the remaining part of his imprisonment sentence.

3. The challenged Decision was served on the Applicant on 20 June 2014.

Subject Matter

4. The subject matter is the constitutional review of the challenged Decision, which allegedly *"violated his rights guaranteed by the Constitution, namely Article 22 [Direct Applicability of International Agreements and Instruments] paragraph 1 and 2, Article 31 [Right to Fair and Impartial Trial] and Article 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution)".*

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, in conjunction with Article 22 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 23 July 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 6 August 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kyeziu and Arta Rama-Hajrizi.

8. On 29 August 2014, the Court notified the Applicant on the registration of the Referral and requested that he submits the challenged Decision to the Court.

9. On 9 September 2014, the Applicant filed the requested document with the Court.

10. On 25 September 2014, the Court sent a copy of the Referral to the Conditional Release Panel.

11. On 2 October 2014, the Conditional Release Panel replied to the Referral.

12. On 25 November 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. On 2 November 2009, the District Court in Prishtina (Judgment P. No. 727/08) sentenced the Applicant to the penalty of imprisonment.

14. The Applicant appealed to the Supreme Court of Kosovo against the Judgment of the District Court in Prishtina.

15. On 14 March 2012, the Supreme Court (Judgment Ap. No. 459/2009) rejected as ungrounded the appeal of the Applicant.

16. On 22 March 2013, the Applicant started to serve his sentence at the Correctional Center in Smrekonicë.

17. On an unspecified date, the Applicant filed a request for conditional release with the Conditional Release Panel.

18. On 19 June 2014, the Conditional Release Panel (Decision Plk. 72/14) rejected the Applicant's request for conditional release.

19. In its reasoning, the Conditional Release Panel held that:

> *"[…] Upon reviewing all the data found in the files, the Panel found that:*
>
> *Release due to termination of the sentence is scheduled for 23 April 2015.*
>
> *The convicted person has shown good behavior and correct stance during the service of the sentence, while, as regards to the criminal offence, he declared that the act had been committed by carelessness.*
>
> *However, despite the positive reports in relation to the degree of re-socialization, the Panel assesses that the purpose of the criminal sanction […] has not been achieved […]. This is the reason why the request of the convicted person was rejected. However, due to his good behavior, the Panel decided to reconsider this matter after three (3) months.*

When deciding, the Panel considered all the requirements for conditional release as foreseen by Article 14 of the Regulation No. 01/39 on the Organization and Function of the Conditional Release Panel.

Based on what is stated above and pursuant to Article 25, item 1.2 of the Regulation No. 01/39 of the Kosovo Judicial Council, it was decided as in the enacting clause of this decision."

Applicant's allegations

20. The Applicant claims that the Decision of the Conditional Release Panel "[...] *did not consider the reports of the Correctional Center assessed by the professional staff, but it rendered an erroneous decision whereby it assessed once again the factual situation upon which the Court* [District Court in Prishtina] *had already rendered a decision".*

21. Thus, the Applicant alleges that the rejection of his request for conditional release *"violated his rights guaranteed by the Constitution, namely Article 22 [Direct Applicability of International Agreements and Instruments] paragraph 1 and 2, Article 31 [Right to Fair and Impartial Trial] and Article 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution".*

22. The Applicant further alleges that the Decision of the Conditional Release Panel also violated *"the Criminal Code and Criminal Procedure Code (Article 94 paragraph 1) [...]".*

23. The Applicant concludes by requesting the Court *"to annul the Decision of the CRP* [Conditional Release Panel] *dated 19 June 2014 and to remand the case for reconsideration, as soon as possible, and to assess the factual situation and the achievement of the re-socialization level as supported by the reports of the C.C.* [Correctional Center] *Smrekonica. I want to emphasize that the C.C. Smrekonica belongs to open type of correctional facilities".*

Admissibility of the Referral

24. The Court examines whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

25. In that respect, the Court refers to Article 113 of the Constitution which establishes:

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*
>
> *[...]*
>
> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law".*

26. In addition, Article 49 of the Law provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision".*

27. The Court notes that the Applicant has exhausted all available legal remedies considering that the decisions of the Conditional Release Panel are final and not subject to appeal nor to administrative conflict. The Court also notes that the Applicant was served with the Decision of the Conditional Release Panel on 20 June 2014 and filed his Referral with the Court on 23 July 2014.

28. Thus, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

29. However, the Court also must take into account Article 48 of the Law and Rule 36 of the Rules of Procedure.

Article 48 of the Law

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

Rule 36 of the Rules of Procedure

"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: […] d) the Applicant does not sufficiently substantiate his claim"

30. The Applicant, as said above, challenges the Decision of the Conditional Release Panel (Plk. No. 72/14, dated 19 June 2014), alleging a violation of his right to fair and impartial trial, direct applicability of the international agreements and instruments and his right not to be tried for the same criminal act.

31. In fact, the Applicant argues that the Conditional Release Panel rejected his request for conditional release by providing him with *"an unclear and confusing reasoning."* He further argues that the Conditional Release Panel *"did not take into consideration the reports of the Correctional Center as evaluated by the professional staff but it rendered an erroneous decision […]".*

32. In that respect, the Court notes that the Conditional Release Panel reasoned its Decision on these particular allegations of the Applicant by holding that *"[…] despite the positive reports in relation to the degree of re-socialization, the Panel assesses that the purpose of the criminal sanction foreseen by Article 41 of the Criminal Code of the Republic of Kosovo and Article 4 of the Law on Execution of Penal Sanctions has not been achieved considering that the purpose of the sentence is not only the rehabilitation and re-socialization of the convicted person, but also the influence on other persons so that they refrain from committing such or similar criminal offences. This is the reason why the request of the convicted person was rejected.*

33. Furthermore, the Court also refers to the Reply of the Conditional Release Panel, stating that "*the allegation of the convicted person for violation of the Constitution and law does not stand, since, as such, the case […] was treated in conformity with the law and professional standards, considering the purpose of the execution of criminal sanction, as foreseen in the law and regular procedures."*

34. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

35. The Constitutional Court also reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts or other public authorities, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *García Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

36. The Constitutional Court can only consider whether the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial. (See, *inter alia*, *Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

37. The Court considers that the proceedings before the Conditional Release Panel have been fair and reasoned. (See, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009).

38. The Court recalls that the Applicant's case is similar to the case No. KI90/13 (see case KI90/13 of the Applicant *Lumni Limaj*, Constitutional Court case, Resolution on Inadmissibility of 24 March 2014). In that case, the Applicant had requested the constitutional review of the Decision of the Conditional Release Panel which rejected his request for conditional release. The Applicant's request for constitutional review was rejected as manifestly ill-founded since the Court considered that the Referral was not *prima facie* justified and that the Applicant had not sufficiently substantiated his claim.

39. In the present case, the Court also notes that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred articles of the Constitution support his claim, as required by Article 113 (7) of the Constitution and Article 48 of the Law.

40. Moreover, the Applicant has neither accurately clarified how and why the decision of the Conditional Release Panel not to grant him conditional release entails a violation of his individual rights and

freedoms guaranteed by the Constitution nor he has presented evidence justifying the allegation of such a violation.

41. In sum, the allegations of a violation of his rights and freedoms are unsubstantiated and not proven and thus are manifestly ill-founded.

42. For the foregoing reasons, the Court considers that, in accordance with Rule 36 (2) d), the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, Rules 36 (2) d) and 56 (b) of the Rules of Procedure, on 25 November 2014, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI147/14, Applicant Avni Ejupi, Constitutional review of the Decision Rev. no. 81/2014, of the Supreme Court, of 16 July 2014

KI 147/14, Resolution on Inadmissibility of 22 January 2015, published on 13 February 2015

Keywords*: Individual Referral, administrative procedure, labor law, a serious breach of work duties, assessment of deadline, manifestly ill-founded referral*

The Supreme Court by Decision Rev. no. 81/2014 rejected the Applicant's request for revision, by holding that the Applicant's lawsuit in the first instance court was out of time, and found that the first and second instance courts have correctly applied the substantive law. The essence of the Applicant's complaint relates to the non-extension of the employment contract.

The Applicant addresses the Court with the request to assess the issue of the time limit of the lawsuit in the first instance court and remanded the case for reconsideration. In his referral he did not specify what rights and freedoms have been violated.

The Constitutional Court noted that the Applicant is not mainly satisfied with legal qualification of facts and the law applied by the regular courts and he did not sufficiently substantiate his allegations of constitutional violations, therefore, in accordance with Rule 36 (2) (d) of the Rules of Procedure, the Applicant's Referral was declared inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI147/14
Applicant
Avni Ejupi
Constitutional review
of the Decision Rev. no. 81/2014, of the Supreme Court,
of 16 July 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Avni Ejupi from the Municipality of Ferizaj.

Challenged decision

2. The challenged decision is the Decision, Rev. no. 81/14 of the Supreme Court, of 16 July 2014, by which the Applicant's revision against the Decision (Ac. no. 4792/12 of 13 January 2014) of the Court of Appeal, was rejected as ungrounded.

Subject matter

3. The subject matter is the constitutional review of the abovementioned decision of the Supreme Court. In his Referral the Applicant does not specify what rights and freedoms have been violated nor which concrete constitutional provision substantiates his Referral, but he requests the review of the issue of the time limit of his claim.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 3 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 November 2014, by Decision GJR. KI147/14, the President of the Court appointed Judge Arta Rama-Hajrzi as Judge Rapporteur. On the same date, by Decision KSH. KI147/14, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 14 November 2014, the Court notified the Applicant on the registration of Referral requesting from him to complete the Referral by submitting additional documents.

8. On 3 December 2014, the Court sent a copy of the Referral to the Supreme Court.

9. On 18 December 2014, the Applicant submitted to the Court the completed Referral form and the additional documents.

10. On 22 January 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

11. Starting from 1 July 2000 until 31 December 2001, the Applicant was employed as an officer for general legal affairs with the Municipal Department of Geodesy, Cadastre and Property in Ferizaj (hereinafter: the Employer).

12. On 8 January 2002, the Employer rendered a Decision (02 no. 77) on non-extension of the contract on the grounds that the Applicant had committed serious violation of work duties.

13. On 8 January 2002, the Applicant filed a complaint with the Employing authorities against the aforementioned Decision.

14. On 22 February 2002, as a result of non-response to a complaint by the Employer within the legal deadline, the Applicant submitted urgency for administrative silence.

15. On 10 April 2002, the Chief Executive of the Municipality of Ferizaj, as a response to the urgency submitted by the Applicant informed him that there were no convincing elements for modification of the Employer's Decision on non-extension of the contract.

16. On the same date, i.e. on 10 April 2002, the Applicant filed a lawsuit with the Municipal Court in Ferizaj for reinstatement to his working place.

17. On 29 December 2006, while the Applicant's lawsuit was pending in the Municipal Court in Ferizaj, the Applicant filed an appeal with the Independent Oversight Board of Kosovo (hereinafter: the IOBK).

18. On 31 January 2007, the IOBK by Decision (A. no. 02/195/2006) rejected the Applicant's appeal as ungrounded, on the grounds that the Applicant had filed a lawsuit with the Municipal Court in Ferizaj, which was still pending.

19. On 13 November 2012, the Municipal Court of Ferizaj (Decision, C. no. 66/09) rejected the Applicant's lawsuit as out of time.

20. The Municipal Court in Ferizaj, based on the provisions of the Associated Labor Law, which law it considered as applicable in this case, found that since the Employer had not decided within 30 days on the Applicant's complaint of 8 January 2002, the Applicant had to submit his lawsuit to the court 15 days after the expiry of 30 days from filing of his complaint with the Employer's authorities. Consequently, the Municipal Court in Ferizaj found that the Applicant filed his claim with the court with a delay of 28 days.

21. The Applicant filed an appeal against the Decision of the Municipal Court in Ferizaj.

22. On 13 January 2014, the Court of Appeal (Decision, AC. no. 4792/12) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Municipal Court in Ferizaj (C no. 66/09 of 13 November 2012).

23. On 18 February, 2014, the Applicant submitted a revision to the Supreme Court against the Decision of the Court of Appeal due to substantial violations of the contested procedure provisions and erroneous application of the substantive law.

24. On 16 July 2014, the Supreme Court (Decision, Rev. no. 81/2014) rejected the Applicant's revision as ungrounded.

25. The Supreme Court of Kosovo found that the Applicant's lawsuit in the first instance court was out of time, and found that the first and the second instance courts correctly applied the substantive law.

Applicant's allegations

26. The Applicant addresses the Court with the request to assess the issue of the time limit of the lawsuit in the first instance court and remand the case for reconsideration.

27. The Applicant has not specified in his Referral, what rights and freedoms have been violated and what constitutional provision in particular substantiates his Referral.

Admissibility of the Referral

28. In order to be able to adjudicate the Applicant's Referral, it is necessary for the Court to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. The Court takes into account Article 48 of the Law, which provides:

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*

30. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *(d) the Applicant does not sufficiently substantiate his claim.*

31. As it was stated above, the Applicant addresses the Court with the request to review the issue of the time limit of the lawsuit in the first instance court and remand the case for reconsideration.

32. The Court notes that the Applicant is not mainly satisfied with legal qualification of facts and the law applied by the regular courts. Legal qualification of facts and applicable law are the matters which fall within the scope of legality.

33. In this respect, the *Court* reiterates that it is *not the duty* of the Constitutional *Court to deal with* errors *of facts or law* (legality) allegedly committed by the Supreme Court, including the regular courts, unless and *in so far* as *they may have infringed rights* and *freedoms guaranteed by the Constitution (constitutionality)*.

34. The Court also notes that the Applicant has not specified in his Referral, what right has been violated and what Article of the Constitution substantiates his Referral.

35. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicant had a fair trial. (See, *inter alia,* Report of the European Commission of Human Rights in case *Edwards v. United Kingdom*, No. 13071/87, adopted on 10 July 1991).

36. The Court considers that the Applicant has not explained how and why the conclusion of the Supreme Court on "the applicable law at the time", in his case has allegedly violated his rights and freedoms, nor he has alleged any injustice and arbitrariness in the proceedings.

37. Furthermore, the Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the

decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

38. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated his claim.

39. Therefore, the Referral is manifestly ill-founded, and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48, Rule 36 (2) d) of the Rules of Procedure, on 9 February 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI136/14, Applicant Abdullah Bajqinca, Constitutional Review of Judgment Rev. No. 99/2014 of the Supreme Court of 12 May 2014

KI 136/14, Resolution on Inadmissibility of 9 December 2014, published on 18 February 2015.

Keywords*: Individual Referral, criminal procedure, right to work and exercise profession, limitations on fundamental rights, criminal offence theft of property, suspension from work, manifestly ill-founded referral*

The Supreme Court of Kosovo, by Judgment Rev. no. 99/2014 of 12 May 2014 had modified the judgments of the first and the second instance courts concerning the reinstatement of the Applicant to his previous working place, considering the fact that the employment relationship had been terminated to the Applicant because of the criminal offense - theft of property of the employer.

The Applicant alleged that the Supreme Court of Kosovo violated his rights deriving from Article 49 [Right to Work and Exercise Profession] and Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution.

The Constitutional Court found that the Applicant only mentioned the violation of constitutional provisions without supporting it with clear and compelling evidence, and moreover, he stated that he is dissatisfied with the challenged decision and the Supreme Court did not in any way prevent him from working or exercising his profession. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI136/14
Applicant
Abdullah Bajqinca
Constitutional Review of the
Judgment Rev. No. 99/2014 of the Supreme Court
dated 12 May 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Abdullah Bajqinca, with residence in Bardh i Madh, Municipality of Fushë-Kosova (hereinafter, the Applicant). The Applicant is represented by Mrs. Fehmije Bytyqi-Gashi, a practicing lawyer in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment Rev. 99/2014 of the Supreme Court of 12 May 2014, which modified the Judgment Ac. no. 1870/2012 of the Court of Appeals dated 21 August 2013, and the Judgment C. no. 2146/2009 dated 22 April 2010 of the Municipal Court in Pristina.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which allegedly violated Article 49 [Right to Work and Exercise Profession] and Article 55 [Limitations on Fundamental

Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 9 September 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 7 October 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 20 October 2014, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. The Applicant was a worker in the Department of Maintenance and Coal of KEK (hereinafter, the Employer) from 1 October 2006.

10. On 16 May 2007, the Employer suspended the Applicant from his work based on the suspicion that he committed the criminal offense of theft of the property of the Employer.

11. Following that suspension, administrative, criminal and contested proceedings were established.

Administrative Proceedings

12. On 27 July 2007, the Disciplinary Commission of the Employer decided to terminate the working relationship with the Applicant because of having violated his work duties.

13. On 31 July 2007, the Applicant filed an appeal with the second instance disciplinary body of the Employer against the Decision of the Disciplinary Commission.

14. On 6 August 2007, the second instance rejected the Applicant's appeal and upheld the Decision of the Disciplinary Commission.

Criminal Proceedings

15. On 27 February 2009, the Municipal Court in Prishtina (Judgment, P. No. 2287/07) acquitted the Applicant from the charge of theft of the property of the Employer. The acquittal decision was final and binding.

Contested Proceedings

16. On an unspecified date, the Applicant filed with the Municipal Court a claim for his reinstatement to the previous working place.

17. On 22 April 2010, the Municipal Court (Judgment, C. No. 2146/09) approved the Applicant's claim, annulled the Decisions of both Disciplinary bodies of the Employer and obliged the Employer to reinstate the Applicant to his previous working place.

18. The Municipal Court concluded that the Decisions of both Disciplinary Bodies of the Employer were rendered in violation of the Law in force, because "[...] *as it results from the criminal judgment, the wire which was taken by the claimant for which he is charged for (...) does not have the characteristics of the criminal offence 'theft'*.

19. The Employer filed an appeal with the Court of Appeals against the the Judgment of the Municipal Court, alleging violation of procedure, erroneous and incomplete ascertainment of the factual situation and erroneous application of substantive law.

20. On 21 August 2013, the Court of Appeals (Judgment, CA. No. 1870/2012) rejected as ungrounded the Employer's appeal and upheld the Judgment of the Municipal Court of 22 April 2010.

21. Then the Employer filed a revision with the Supreme Court against the Judgment of the Court of Appeals, alleging essential violations of the Law on Contested Procedure and erroneous application of the substantive law.

22. On 12 May 2014, the Supreme Court (Judgment, Rev. No 99/2014) approved the Employer's revision as grounded and amended the Judgment of the first and second instance courts.

23. The Supreme Court found that *"the substantive law was erroneously applied by the lower instance courts"*.

24. In fact, the Supreme Court explained that *"The employment relationship was terminated to the claimant due to serious violations of work duties- theft of respondent's assets, provided by Article 6 par. 1, item 4 of the Regulation on Disciplinary and Material Responsibility of the KEC employees. The respondent conducted the disciplinary procedure pursuant to provisions of Regulation on Disciplinary and Material Responsibility and the responsibility of the claimant was determined in this procedure. When the disciplinary measure – the termination of employment relationship - was imposed by the respondent on the claimant, the provisions of Article 112 of the Law on Labor Relationship, which was applicable law when the disciplinary procedure was conducted, were respected. In this legal matter, the Court cannot examine the fact of existence or non-existence of the disciplinary offence, because this is determined in the procedure conducted with the employer. Based on the existing evidence in the case file, it results that the disciplinary procedure with the respondent against the claimant was conducted pursuant to the Regulation on Disciplinary and Material Responsibility and the Law on Labor which was applicable at that time"*.

Applicant's allegation

25. The Applicant does not present an allegation on a constitutional violation; he only claims that *"[…] by last decision of the Supreme Court his fundamental rights as set out by the Constitution, Article 49 and 55 of the Constitution of the Republic of Kosovo, have allegedly been violated"*.

26. The Applicant further requests the Court to annul the Judgment of the Supreme Court (Rev. No. 99/2014 dated 12 May 2014).

Assessment of the admissibility of the Referral

27. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

28. In this respect, the Court refers to Article 48 of the Law, which provides:

> *In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.*

29. In addition, the Court refers to Rule 36 of the Rules of Procedure, which provides:

> *(2) "The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *...*
>
> *(d) the Applicant does not sufficiently substantiate his claim".*

30. The Court recalls that the Applicant claims that the challenged Judgment of the Supreme Court has violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution.

31. However, the Applicant does not make any allegation on a violation of the constitutional rights as he is claiming.

32. The Court observes that the Applicant is not satisfied mainly with the legal qualification of the facts and the law applied by the Supreme Court. Legal qualification of the facts and applicable law are matters which fall under the domain of legality.

33. The mere fact that the Applicant is not satisfied with the outcome of the Judgment of the Supreme Court or only mentioning Article 49 and 55 of the Constitution is not sufficient for the Applicant to build an allegation on a constitutional violation. When alleging such violations of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument.

34. In fact, the Court observes that the Applicant invokes Article 49 [Right to Work and Exercise Profession] of the Constitution. However, the Court considers that the challenged Judgment of the Supreme Court does not in any way prevent the Applicant from working or exercising a profession. As such, there is nothing in the

Applicant's claim that justifies a conclusion that his constitutional right to work has been violated.

35. The Court notes that the Supreme Court concluded namely that *"the disciplinary procedure with the respondent against the claimant was conducted pursuant to the Regulation on Disciplinary and Material Responsibility and the Law on Labor which was applicable at that time"*.

36. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

37. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial. (See, among other authorities, the Report of the European Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).

38. The Court considers that the Applicant has neither explained how and why the Supreme Court conclusion, on the "law applicable at that time" to his case, has violated the rights and freedoms he claims to have been violated, nor he has alleged any unfairness and arbitrariness in the proceedings.

39. Moreover, the Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

40. For the foregoing reasons, the Court concludes that the Applicant has not presented an allegation on a constitutional violation nor he has sufficiently substantiated and proved his claim.

41. Therefore, the Referral is manifestly ill-founded and thus inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (2), d) and 56 (b) of the Rules of Procedure, on 10 February 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI145/14, Applicant Behxhet Mustafa, Constitutional review of Decision A. no. 1780/14, of the Basic Court in Prishtina, of 12 September 2014

KI 145/14, Decision to strike out the Referral, of 9 Decemberber 2014, published on 18 February 2015

Keywords*: Individual Referral, administrative-constitutional procedure, withdrawal of referrals, exhaustion of legal remedies, striking out the referral*

The Applicant challenged the election of the Rector of the University of Prishtina "Hasan Prishtina", but meanwhile he informed the Court about the withdrawal of his Referral, because he wants to exhaust the legal remedies.

The Constitutional Court found that there are no special circumstances regarding respect for human rights and freedoms which require further examination of the Referral, thus, it decided to strike out the Referral in accordance with Rule 32 of the Rules of Procedure.

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI145/14
Applicant
Behxhet Mustafa
Constitutional review of the Ruling of the Basic Court in Prishtina, A. no. 1780/14, dated 12 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Behxhet Mustafa, residing in Prishtina.

Challenged decision

2. The applicant challenges Ruling A. no. 1780/14 of the Basic Court in Prishtina of 12 September 2014, which was served on him on 13 September 2014.

Subject matter

3. The subject matter is the constitutional review of the election procedure of the Rector of the University of Prishtina, "Hasan Prishtina", by which, allegedly, Article 20 (4.1) of the statute of the University of Prishtina was violated. The Applicant has not referred to any constitutional provisions.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Constitutional Court

5. On 24 September 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 30 September 2014 the Applicant submitted a request to withdraw his Referral because he wants to exhaust the legal remedies.

7. On 7 October 2014 the President of the Court, by Decision No. GJR. KI145/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI145/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 9 October 2014 the Court notified the Applicant of the registration of the Referral.

9. On 9 December 2014 the Review Panel considered the report of the Judge Rapportuer and made a recommendation to the Court on the Inadmissibility of the Referral.

Admissibility of the Referral

10. The Court notes that, in order to assess the admissibility it has to examine the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

11. In the case at hand, the Applicant contests the election procedure of the Rector of the University of Prishtina, "Hasan Prishtina". However, on 30 September 2014 the Applicant submitted a request to withdraw his Referral because he wants to exhaust the legal remedies.

12. In this respect, the Court refers to Rule 32 (Withdrawal of Referrals and Replies) of the Rules of Procedure which provides:

> *"(1) A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.*
>
> *(2) Notwithstanding a withdrawal of a referral, the Court may determine to decide the referral.*
>
> *(3) The Court shall decide such a referral without a hearing and solely on the basis of the referral, any replies, and the documents attached to the filings. […]"*

13. Therefore, the Court concludes that there are no special circumstances regarding respect for human rights which would require further examination of the Referral and, thus, decides to strike out the Referral pursuant to Rule 32 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (3) e) of the Rules of Procedure, on 23 September 2014, unanimously

DECIDES

I. TO STRIKE OUT the Referral;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI161/14, Applicant Mursel Izeti, Constitutional review of Judgment, Pml. no. 99/2014, of the Supreme Court, of 10 June 2014

KI161/14, Resolution on Inadmissibility of 22 January 2015, published on 19 February 2015.

Keywords*: Individual Referral, criminal procedure, unauthorized possession of weapons, the right to fair and impartial trial, manifestly ill-founded referral.*

The Supreme Court of Kosovo, by Judgment Pml. no. 99/2014 of 10 June 2014, rejected the Applicant's request for protection of legality. In his request the Applicant alleged that the lower instance courts have committed substantial violations of the provisions of the criminal proceedings regarding his imprisonment sentence for committing the criminal offense, unauthorized possession of weapons.

The Applicant alleged that in his case was violated the principle of equality of arms because the regular courts had rejected his proposal to hear forensic and ballistic experts respectively, without giving any reason for the rejection.

The Constitutional Court found that regular courts answered all the Applicant’s allegations, they have sufficiently reasoned their decisions and were based on the case law of the European Court of Human Rights and the constitutional provisions regarding the presumption of innocence of the Applicant. The Referral was declared inadmissible as manifestly ill-founded as provided by Article 48 of the Law and further specified in the Rules 36 (1) (d) and 36 (2) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KI161/14
Applicant
Mursel Izeti
Constitutional review of the Judgment, Pml. no. 99/2014, of the Supreme Court, dated 10 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Mursel Izeti (hereinafter: the Applicant), from village Greme, Municipality of Ferizaj, represented by Mr. Besnik Berisha, lawyer.

Challenged decision

2. The challenged decision is the Judgment, PML. no. 99/2014, of the Supreme Court of 10 June 2014, which rejected as ungrounded the request of the Applicant for protection of legality. This decision was served on the Applicant on 25 June 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, by which, allegedly, Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 (Right to fair trial) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the "ECHR") were violated, because *"The*

Court, without any grounded reasoning, did not review the items of evidence proposed by the Defense Counsel. The evidence that is not administered by this Court is very relevant and influential for ascertaining the innocence or culpability of the Applicant."

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 27 October 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) by post mail and it arrived at the Court on 29 October 2014.

6. On 6 November 2014 the President of the Court, by Decision GJR. KI161/14 appointed Judge Arta Rama-Hajrzi as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI161/14 appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 6 November 2014 the Court notified the Applicant on the registration of Referral and requested from him to submit the power of attorney for Mr. Besnik Berisha.

8. On 19 November 2014 the Applicant submitted the requested documentation by the Court.

9. On 24 November 2014 the Court notified the Supreme Court and the Basic Court in Ferizaj – Serious Crime Department (hereinafter: the Basic Court) on the registration of Referral and requested from it to submit the return paper, indicating the date on which the Applicant was served with the Judgment (Pml. no. 99/2014, of 10 June 2014) of the Supreme Court.

10. On 4 December 2014 the Basic Court submitted to the Court the return paper, showing that the Judgment of the Supreme Court of 10 June 2014 was served on the Applicant's lawyer on 25 June 2014.

11. On 22 January 2015 the Review Panel considered the report of the Judge Rapportuer and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

12. On 22 March 2013, the Basic Court in Ferizaj-Department for serious crimes (Judgment PKR. no. 9/2013-P. 94/12 PR1) found the Applicant guilty of having committed a criminal offence under the Criminal Code of the Republic of Kosovo and convicted him to imprisonment. The Applicant had pleaded guilty at the beginning of the hearing for the criminal offence "unauthorized ownership, control, possession or use of weapons" as provided by Article 328, paragraph 2 of the Criminal Code of Kosovo (hereinafter: "CCK"), but not for the criminal offence "aggravated murder" as provided by Article 147, paragraph 1, subparagraph 9 of the CCK because his actions were done in self-defense. The Basic Court based its findings based on the following evidence:

    a. partially from the defense of the accused persons, during the main trial and the investigative proceedings;

    b. from the testimonies of the witnesses;

    c. from the examination of the photo-album, scheme, and photos taken in the crime scene;

    d. from the reading of the Autopsy Report No. NA11-033 of the Forensic Department;

    e. from the reading of the expertise report on firearm;

    f. from the reading of the expertise report on fingerprints; etc.

13. The Applicant filed an appeal with the Court of Appeal against the Judgment of the Basic Court because of essential violation of criminal procedure provisions, erroneous and incomplete ascertainment of the factual situation and violation of criminal law. The Applicant claimed that the Basic Court had denied him the opportunity to ask questions to the expert, which would have contribute to the finding of the truth of the matter via questions.

14. On 12 November 2013, the Court of Appeal (Judgment PAKR. no. 303/2013) rejected the appeal and upheld the Judgment of the Basic Court. The Court of Appeal held that the Applicant had not been denied any of the rights granted to them under the Criminal Code of Kosovo, which can be confirmed by the case files, especially by the minutes of the main trial.

15. The Applicant filed a request for protection of legality with the Supreme Court against the Judgment of the Basic Court and the Judgment of the Court of Appeal, because of essential violation of the criminal procedure provisions and violation of the criminal law. The Applicant claimed that the lower instances court had failed to provide reasons for not granting the proposals of the Applicant to hear the forensic expert and to do the reconstruction of the crime scene and the hearing of the ballistics expert.

16. On 10 June 2012, the Supreme Court (Judgment Pml. no. 99/2014) rejected as ungrounded the request for protection of legality filed by the Applicant. The Supreme Court held that the Applicant's appeal does not contain any specification with regard to the manner the alleged violations were manifested in the lower instances decisions.

Applicant's allegations

17. The Applicant alleges that *"[...] in the proceedings against him, the principle of equality of arms was violated and this action was manifested by the rejection of the proposals of the Applicant's defense to submit the evidence and hear the witnesses in the interest of the defense, while, on the other hand, the hearing of all the witnesses and the submission of evidence were provided to the Prosecution even in the main trial [...]".*

Admissibility of the Referral

18. The Court notes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

19. In this respect, the Court refers to Article 48 of the Law, which provides:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".

20. In addition, Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, provide:

(1) The Court may consider a referral if::

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(a) the referral is not prima facie justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his

claim;

21. The Court notes that in the present case the Applicant complains that the regular courts had rejected his proposals to hear the forensic expert and the ballistics expert and to do the reconstruction of the crime scene, without giving any single reason for the rejection.

22. In this respect, the Court notes that the Basic Court in Ferizaj have provided extensive reasons for its findings and also referred to the case law of the European Court of Human Rights and the provisions of the Constitution in respect to the presumption of innocence. Furthermore, also the Court of Appeal and the Supreme Court have reasoned their decisions and argued each of the

Applicant's allegations in respect to the rejection of the Applicant's proposal.

23. The Supreme Court held in its judgment that the Applicant has had ample opportunity to defend himself and that he has been given the opportunity to see the case files. Furthermore, it held that it does not suffice to say, for example, that the judgment is not grounded on the content of the case files, or that it is grounded on assumptions, but it must be explained where the contradiction is, what the flaws in the reasoning of the decisive facts are. Due to the absence of specification in giving these explanations, the Supreme Court assessed that the allegations in question were ungrounded. The Supreme Court, in respect to the Applicant's allegation that the Basic Court did not reason the rejection of the proposal of the Applicant related to the administration of evidence, found that in page 11 of the Judgment it is explained why the Applicant's request was rejected. Moreover, the Applicant has also commented on the case file.

24. The Court reiterates that it is not to act as a court of fourth instance, with respect to the decision rendered by the Supreme Court. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken, (see case *Edwards v. United Kingdom*, No. 13071/87, the Report of the European Commission of Human Rights of 10 July 1991).

25. In the present case, the Court does not find that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary (see mutatis mutandis, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

26. Therefore, the Court notes that the Applicant has not substantiated his allegation on constitutional grounds and he did not provide evidence, indicating how and why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision.

27. The Court concludes that the Applicant's Referral is manifestly ill-founded pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) d) and 36 (2) of the Rules of Procedure, on 10 February 2015, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI109/14, Applicant Ahmet Krasniqi et al., Constitutional Review 'of the conclusion of the Assembly based on the transcript of the plenary session of 10, 11 and 17 April 2014

KI109/14, Resolution on Inadmissibility, of 2 February 2015, published on 20 February 2015.

Keywords*: Individual Referral, administrative procedure, right to work and exercise profession and judicial protection of rights, interpretation of the quorum of the Assembly, unauthorized party, manifestly ill-founded Referral*

The Applicants challenged the actions of deputy president of the Assembly of the Republic of Kosovo, Mr. Sabri Hamiti, during the plenary session of the Assembly on 10, 11 and 17 April 2014, when he concluded that there was no required quorum to vote for the composition of the Kosovo Competition Authority.

The Applicants claimed that the conclusion of Mr. Hamiti that there was no quorum to render a decision is erroneous application and violation of Article 80.1 [Adoption of Laws] of the Constitution. This error of Mr. Hamiti, according to the Applicants, had resulted in a violation of their rights guaranteed by the Constitution, namely Articles 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights].

The Constitutional Court first explained who is an authorized party, under the Constitution, to refer the question of the interpretation of a quorum in the Assembly of Kosovo and then held that the Applicants were not an authorized party regarding alleged violations of Article 80.1 of the Constitution. While, as to the allegations for violation of Article 49 and Article 54 of the Constitution, the Constitutional Court found that the Applicants have only listed and described the content of the constitutional provisions and did not present convincing arguments to support their allegations. The Referral was declared inadmissible as manifestly ill-founded as provided for in Article 113.1 of the Constitution, Article 47 of the Law and further specified in the Rules 36 (1) (a) and 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI109/14
Applicant
Ahmet Krasniqi et al.
Constitutional Review
of the conclusion of the Assembly based on the transcript of the plenary session of 10, 11 and 17 April 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicants

1. The Applicants are Ahmet Krasniqi, Halit Shabani, Ramë Manaj and Arbnor Kastrati (hereinafter, the Applicants). In front of the Constitutional Court of the Republic of Kosovo (hereinafter, the Court), they are represented by the first Applicant, Mr. Ahmet Krasniqi residing in Prishtina.

Challenged decision

2. The Applicants do not challenge any specific decision, instead they challenge the actions of the deputy president of the Assembly of the Republic of Kosovo (hereinafter, the Assembly) Mr. Sabri Hamiti, during the plenary session of the Assembly on 10, 11 and 17 April 2014, when he concluded that there was no required quorum to vote for the composition of the Kosovo Competition Authority (hereinafter, the KCA).

Subject matter

3. The subject matter is the request for constitutional review of the actions of the deputy president of the Assembly during the plenary session of the Assembly on 10, 11 and 17 April 2014, when he concluded that there was no required quorum to vote for the composition of the KCA. The Applicants claim that the conclusion of Mr. Sabri Hamiti that there was no quorum to render a decision is an erroneous application and violation of Article 80, paragraph 1 [Adoption of Laws] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"). The Applicants consider that it resulted in an essential violation of human rights pursuant to Article 49 of the Constitution, [Right to Work and Exercise Profession] and Article 54 of the Constitution [Judicial Protection of Rights].

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 27 June 2014 the Applicants submitted the Referral to the Court.

6. On 7 July 2014 the President of the Court by Decision GJR. KI109/14 appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision, KSH. KI109/14 appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

7. On 4 September 2014 the Court informed the Applicant of the registration of the Referral.

8. On 13 October 2014 the Applicants submitted additional documents to the Court, which provided a more detailed and extensive elaboration of the existing Referral submitted on 27 June 2014.

9. On 2 February 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 19 February 2014 the Government of the Republic of Kosovo (hereinafter: the Government) adopted Decision 02/171 by which the names of the presiding and other members of the KCA: Ahmet Krasniqi (presiding) and Halit Shabani, Ramë Manaj and Arbnor Kastrati (members) were proposed to the Assembly.

11. On 10, 11 and 17 April 2014 the Assembly held its regular plenary session, in which it had as a point of the agenda, amongst others, the review or the proposal/decision of the Government on the appointment of the presiding and the other members of the KCA. When the proposal/decision was put to the vote the deputy president of the Assembly concluded that *"currently there are 82 deputies in total present. We have a vote: 7 against, 36 in favor, and 1 abstention. There is no quorum to render a decision."*

12. On 19 May 2014 the Applicants submitted a request to the General Directorate for Legal and Procedural Matters of the Assembly, for the interpretation of the vote on the proposal/decision of the Government by the Assembly.

13. On 21 May 2014 the Director of General Directorate for Legal and Procedural Matters of the Assembly replied to the Applicants through a letter, in which was stated that:

> *"The General Directorate on legal and procedural matters is not authorized to interpret the vote at the plenary session.*
> *We remind you that the Assembly was dissolved on 7 May 2014. Pursuant to the Rules of Procedure of the Assembly, all pending matters must be proceeded again by the proposer."*

14. On 21 May 2014 the Applicants also submitted a complaint with the Independent Oversight Board of Civil Service in Kosovo (hereinafter, the IOB) *"in the legal matter "Challenging a rendered decision" against the Assembly of the Republic of Kosovo"*.

15. O2 22 May 2014 the IOB rendered Decision A/02/212/2014, declaring itself incompetent to decide on the matter. The IOB held that:

"The panel of the Board upon reviewing this matter concluded that the Board is not competent to review this administrative matter because pursuant to Article 4, paragraph 2 of Law No.03/L-149 on the Civil Service of Kosovo "Officials elected to elected positions in the institutions of the public administration and officials appointed by elected officials to specific positions are not Civil Servants", as well as pursuant to Article 10, paragraph 1.1 of Law No.03/L-192 on the Independent Oversight Board for Civil Service of Kosovo, the Board has the competency to "reviews and determine appeals filed by civil servants against decisions of employing authorities in all institutions of Civil Service in accordance with rules and principles set out in the Law on Civil Service in the Republic of Kosovo."

16. On 23 May 2014 the Applicants submitted to the Ombudsperson Institution an *"Appeal against the violation of the Constitutional rights upon the voting pertaining to the Decision to propose the appointment of the president and the members of the Commission on Protection of Competition"*.

17. On 9 June 2014 the Ombudsperson Institution sent a Notification on Inadmissibility to the Applicants, providing that:

"[...] the Ombudsperson notices that the abovementioned have submitted their request to refer to the Constitutional Court the reviewing of the constitutionality pertaining to the rendering of the decision during the session of the Assembly [...] The Ombudsperson reemphasizes that the Constitutional Court reviews only cases legally brought before the Court by authorized parties. The Ombudsperson considers it necessary to invoke Article 113 of the Constitution [Jurisdiction and Authorized Parties] which legitimates the Ombudsperson to address the Constitutional Court, but only in the following cases:

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

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

In these circumstances, the Ombudsperson concludes that the referral of the above mentioned challenging the decisions of the Assembly of the Republic of Kosovo cannot be processed before the Constitutional Court, because the Ombudsperson is not legitimized as an authorized party in this matter, pursuant to Article 113.1 of the Constitution of the Republic of Kosovo [...]".

Applicants' allegations

18. The Applicants allege that that the conclusion of Mr. Sabri Hamiti that there was no quorum to render a decision is an erroneous application and a violation of Article 80, paragraph 1 [Adoption of Laws] of the Constitution, which reads as follows:

"Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution."

19. According to the Applicants, the erroneous counting of the necessary quorum resulted in an *"essential violation of human rights, pursuant to Articles 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution."*

20. The Applicants further argue that *"[...] Article 51, item 3, second paragraph of the Rules of Procedure of the Assembly of the Republic of Kosovo provides that: "The decisions taken in the meetings of the Assembly are valid if more than half of the total number of Members of the Assembly were present at the time the decision was taken. The laws, decisions and other acts of the Assembly shall be considered adopted if voted for by the majority of the members present and voting,".*

21. In addition, the Applicants claim that "*Neither the Constitution nor the Rules of the Procedure of the Assembly draw a distinction between the quorum for work and quorum for decision making which means, that if 61 deputies are present in the Assembly hall, the Assembly can hold hearings and make decisions if not otherwise is determined by the Constitution [...]".*

22. Furthermore, the Applicants argue that *"The conclusion of Mr. Hamiti that in the plenary session there were 82 deputies and that there was no quorum for decision-making is inconsistent with itself and the general rules, because if there is no quorum the session would not be able to proceed. In the present case the*

session has continued and the proposal was put to a vote, if the deputy does not vote either for or against, it is present considered to have abstained, otherwise nowhere in the provisions of the Constitution and the Rules is not determined that if the deputy is present in the hall can be considered is not."

23. Finally, the Applicants request from the Court:

    i. *"For this matter , to deliberate and adopt a decision in accordance of the constitutional provisions in force;*

    ii. *To give a clear interpretation what does the quorum mean, and what is the meaning of simple majority and what of the absolute majority;*

    iii. *To give an interpretation of the abstention;*

    iv. *To give an interpretation of the number of votes necessary to adopt a decision in the Assembly"*

Admissibility of the Referral

24. The Court first examines whether the Applicants are authorized party to submit a referral to the Court, in accordance with the requirements of Article 113.7 of the Constitution.

    Article 113, paragraph 7 of the Constitution provides:

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

A. As to the alleged violation of Article 80.1 of the Constitution

25. The Court notes that in the present case, *inter alia,* the Applicants are seeking an interpretation of Article 80.1 [Adoption of Laws] of the Constitution.

26. In this respect, the Court emphasizes that, under Article 112.1 of the Constitution, it is "the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution."

However, the Court has the authority to interpret the Constitution only if the Referral is filed by an authorized party.

27. The Court notes that the Applicants submitted their Referral under Article 113.7 of the Constitution, but they do not challenge any final decisions by a public authority. Instead, they are seeking an interpretation from the Court in respect to Article 80.1 [Adoption of Laws] of the Constitution, in order to clarify what does the "necessary quorum for adopting a decision in the Assembly" mean.

28. In this respect, the Court notes that Article 113.5 of the Constitution provides that before a law is promulgated ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.

29. Furthermore, after a law has been promulgated, Article 113.2 (1) authorizes the Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson to refer a question of compatibility of laws with the Constitution to the Court.

30. Finally, Article 113.8 of the Constitution also provides that "The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue."

31. Thus, the Court concludes that this complaint of the Applicants does not fall within the scope of neither of the abovementioned articles of the Constitution. Therefore, the Applicants are not an authorized party under the Constitution to refer this question to the Court. (See also Constitutional Court Case No. KI207/13, Applicants *Rexhep Kabashi et al.*, Resolution on Inadmissibility of 24 April 2014).

32. Consequently, this part of the Referral is inadmissible, pursuant to Article 113.1 of the Constitution.

B. As to the alleged violation of Articles 49 and 54 of the Constitution

33. The Court further notes that, the Applicants also invoke Article 49 [Right to work and Exercise Profession] and Article 54 [Judicial Protection of Rights], complaining of the erroneous calculation of the quorum by the deputy president of the Assembly, which resulted in a violation of these articles.

34. In this respect the Court recalls that Article 49 provides:

> *"1. The right to work is guaranteed.*
>
> *2. Every person is free to choose his/her profession and occupation."*

while Article 54 provides:

> *"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."*

35. The Court notes that the Applicants only listed and described the content of the constitutional provisions guaranteeing right to work and exercise profession and judicial protection of rights. However, they did not clearly present how and why these rights have been violated.

36. The Court reiterates that dissatisfaction with the decision or merely the mentioning of articles and provisions of the Constitution does not suffice for an Applicant to allege a constitutional violation. When alleging such a violation, an Applicant must present convincing and indisputable arguments to support the allegations for the referral to be grounded (See Constitutional Court case No. KI198/13 Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).

37. In this context, the Applicants have not filed any convincing arguments to establish that the alleged violations mentioned in the Referral represent constitutional violations (see, *Vanek v. Republic of Slovakia*, ECtHR Admissibility Resolution, no. 53363/99, of 31 May 2005) and did not specify how the referred articles of the Constitution to support his claims, as required by Article 113.7 of the Constitution and Article 48 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rules 36 (1) a) and 36 (2) d) of the Rules of Procedure, on 2 February 2015, unanimously

DECIDES

I. TO DECLARE the Referral:

a. With regards to allegations under point A), inadmissible, because the Applicants are not authorized party to seek interpretation of a constitutional provision;

b. With regards to allegations under point B), inadmissible because the Applicants have not sufficiently substantiated his claim.

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KO13/15, Assembly of the Republic of Kosovo, assessment of an amendment to the Constitution of the Republic of Kosovo proposed by fifty five deputies of the Assembly of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 6 February 2015 by letter No. 05-259/D0-179

KO13/15, Judgment of 10 March 2015, published on 16 March 2015

Keywords*: Referral filed by institution, constitutional procedure, preventive control of constitutionality, the principle of gender equality, automatic preference, rights and freedoms guaranteed by Chapter II and III of the Constitution.*

On 6 February 2015, the President of the Assembly of the Republic of Kosovo in accordance with Articles 113.9 and 144.3 of the Constitution referred an amendment to the Constitutional Court proposed by 55 deputies of the Assembly of the Republic of Kosovo. The proposed amendment stipulated that none of the genders can be represented less than 40% in the positions of ministers and deputy ministers of the Government of the Republic of Kosovo.

The subject matter of the Referral is prior assessment by the Constitutional Court that the proposed Amendment to the Constitution does not diminish any of the rights and freedoms guaranteed by Chapter II of the Constitution.

The Constitutional Court first assessed the procedural requirements and found that it has jurisdiction to adjudicate the case and that the Referral is submitted by the authorized party. Regarding the question whether the proposed amendment diminishes the rights and freedoms guaranteed by Chapter II and III of the Constitution, the Constitutional Court stated *inter alia* that: (i) the principle of equal opportunities for both genders should be applied, (ii) constitutional practice does not establish any form of positive discrimination, (iii) preference cannot be given unconditionally based on a gender notwithstanding the requirement of professional merit, and (iv) Deputies have not submitted any supporting evidence to support their allegation of serious discrimination of gender. The Constitutional Court based its findings among other on the statements of the constitutions of other states, the jurisprudence of the European Court of Justice and the Constitutional Council of France. The Constitutional Court concluded that the proposed amendment diminishes the fundamental rights and freedoms guaranteed by Chapter II and III of the Constitution as well as its letter and spirit, and therefore it is not in compliance with the Constitution.

JUDGMENT
in
Case No. KO13/15
Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by fifty five Deputies of the Assembly of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 6 February 2015 by letter No. 05-259/DO-179

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. On 6 February 2015 the President of the Assembly of the Republic of Kosovo (hereinafter: the "Applicant"), in accordance with Articles 113.9 and 144.3 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), referred an Amendment to the Constitution to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), proposed by fifty five (55) Deputies of the Assembly of the Republic of Kosovo (hereinafter: the "Deputies").

Subject matter

2. The subject matter of the Referral is the prior assessment by the Court that the proposed Amendment to the Constitution does not diminish any of the rights and freedoms guaranteed by Chapter II of the Constitution according to Article 113.9 of the Constitution.

3. The proposed Amendment is for a new paragraph 8 to Article 96 [Ministers and Representation of Communities]. It states: *"8. None of the genders can be represented less than 40% in the positions of*

ministers and deputy ministers of the Government of the Republic of Kosovo.".

Legal basis

4. The Referral is based on Articles 113.9 and 144.3 of the Constitution and Articles 20 and 54 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law").

Proceedings before the Court

5. On 6 February 2015 the Applicant referred the Amendment to the Court.

6. On 6 February 2015 the President of the Court, by Decision No. GJR. KO13/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KO13/15, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 10 February 2015 the Court notified the Applicant of the registration of the Referral and requested him to provide a comprehensive list of all the names of the Deputies and their signatures. The Court also asked the Applicant to provide a copy of the notification to each of the Deputies who had signed the Referral and to submit, if they wished, further comments.

8. On 10 February 2015 a copy of the Referral was communicated to the President of the Republic of Kosovo, the Prime Minister and the Ombudsperson.

9. On 13 February 2015 the Applicant submitted the requested list signed by the following Deputies: Alma Lama, Shpejtim Bulliqi, Emilija Redžepi, Veton Berisha, Teuta Sahatqija, Doruntinë Maloku, Vjosa Osmani, Lirije Kajtazi, Synavere Rysha, Besa Gaxheri, Njomza Emini, Shaip Muja, Armend Zemaj, Antoni Quni, Agim Kikaj, Fatmir Limaj, Valdete Bajrami, Shukrije Bytyqi, Haxhi Shala, Zafir Berisha, Sala Berisha Shala, Luljeta Veselaj Gotaj, Nait Hasani, Melihate Tërmkolli, Fadil Beka, Teuta Haxhiu, Fikrim Damka, Müfera Şinik, Time Kadrijaj, Puhie Demaku, Aida Dërguti, Shqipe Pantina, Besa Baftija, Mexhide Mjaku Topalli, Xhevahire Izmaku, Nuredin Ibishi, Ganimete Musliu, Pal Lekaj, Rexhep Selimi, Bekim Haxhiu, Kujtim Pacaku, Qerim Bajrami, Danush

Ademi, Enver Hoti, Mytaher Haskuka, Fisnik Ismaili, Glauk Konjufca, Berta Deliu Kodra, Blerim Grainca, Blerim Shala, Labinote Demi Murtezi, Naser Osmani, Hatim Baxhaku, Ilir Deda, Teuta Rugova.

10. No comments by the Deputies were submitted in response to the notification of the Court of 10 February 2015.

11. On 10 March 2015 the Judge Rapporteur presented the Report to the Review Panel. The Review Panel endorsed it and unanimously recommended to the full Court the Referral to be declared admissible for consideration and to declare that the proposed Amendment diminishes the rights and freedoms guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

12. On the same date, the Court deliberated and voted on the case.

13. Judge Kadri Kryeziu did not participate in the Court's proceedings and ruling on the current Case KO13/15 based on the decision KK124/14 of 19 August 2014.

Summary of facts

14. On 29 December 2014 the Deputies, pursuant to Article 144 [Amendments], paragraph 1, of the Constitution, proposed to the President of the Assembly one Amendment to the Constitution.

15. On 6 February 2015 the President of the Assembly referred to the Court the Amendment to the Constitution, requesting the Court to make a prior assessment whether the proposed Amendment diminishes any of the rights and freedoms set forth in Chapter II of the Constitution.

Admissibility of the Referral

16. In order for the Court to adjudicate the Applicant's Referral it is necessary to examine whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law.

17. Firstly, the Court needs to determine whether the Referral has been submitted by an authorized party and, secondly, whether it has jurisdiction to assess the Amendment to the Constitution

proposed by the Deputies according to Article 113.9 of the Constitution.

18. The Court recalls that, pursuant to Article 113.9 of the Constitution, *"The President of the Assembly of Kosovo refers proposed Constitutional Amendments [...]"*,

19. The Court notes that the President of the Assembly, Mr. Kadri Veseli, referred the proposed Amendment and, accordingly, it was submitted by the authorized party, pursuant to Article 113.9 of the Constitution.

20. Further, the Court recalls that, pursuant to the same Article 113.9, it has *"[...] to confirm that the proposed Amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution"*.

21. Consequently, the Court has jurisdiction to assess whether the proposed Amendment diminishes the rights and freedom guaranteed by Chapter II of the Constitution.

22. Therefore, since it is referred by the authorized party and the Court has jurisdiction to adjudicate the case, the Referral is admissible.

Scope of the assessment

23. The scope of the assessment of the proposed Amendment is based on Chapter II [Fundamental Rights and Freedoms], Chapter III [Rights of Communities and their Members] and the letter and spirit of the Constitution (See, Cases Nos. KO29/12 and KO48/12, Applicant: *President of the Assembly of the Republic of Kosovo,* Judgment of 20 July 2012; see, also Case No. KO61/12, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 31 October 2012).

24. The Court, in addition, considers that Article 21 [General Principles] of the Constitution should be read in conjunction with Article 7 [Values], paragraph 1, of the Constitution. The latter Article defines the values of the constitutional order of the Republic of Kosovo which is based *"on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of the law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers and a market economy."*

Proposed Amendment: new paragraph 8 to Article 96 of the Constitution

25. The Amendment is proposed to be a new paragraph after paragraph 7 of Article 96 [Ministries and Representation of Communities] of the Constitution, reading as follows:

> *"8. None of the genders can be represented less than 40% in the positions of ministers and deputy ministers of the Government of the Republic of Kosovo."*

Reasons for the proposed Amendment

26. The Deputies allege that, so far, women in the postwar governments were not represented more than 10-15 % in ministerial positions, although the women/men ratio of the population is 50 % to 50 %. Based on that, they consider that *"[…] there is a necessity to introduce gender quota in the executive branch as an affirmative mechanism to change the serious situation of discrimination."* According to them, Article 24 [Equality Before the Law], paragraph 3, of the Constitution justifies the affirmative measures that should be taken towards *"the less represented groups"*.

27. The Deputies consider that the imposition of gender quota in the Constitution constitutes an obligation, which the Government cannot ignore, and which is similar to the guarantees that the Constitution provides to minorities.

28. According to the Deputies, the negative experience of the non-implementation of Law No. 2004/2 on Gender Equality of 19 February 2004, which includes all institutions and leading bodies, is another reason for this norm to be a constitutional norm and for the Constitution to be a guarantor thereof.

29. The Deputies further hold that the proposed Amendment is in compliance with the objectives of Resolution No. 04-R-09 of the Assembly of Kosovo, adopted on 20 December 2012. The Resolution is entitled: *"Prishtina Principles emerging from the International Women's Summit: "Partnership for Change: Empowering Women",* held in Prishtina on 4-6 October 2012. They quote paragraph 4 of the Resolution, which states:

> *"4. Encourages the institutions of the Republic of Kosovo to undertake concrete measures and establish local and*

international partnerships with relevant institutions to fulfill the objective of women's participation in civil service by fifty percent until 2050."

Assessment of the proposed Amendment

30. The proposed Amendment will be reviewed by the Court in accordance with the above defined scope of assessment.

31. The Court notes that the proposed Amendment to Article 96 of the Constitution contains two elements. The first one is to introduce a gender quota of forty percent (40 %), which according to the Deputies is equivalent to proportional representation of the population. The second one is about the forty percent (40 %) quota applicable only to the Ministerial and Deputy Ministerial positions in the Government.

32. The Court further notes that the proposed Amendment, as reasoned by the Deputies, may be considered as a qualified form of positive discrimination or affirmative action, whereby the preference is automatically and unconditionally given to women, notwithstanding the requirement of professional qualifications.

33. Moreover, the nature of the positive discrimination or affirmative action, in general is temporary, until a certain goal has been achieved as per Article 24.3 of the Constitution. On the other hand, any constitutional norm is perceived to be of a permanent nature, in order to ensure a stable constitutional and legal order. This is in compliance with the principle of legal certainty.

34. The Court also notes that the scope of the present Article 96 of the Constitution extends to the non-majority communities, such as the *"Serb, Roma, Ashkali, Egyptian, Bosnian, Turkish, Goran Communities and their members"*, which evidently include male and female members.

35. Therefore, the proposed Amendment needs to be considered in the context of the rights to these communities guaranteed by the Constitution.

36. As noted previously, the scope of the application of the proposed Amendment applies only to Ministerial and Deputy Ministerial positions within the Government.

37. The Court notes that, while Chapter I [Basic Provisions] of the Constitution defines the structure of the state of the Republic of Kosovo and its values, Article 3 [Equality Before the Law], paragraph 2, of the Constitution provides that: "*The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members"* Therefore, it is for the state bodies to establish appropriate mechanisms for the implementation of the guaranteed rights of the citizens.

38. The Court also recalls that, in particular, Article 7 [Values] of the Constitution stipulates that:

> *"1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.*
>
> *2. The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life."*

39. From the above provisions, it stems that equality, non-discrimination and gender equality, *inter alia*, are part of the constitutional order and constitutes the democratic foundation of the Kosovo society. Their practical implementation is of vital importance for the enhancement of the democracy in Kosovo.

40. In order to make a full assessment of the proposed Amendment, the Court takes also into account the international instruments envisaged in Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, related to the safeguards of human rights and fundamental freedoms.

41. Namely, Article 22 of the Constitution provides:

> *"Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the*

Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

(1) Universal Declaration of Human Rights;

(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;

(3) International Covenant on Civil and Political Rights and its Protocols;

[…]

(6) Convention on the Elimination of All Forms of Discrimination Against Women;

[…]"

42. The abovementioned international agreements and instruments that guarantee human rights and fundamental freedoms, including the principle of equality, are part of the legal order of the Republic of Kosovo.

43. The Court reiterates that the principle of equality is one of the fundamental principles of the constitutional system of the Republic of Kosovo and guarantees gender equality of all citizens in its constitutional and legal order.

44. There are further references to the gender equality in the Constitution. Namely,

a. Article 71 [Qualification and Gender Equality], paragraph 2, of the Constitution: *"The composition of the Assembly of Kosovo shall respect internationally recognized principles of gender equality."*

b. Article 101 [Civil Service], paragraph 1, of the Constitution: *"The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality."*

c. Article 104 [Appointment and Removal of Judges], paragraph 4, of the Constitution: *"The composition of the*

judiciary shall reflect the ethnic diversity of Kosovo and internationally recognized principles of gender equality."

d. Article 108 [Kosovo Judicial Council], paragraph 2, of the Constitution: *"[…] The Kosovo Judicial Council shall ensure that the Kosovo courts are independent, professional and impartial and fully reflect the multi-ethnic nature of Kosovo and follow the principles of gender equality. The Kosovo Judicial Council shall give preference in the appointment of judges to members of Communities that are underrepresented in the judiciary as provided by law."*

e. Article 108 [Kosovo Judicial Council], paragraph 4, of the Constitution: *"Proposals for appointments of judges must be made on the basis of an open appointment process, on the basis of the merit of the candidates, and the proposals shall reflect principles of gender equality and the ethnic composition of the territorial jurisdiction of the respective court. All candidates must fulfill the selection criteria provided by law."*

f. Article 109 [State Prosecutor], paragraph 4, of the Constitution: *"The State Prosecutor shall reflect the multiethnic composition of the Republic of Kosovo and shall respect the principles of gender equality."*

g. Article 110 [Kosovo Prosecutorial Council], paragraph 1, of the Constitution: *"[…] The Kosovo Prosecutorial Council shall ensure that the State Prosecutor is independent, professional and impartial and reflects the multiethnic nature of Kosovo and the principles of gender equality."*

h. Article 110 [Kosovo Prosecutorial Council], paragraph 3, of the Constitution: *"Proposals for appointments of prosecutors must be made on the basis of an open appointment process, on the basis of the merit of the candidates, and the proposals shall reflect principles of gender equality and the ethnic composition of the relevant territorial jurisdiction."*

i. Article 114 [Composition and Mandate of the Constitutional Court], paragraph 1, of the Constitution: *"[…] Principles of gender equality shall be respected."*

45. The abovementioned constitutional safeguards of the gender equality are in line with many constitutions of democratic countries and international instruments and recommendations.

46. In this respect, the Constitution of the Republic of Bulgaria in its Article 6 (2) provides: "[...] *There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status*."

47. The Constitution of the Republic of Cyprus in its Article 28 (2) stipulates that: "*Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution*."

48. The Constitution of the Czech Republic includes the concept of equality and the principle of non-discrimination in its Article 3 [Charter of Fundamental Rights and Freedoms], reading: "*Everyone is guaranteed the enjoyment of fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status*."

49. The Constitution of the Republic of Latvia in its Article 91 provides in part: "*Human rights shall be realised without discrimination of any kind*."

50. The Constitution of the Slovak Republic in its Section 12, paragraph 2, reads as follows: "*Fundamental rights and freedoms are guaranteed to everyone in the territory of the Slovak republic regardless of sex, race, colour of skin, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or other status. No one may be harmed, preferred or discriminated against on these grounds*."

51. The Constitution of the Republic of Slovenia in its Article 14 provides that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing,

birth, education, social status, disability or any other personal circumstance.

52. In addition, the Court refers to Recommendation Rec. (2003)3 of the Committee of Ministers of the Council of Europe on "*Balanced participation of women and men in political and public decision making*" (Adopted by the Committee of Ministers on 12 March 2003 at the 831st meeting of the Ministers' Deputies). It provides in its Chapter on Legislative and Administrative Measures, amongst others, that:

"Member states should:

a. consider possible constitutional and/or legislative changes, including positive action measures, which would facilitate a more balanced participation of women and men in political and public decision making;

b. consider adopting legislative reforms to introduce parity thresholds for candidates in elections at local, regional, national and supra-national levels. Where proportional lists exist, consider the introduction of zipper systems;

c. consider action through the public funding of political parties in order to encourage them to promote gender equality;

d. where electoral systems are shown to have a negative impact on the political representation of women in elected bodies, adjust or reform those systems to promote gender-balanced representation;

e. consider adopting appropriate legislative and/or administrative measures to ensure that there is gender-balanced representation in all appointments made by a minister or government to public committees;

f. ensure that there is a gender-balanced representation in posts or functions whose holders are nominated by government and other public authorities;

g. ensure that the selection, recruitment and appointment processes for leading positions in public decision making are gender sensitive and transparent;

h. consider taking legislative and/or administrative measures aiming at encouraging and supporting employers to allow those participating in political and public decision making to have the right to take time off from their employment without being penalised;

i. encourage parliaments at all levels to set up parliamentary committees or delegations for women's rights and equal opportunities and to implement gender mainstreaming in all their work."

53. As seen from the above references, the Constitution of the Republic of Kosovo equally contains the internationally recognized safeguards for gender equality.

54. Based on that, the Court considers that, by introducing a gender-related quota for Ministerial and Deputy Ministerial positions, the proposed Amendment narrows the applicability of the constitutional safeguards for the gender equality. Thus, it diminishes the rights to a gender-balanced participation in public bodies.

55. Moreover, Article 96, paragraph 6, of the Constitution has to be taken into account as well. This provision clearly states that the Ministers in the first place, may be elected amongst deputies of the Assembly. Therefore, the deputies of the Assembly may apply the principle of gender equality and proportional representation while voting for Ministerial positions. The Assembly itself constitutes an entity with different gender presence. Secondly, Article 96 provides for the possibility for Ministers to be elected from qualified people who are not deputies of the Assembly, i.e. merits based nominations.

56. In this respect, the Court notes that the composition of the government reflects the political will of the Assembly, notwithstanding whether the Ministers and Deputy Ministers are public figures or qualified professionals.

57. A constitutional regulation of a gender quota for Ministerial and Deputy Ministerial positions may further, in practice, turn into a formal replacement of a person of the same gender that could diminish the rights of the other people being Deputies or qualified persons to become part of the government.

58. The European Court of Justice (See Case C-409/95, *Kalanke c Freie Hanstadt Bremen* (1995), Decision of 17 October 1995) reviewed a provision of the State of Bremen on the basis of which women had to be given priority over male candidates with equal qualifications in the event of promotion in a sector where women were under-represented. The European Court of Justice held that a provision granting women absolute priority over men for employment or promotion is not covered by the purpose of equal opportunities embraced by Directive 76/207 EEC. The problem was that the law of the State of Bremen, unlike similar German laws, did not leave the way open for exceptions in the face of a candidate's specific characteristics that could be relevant for the post.

59. Also, the Constitutional Council of France, in a decision of 1982, rejected as unconstitutional a proposal to limit the maximum percentage of either sex on the lists of candidates in municipal elections to 75 per cent. The Council considered that quotas were contrary to the constitutional principles of equality and universality which prohibited any division into categories of the electors and of the people to be elected.

60. Based on the abovementioned examples, the Court notes, *inter alia*, that it is not a common practice to have constitutional provisions regulating the participation in public bodies through gender quotas. Rather, the principle of equal opportunities for both women and men should be applied. The constitutional practice does not establish a qualified form of positive discrimination whereby preference is automatically and unconditionally based on a gender, notwithstanding the requirement of professional merit.

61. In that respect, the Court notes that the Deputies have not submitted any supporting evidence showing that the current constitutional safeguards of the principle of gender equality are insufficient to guarantee the gender equality constitutes *"a serious situation of discrimination"*. In fact, the burden of proof lies with the Deputies who have not presented a reasoned argument and pertinent relevant proof.

62. The Deputies consider that the negative experience of the non-implementation of Law No. 2004/2 on Gender Equality of 19 February 2004, which includes all institutions and leading bodies, is another reason for this norm to be a constitutional provision and for the Constitution to be a guarantor thereof.

63. In this relation, the Court wishes to refer to Article 4 [Form of Government and Separation of Power], paragraph 4, of the Constitution, which provides:

> *"The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control."*

64. Based on the above, the Court notes that the responsibility for implementing Law No. 2004/2 on Gender Equality lies with the Government, which is subject to the control of the Assembly, but it reiterates that it is the Assembly itself that votes and elects the government.

65. Furthermore, the Court notes that the Deputies refer to Article 24, paragraph 3, of the Constitution. However, the Court considers that the reference to this constitutional provision is unsubstantiated, as the Deputies have not justified that the proposed Amendment would be necessary to protect and advance gender equality in the Government.

66. Based on its conclusion that the Constitution provides sufficient safeguards for genders to be represented and participate in public life equally, the Court further considers that women of equal qualifications as men in Kosovo society have to be broader involved in public life and in the formation and functioning of the public bodies. This is to be achieved through the implementation of the constitutional principles, values and mechanisms.

67. For the above reasons, the Court concludes that the proposed Amendment diminishes the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law. Therefore, the proposed amendment is not in compliance with the Constitution.

FOR THESE REASONS

The Court, pursuant to Article 113.9 and Article 144.3 of the Constitution, Article 20 of the Law and Rule 56 (a) of the Rules of Procedure, in its session held on 10 March 2015, unanimously

DECIDES

I. TO DECLARE admissible the Referral by the President of the Assembly submitted on 6 February 2015 with referred proposed Amendment to the Constitution of the Republic of Kosovo;

II. TO DECLARE that the proposed Amendament diminishes human rights and freedoms set forth in Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law;

III. TO NOTIFY this Judgment to the Parties and to publish it in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Judgment effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI137/14, Applicant Shpejtim Ademaj, Constitutional Review of Judgment Pml. no. 194/2013 of the Supreme Court of Kosovo, of 2 April 2014

KI137 / 14, Resolution on Inadmissibility of 21 January 2015, published on 16 March 2015.

Keywords*: Individual Referral, criminal proceedings, organized crime, smuggling of migrants, the imprisonment sentence, right to fair and impartial trial, equality before the law, right not to be tried twice for the same act, referral manifestly ill-founded.*

The Supreme Court of Kosovo, by Judgment Pml. no. 194/2013, of 2 April 2014 had upheld the decisions of the lower instance courts and rejected the Applicant's request for protection of legality with respect to his imprisonment sentence for committing the criminal offenses of organized crime and smuggling of migrants.

The Applicant claimed that the Supreme Court had violated his rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases] Article 34 [Right not to be Tried Twice for the same Criminal Act] of the Constitution.

The Constitutional Court concluded that the Referral raises issues of legality and not of constitutionality and that the regular courts have given clear answers on the Applicant’s claims with respect to the right to fair and impartial trial. The Court also found that the Applicant's allegations for violation of Articles 24, 33 and 34 of the Constitution have only been mentioned by the Applicant and are not supported by convincing arguments and indisputable evidence. The Referral was declared inadmissible in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI137/14
Applicant
Shpejtim Ademaj
Constitutional Review of the Judgment P.m.l. nr. 194/2013
of the Supreme Court of Kosovo of 2 April 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Shpejtim Ademaj, with residence in village Jabllanica, Municipality of Gjakova, currently serving his sentence in Dubrava prison (hereinafter, the Applicant). He is represented by Mr. Gafur Elshani, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment, P.m.l. nr. 194/2013 of the Supreme Court of Kosovo dated on 2 April 2014, which was served on the Applicant on 23 May 2014, based on the information received from the Basic Court in Prishtina.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment, P.m.l. nr. 194/2013 of the Supreme Court of Kosovo dated on 2 April 2014. The Applicant claims that the Supreme Court by rejecting the request for protection of legality as ungrounded has violated his rights to equality before the law, fair

and impartial trial, prohibition of discrimination and legal remedies as guaranteed by the Constitution of the Republic of Kosovo (hereafter: the Constitution) and the European Convention on Human Rights (hereafter: ECHR).

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 September 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 18 September 2014 the Applicant, on his own initiative, submitted additional documents to the Court.

7. On 7 October 2014 the President of the Court by Decision, GJR. KI137/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI137/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

8. On 27 October 2014 the Court informed the Applicant of the registration of the Referral and requested that he files the power of attorney in compliance with Article 21 of the Law and Rule 29.2 (c) of the Rules of Procedure. On the same date the Court informed the Basic Court in Prishtina of the registration of the Referral and requested that they provide a copy of the letter of receipt indicating the date when the Applicant or his representatives have received the challenged Judgment. Lastly, on the same date the Court sent a copy of the Referral to the Supreme Court.

9. On 3 November 2014 the Applicant submitted the power of attorney, as requested by the Court.

10. On 4 November 2014 the Basic Court in Prishtina submitted the requested document to the Court, which proves that the Applicant received the challenged Judgment on 23 May 2014.

11. On 21 January 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. During the night between 14 and 15 October 2009, a group of 18 (eighteen) citizens from Kosovo has crossed the border between Serbia and Hungary by a boat sailing in river Tisa, near the city of Subotica. The boat was drowned on its way and 15 (fifteen) citizens of Kosovo lost their lives, while 3 (three) of them survived.

13. On 7 October 2010 the Special Prosecution Office of the Republic of Kosovo (hereinafter: SPRK) based on the act PPS. No. 422/09, filed an indictment against the Applicant and six (6) other persons, charging them with the criminal offence of the organized crime under Article 274, paragraph 4, in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: CCK), and the criminal offence of Smuggling of migrants under Article 138, paragraph 6 of the same Code.

14. On 17 June 2011 the District Court in Prishtina adopted Judgment P. no. 244/10, which found the Applicant *"guilty for both criminal offences and sentenced him, for the first offence, with imprisonment of fourteen (14) years and €200.000, while for the second offence with imprisonment of two (2) years for each migrant, namely the aggregate sentence in duration of seventeen (17) years of imprisonment and fine of €200.000. "*

15. On 30 October 2011 the Applicant filed an appeal with the Supreme Court against the Judgment of the District Court P. no. 244/10, in which he admitted the responsibility for the criminal offence of Smuggling of migrants under Article 138 of the CCK, but rejected the charges for organized crime. Thus the Applicant requested from the Supreme Court to return the case to District Court for a retrial or to adopt a new decision which would only find him responsible for smuggling of migrants, but not for organized crime.

16. On the same date the lawyer of the Applicant filed an additional appeal with the Supreme Court against the Judgment of the District Court P. no. 244/10 due to "*substantial violations of the provisions of criminal procedure, violations of criminal code provisions, erroneous and incomplete ascertainment of the*

factual situation and with regard to the decision about the criminal sentence".

17. On 2 October 2012 Supreme Court adopted Judgment AP-Kz nr. 61/2012, which rejected the appeal of the Applicant as ungrounded and held that:

> "*[...] the trial panel of the district court has verified the relevant factual situation entirely for all the defendants. For this purpose, the Supreme Court of Kosovo refers to the reasoning of the judgment dealing with the verification of facts and the responsibility of each defendant. There is no indication that the District Court did not explore in an honest manner the circumstances of the case and the whole procedure was conducted correctly and it was objective. Supreme Court agrees that there are some formulations used by the trial panel may seem vague. However the findings of the trial panel are not based on assumptions. In fact, the first instance court has reasoned extensively the assessment of evidence, including the credibility of the witnesses [...]. and [...] and the importance of their statements, in order to decide about the culpability of defendants [...]".*

18. On 8 December 2012 the Applicant submitted a request for protection of legality to the Supreme Court, based on Article 451, paragraph 1 and Article 452, paragraphs 1 and 3 of the Criminal Procedure Code of Kosovo (hereinafter, CPCK), challenging the judgments: P. no. 244/10 of District Court in Prishtina and AP-Kz nr. 61/2012 of the Supreme Court, claiming that these judgments contain "*essential violations of provisions of CPCK [...] other violations of provisions of CCK, which have influenced the legality of the court decision [...]".*

19. On 2 April 2014 the Supreme Court adopted Judgment P.m.l. nr. 194/2013, which rejected the Applicant's request for protection of legality as ill-founded, and held that:

> *"The Supreme Court firstly refers to Article 432 of the CCP (Article 451 paragraph 2 of the PCCK), which provides that request for protection of legality may not be filed on the ground of an erroneous or incomplete situation. Therefore, the dispute of the factual situation in this phase is inadmissible, and the court will only limit itself in assessment of eventual violations in interpretation or application of the law*
> *[...]*

> *Under Article 436 of the CCP (Article 451 of the KPCC that), shall confine itself to examining those violations of law which the requesting party alleges in his or her request*
> *[…]*
> *in this respect, in its assessment the Supreme Court has not found any procedural violation in the contested judgments, and did not find any other violation, which should be considered ex officio."*

Applicant's allegations

20. The Applicant alleges that Judgment, P.m.l. nr. 194/2013 of the Supreme Court of 2 April 2014 by rejecting his request for protection of legality has violated his rights guaranteed by the Constitution, namely Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases], Article 34 [Right not to be Tried Twice for the Same Criminal Act], his right to a fair trial guaranteed by Article 6 of the ECHR and Article 10 of Universal Declaration of Human Rights (hereinafter: UDHR).

21. With regards to the alleged violation of his rights under Article 31 of the Constitution and Article 6 ECHR the Applicant claims that: *"By decision cited above, the Applicant considers that his rights to fair and impartial trial has been violated, since during the trial it has not been determined that the Applicant by his actions or inactions, was a part of the organized crime, or he has collaborated in co-perpetration of the criminal offence, as provided by Articles 274, para. 4,in conjunction with Article 23 of CCK and in the appeal procedure has plead guilty and the punishment for the criminal offence of Smuggling with migrants, while by challenged judgments was found guilty for the criminal offence of the organized crime."*

22. With regards to violations of other constitutional provisions, namely Article 24, Article 33 and Article 34, the Applicant only lists them as alleged violations, but does not provide any arguments or evidence in support of his claims.

23. Finally the Applicant requests from the Court to find that:

> *"[…] that Judgment of the District Court in Prishtina P. no. 244/2010, of 17 June 2011, and the judgments of the higher instance authorities that have upheld the imposed punishments even, by regular and extraordinary remedies, there is violation*

of the Constitution and the applicable law, of the right to fair and impartial trial, and there is disproportion in the severity of the punishment with the criminal offense, to the detriment of the appellant, and also for the offence he is charged with, the organized crime, it has not been proven by evidence that the Applicant was a member of the criminal organization by any of his individual action or inaction.

The same judgments should be annulled as regards to organized crime under Article 274, paragraph 4, in conjunction with Article 23 of the Criminal Code of Kosovo, and the case should be adjudicated in impartial manner and in accordance with the evidence."

Admissibility of the Referral

24. The Court first examines whether the Applicant is an authorized party to submit a referral with the Court, in accordance with requirements of Article 113.7 of the Constitution.

Article 113, paragraph 7 of the Constitution provides:

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

25. In addition, Article 49 of the Law provides that *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision"*.

26. In the instant case, the Court notes that the Applicant started judicial proceedings before the regular courts, namely the District Court and later before the Supreme Court of Kosovo. The Court also notes that the Applicant was served with the last Supreme Court Judgment on 23 May 2014 and filed his Referral with the Court on 12 September 2014.

27. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to him by the applicable law and the Referral was submitted within the four months time limit.

"In his/her referral, the claimant should accurately clarify what rights

28. In addition, the Court refers to Rules 36 (1) d) and 36 (2) b) and d) of the Rules of Procedure, which provide that:

"(1) The Court may only deal with Referrals if:

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...]

b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,

[...]

d) when the Applicant does not sufficiently substantiate his claim".

A. As to the allegations under Article 31 of the Constitution and Article 6 of ECHR

29. As mentioned above, the Applicant had the possibility to confront the charges in all instances of regular courts, which he did exercise his right to present his defence and used the right to regular and extraordinary legal remedies. In addition, the Court considers that the justification provided by the Supreme Court, in answering the allegations made by the Applicant with regards to the sanctioning decision, is clear, reasoned and fair.

30. With regards to the Applicant's claims related to the assessment of evidence and questioning the witnesses, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

31. The Constitutional Court also reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and

apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

32. The Constitutional Court can only consider whether the regular courts' proceedings in general and viewed in its entirety have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, *Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).

33. The Court considers that the proceedings before the regular courts, including before the Supreme Court, have been fair and reasoned (See *Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009).

B. As to allegations under Article 24, 33 and 34 of the Constitution

34. The Court notes that the Applicant only listed and described the content of the constitutional provisions guaranteeing Equality before the Law, The Principle of Legality and Proportionality in Criminal Cases and Right not to be Tried Twice for the Same Criminal Act. However, the Applicant does not clearly present how and why has been treated differently, how was the principle of legality and proportionality has been violated or why does he consider that he has been tried twice for a same criminal act.

35. In this respect, the court reiterates that dissatisfaction with the decision or merely the mentioning of articles and provisions of the Constitution does not suffice for the Applicant to raise an allegation of constitutional violation. When alleging Constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be grounded (See Constitutional Court case No. KI198/13 Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).

36. In this context, the Applicant has not filed any convincing argument to establish that the alleged violations mentioned in the Referral represent constitutional violations (see, *Vanek v. Republic of Slovakia*, ECtHR Admissibility Resolution, no. 53363/99, of 31 May 2005) and did not specify how the referred articles of the

Constitution, ECHR and UDHR support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rules 36 (1) d), 36 (2) b) and d) of the Rules of Procedure, on 21 January 2015, unanimously

DECIDES

I. TO DECLARE the Referral:

a. With regards to allegations under point A), inadmissible because the facts presented by the Applicant do not in any way justify the alleged violation of his constitutional rights;

b. With regards to allegations under point B), inadmissible because the Applicant has not sufficiently substantiated his claim.

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI162/14, Applicant Shefki Hyseni, Constitutional review of Decision Pml. no. 165/14, of the Supreme Court of the Republic of Kosovo, of 27 August 2014

KI162/14, Resolution on Inadmissibility of 22 January 2015, published on 16 March 2015.

Keywords*: Individual Referral, criminal procedure, right to fair and impartial trial, imprisonment sentence, criminal offence of fraud, non-exhaustion of legal remedies.*

The Supreme Court of Kosovo, by Decision Pml. no. 165/14 of 27 August 2014 had rejected the Applicant's request for protection of legality because of non-fulfillment of the procedural admissibility requirements, and accordingly, the decisions of lower instance courts with regard to imprisonment sentence of the Applicant for committing the criminal offense of fraud, have not been considered.

The Applicant challenged the decision of the Supreme Court of Kosovo claiming that he had not been served with the decision of the second instance court, and by that were violated the rights guaranteed by the Constitution.

The Constitutional Court found that the Applicant was provided the opportunity to request the decision of the second instance court - where after having that decision – he could have begun the calculation of the legal deadline and the possibility of filing a legal remedy with a higher instance court. The Referral was declared inadmissible because of non-exhaustion of all legal remedies as provided by Article 113.7 of the Constitution, Article 47.2 of the Law and further specified in Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI162/14
Applicant
Shefki Hyseni
Constitutional review of the Decision Pml. no. 165/14, of the Supreme Court of the Republic of Kosovo, of 27 August 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Shefki Hyseni, with permanent residence in Mitrovica.

Challenged decision

2. The Applicant challenges the Decision Pml. no. 165/14, of the Supreme Court of the Republic of Kosovo, of 27 August 2014 (hereinafter: the Supreme Court).

Subject matter

3. The subject matter is the constitutional review of the Decision Pml. no. 165/14, of the Supreme Court, of 27 August 2014, which, according to the Applicant's allegations, violated rights guaranteed by the Constitution.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 30 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 November 2014, the President of the Court, by Decision GJR. KI162/14/14, appointed Judge Robert Carolan as Judge Rapporteur and on the same date, by Decision KSH. KI162/14/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 6 November, 2014, the Court notified the Applicant of registration of the Referral and requested from him to complete the Referral with relevant documentation. On the same date, the Supreme Court was also notified and a copy of the Referral was sent to it.

8. On 8 December 2014, the Applicant submitted the completed Referral form and attached to it the Decision Pml. no. 165/14, of the Supreme Court, of 27 August 2014.

9. On 22 January 2015, the Review Panel considered the report of the Judge Rapportuer and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

10. On 18 March 2009, the Municipal Court in Ferizaj (Judgment, P. no. 798/2006) found the Applicant guilty of the criminal offense of Fraud under Article 261 paragraph 1 of the Criminal Code of Kosovo (CCK), by imposing on him the sentence of 20 months of imprisonment.

11. On 23 October 2012, the District Court in Prishtina (Judgment, Ac. no. 285/2009) modified the Judgment of the Municipal Court of Ferizaj regarding the measure of punishment of the Applicant, by

reducing the imprisonment sentence from 20 months to one (1) year.

12. On 20 July 2014, the Applicant filed a request for protection of legality with the Supreme Court, alleging that there was a substantial violation of the provisions of the criminal procedure law.

13. On 27 August 2014, the Supreme Court (Decision PML. no. 165/14), rejected, as inadmissible, the Applicant's request for protection of legality, because, according to said court, the procedural admissibility requirements, provided by applicable law, had not been met.

14. Furthermore, the Supreme Court reasoned:

> *[…]*
> *"From the content of the request for protection of legality, it does not result that by this legal remedy was challenged any court decision, because there was not specified what decision was challenged or what court proceedings was conducted prior to rendering of such a decision.*
>
> *On the contrary, in the request is mentioned only the fact that the judgment of the second instance court has not been served on the convict and, in this way, the law has been violated because he was not given the opportunity to use any legal remedy against the decision of the second instance court.*
>
> *The fact that in the present case the Judgment of the second instance court was not served on the convict, is grounded, since, as it results from the case file- the return paper, dated 4.3.2013- it was attempted to submit the document to the convict, but in the return paper it was found that the party was unknown. However, the Supreme Court assesses that in the present case, the convict's request for protection of legality is premature because in such a situation the convict should have addressed the first instance court with a request for service of the judgment of the second instance court in a regular manner, from which date the time limit starts to run, and then, by respecting this time limit, he should have used this legal remedy".*
> *[…]*

Applicant's allegations

15. The Applicant alleges that the Supreme Court violated his rights guaranteed by the Constitution, due to the fact that the said court rejected the request for protection of legality as inadmissible, because according to the Applicant, this court did not take into account the fact that Judgment Ac. nr. 285/2009, of the District Court of Prishtina, of 23 October 2012, was not served on the Applicant.

Admissibility of the Referral

16. The Court first examines whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

17. In the present case, the Court refers to Article 113.7, which provides that:

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

18. In addition, Article 47. 2 of the Law provides:

> *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".*

19. The Court also refers to the Rule 36 (1) b) of the Rules of Procedure, which provides:

> *The Court may consider a referral if:*
>
> *[...]*
>
> *(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.*
>
> *[...]*

20. From the case file, the Court notes that the Applicant challenges Decision Pml. No. 165/14, of the Supreme Court, of 27 August 2014, regarding alleged violations of rights guaranteed by the Constitution. In fact, the Applicant has not specified which specific provision of the Constitution has been violated. However, the Court *inter alia* has understood that it is about the rights deriving from Article 31 of the Constitution and Article 6 of the ECHR, such as the right to have the decision of the court, so that the party or the parties be given anopportunity to contest an unfavorable court decision and prepare an adequate defense for exhausting his legal remedies in the higher instance courts.

21. However, it is clear in this case that the Applicant was provided the opportunity by the Supreme Court to request and receive the Judgment of the District Court of Prishtina from the Basic Court in Prishtina, and that after having it, he could then begin the calculation of legal time limit for seeking his request for Protection of Legality. There is no evidence that the Applicant then requested to receive the Judgment of the District Court of Prishtina.

22. In the present case, the Court cannot conclude that because the Applicant has not asked for the Judgment of the District Court of Prishtina and, therefore, has apparently not received the Judgment of the District Court of Prishtina, that the Applicant was denied the right to exhaust legal remedies against this judgment or that his rights guaranteed by the Constitution were violated.

23. Even from the reasoning of the Decision of the Supreme Court, it is clear that the Applicant's request for protection of legality was rejected as inadmissible, because it was considered as premature. The said court advised the Applicant to address the Basic Court in Prishtina, to ask for the Judgment Ac. no. 285/2009, of 23 October 2014, and after having this judgment would begin the calculation of legal time limit and the possibility of exercising the remedy to the higher instance.

24. Therefore, in this respect, the Court considers that the Applicant's Referral does not meet the procedural admissibility requirements, as required by Article 113.7 of the Constitution, due to the fact that he failed to prove that he had used the opportunities provided by the Supreme Court.

25. The Court reiterates that the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular

proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of the fundamental human rights. Otherwise, the Applicant is liable to have its case declared inadmissible by the Constitutional Court, when failing to avail itself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. (See Resolution on Inadmissibility KI41/09, of 21 January 2010, *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo,* and see *mutatis mutandis,* ECHR, *Selmouni vs. France,* no. 25803/94, Decision of 28 July 1999).

26. For all the aforementioned reasons, the Court concludes that the Referral does not meet the procedural admissibility requirements, provided by Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) b) of the Rules of Procedure, due to non-exhaustion of legal remedies.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 22 January 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI118/14, Applicant Raiffeisen Bank Kosovo J. S. C, Constitutional review of Judgment E. Rev. no. 24/2013 of the Supreme Court of Kosovo, of 5 February 2014

KI118 / 14, Resolution on Inadmissibility of 23 September 2014, published on 18 March 2015

Keywords: Individual Referral, civil procedure, penalty interest, legality, constitutionality, the right to fair and impartial trial, protection of property, manifestly ill-founded referral.

Applicant filed a request for revision with the Supreme Court on the grounds that there had been a violation of the provisions of the contested procedure and erroneous application of the substantive law by the lower instance courts, regarding the amount of penalty interest that the third party was obliged to pay the Applicant due to non-observance of deadlines for the payment of principal. The Supreme Court through Judgment Rev. E. no. 24/2013 had rejected as ungrounded the request for inspection of the Applicant and upheld the decisions of lower instance courts.

The Applicant alleged, *inter alia*, that: (i) the challenged decision does not address the key questions of the case, (ii) the decision does not contain coherent reasoning, (iii) the challenged decision is contradictory. The Applicant also referred to violations of Articles 4 [Form of Government and Separation of Power] and 10 [Economy] of the Constitution.

The Constitutional Court noted that the Applicant is not an authorized party to allege violation of Articles 4 and 10 of the Constitution and that the Applicant has the right to refer constitutional matters only under Article 113.7 of the Constitution. Regarding the claims of the Applicant that the challenged decision was unjustified, the Constitutional Court *inter alia* held that: (i) The Supreme Court had addressed all the central issues of the Applicant's case, (ii) the challenged decision was coherent and sufficiently reasoned, (iii) that the Applicant's allegations essentially raise questions of legality and not of constitutionality and (iv) it is the duty and the constitutional prerogative of the regular courts to resolve issues of legality. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and 2 (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case KI118/14
Applicant
Raiffeisen Bank Kosovo J.S.C
Constitutional review of
Judgment E. Rev. no. 24/2013 of the Supreme Court of Kosovo,
of 5 February 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Raiffeisen Bank Kosovo J.S.C in Prishtina, represented by Mr. Ilir Tahiri, head of the legal office (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges the Judgment E. Rev. no. 24/2013 of the Supreme Court of Kosovo of 5 February 2014, which is in connection with Judgment Ac. no. 352/2012 of the Appeals Court of Kosovo of 7 June 2013 and Judgment II. C. nr. 272/2011 of the Kosovo Commercial Court of 30 January 2012.

3. The challenged decision was served on the Applicant on 18 March 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged judgment, which allegedly *"has violated the Applicant's constitutional rights, guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and Article 6.1 of the European Convention for Protection of Human Rights and Fundamental Freedoms"*.

Legal basis

5. The Referral is based on Articles 113 (7) and 21 (4) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 29 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 15 July 2014, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 6 August 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Kadri Kryeziu.

8. On 15 August 2014, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.

9. On 15 September 2014, the President of the Constitutional Court replaced Judge Robert Carolan as member of the Review Panel with Judge Snezhana Botusharova.

10. On 23 September 2014, the Review Panel considered the Report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. In the period 12 July 2005 to 21 November 2007, the Applicant signed with third party loan agreements, which included 3% penalty interest clauses for the delayed payment of instalments.

12. On 27 April 2009, the Applicant initiated an enforcement procedure before the Municipal Court in Prizren considering that the third party did not honor the deadlines of payment of the loan.

13. On 3 July 2009, the Municipal Court in Prizren (Decision E. no. 763/2009) allowed the sale of mortgaged property. However, the District Court in Prizren (Decision Ac. no. 536/2009) quashed the decision of the Municipal Court and remanded the case for retrial.

14. On 20 May 2011, the Municipal Court, based on the proposal of the Applicant, imposed security measures on the mortgaged property and ordered the third party to hand over the mortgage to the Applicant.

15. Meanwhile, on 26 May 2011, the Applicant and the third party signed an extra-judicial agreement "*on repayment of debt in exchange of the removal of a part of the penalty interest and the suspension of the procedure for execution of mortgage*".

16. On 30 September 2011, the third party filed a claim with the District Commercial Court in Prishtina against the Applicant for repayment of 44.640,54 Euros as ungrounded profit which allegedly had been realized by the Applicant.

17. On 19 October 2011, the Applicant responded, requesting the claim to be "*rejected because: (i) filing of claim was not permitted under Article 211 of the LCT, since the Carrera paid the debt voluntarily, according to the extrajudicial agreement, which was reached at the proposal of Carrera itself; (ii) exercising of legal unalienable rights of the Applicant to enforce the mortgage cannot be considered as exercising violence; and (iii) collection payment of penalty interest was agreed and implemented in full compliance with Article 277.2 of LCT in conjunction with Articles 10 and 28 of LCT, which provide instrument of penalty interest and allow contracting of the amount of penalty interest*" *(para 14 of the Referral).*

18. On 30 January 2012, the District Commercial Court in Prishtina (Judgment II.C.no.272/2011) determined:

> *The statement of claim of claimant "CARRERA – R" L.l.c. – Prizren is APPROVED as grounded, and the respondent RAIFFEISEN BANK – Prishtina is obliged to pay to the claimant the amount of 44.640,54 € with an annual interest of 3.5%, on behalf of the ungrounded profit starting from 30.05.2011 until the final payment, and to compensate the expenses of the contested procedure at the amount of 1.123 €, all this within a 7 day time limit after the Judgment becomes final under the threat of forced execution.*

19. On 24 February 2012, the Applicant appealed the District Commercial Court Judgment and based its appeal on three main points*: (i) a substantial violation of contested procedure provisions, pursuant to Article 182, paragraph 2, item (n) of the LCP (...); (ii) erroneous and incomplete determination of factual situation, as the judgment presented facts in relation to the amount of the debt and paid penalty interest and the reasons of payment that were completely contrary to the evidence presented during the proceedings; and (iii) erroneous application of the material law, so that the judgment qualified the penalty interest, agreed upon Article 4.1 (c) of the Loan Agreement, based on Article 277 of LCT as "a contractual penalty" under Article 277.3 of LCT.*

20. On 7 June 2013, the Court of Appeals of Kosovo (Judgment Ac. No. 352/2012) determined:

> *The respondent's appeal is REJECTED as not grounded and the Judgment of the District Commercial Court II.C.no.272/11 of date 30.01.2012, is UPHELD.*

21. On 6 August 2013, the Applicant filed a revision and a complement of revision with the Supreme Court, *"due to the:*

    1) Violation of the provisions of the contested procedure

    2) Erroneous application of the material law".

22. In the revision, the Applicant states mainly what follows.

    a). It has provided to the Supreme Court "*a comprehensive analysis of the theory and practice of application of the*

legal instrument penalties under Article 277 and the major differences between this legal instrument and "contractual penalties provided by Article 270.3 of the LCT". In addition, it has provided *"a detailed analysis of the theory and practice of Article 270.3 and 277 of LCT, including the essential difference between the contractual penalty and default interest"*.

b). It highlighted that the Court of Appeal Judgment *"not only (...) did not consider the appealed allegations regarding violation of contested procedure provisions under Article 182, paragraph 2, item (n), but it also failed to consider the appeal within the boundaries of the appealed allegations, by completely ignoring two of the three categories of the appealed allegations of the Applicant, in breach of Article 194 of the LCP"*.

23. In the complement of the revision, the Applicant reasoned the ground on incorrect application of substantive law arguing namely what follows.

a). The Court of Appeal violated *"seriously the principle of separation of power established by Article 4 of the Constitution"*, by disregarding Article 277 of the LOR, *"without any consideration and in arbitrary manner, without giving any single reasoning"*. In fact, the Applicant states that *"Article 4 of the Constitution stipulates clearly that the Assembly of Kosovo exercises the legislative power in the country. Consequently, (...) no court in Kosovo is entitled that through its own decisions pronounce null and legally void a legal provision which is approved by the Assembly of Kosovo or predecessor institutions, and which have exercised the legislative function in Kosovo. The appealed judgment in its reasoning by pronouncing null and legally void the punitive interest rate, which was contracted through litigation parties indirectly also pronounces null and legally void the Article 277 of LOR. (...). In this manner, the Court of Appeal by violating seriously the principle of separation of power – as per Article 4 of the Constitution – is put in the role of legislative power in which case annuls in counter- constitutional manner one legal provision and in this case produces legal effect, which is equal to legislative activity"*.

b). In addition, *"the reason why Article 277 SFRY LOR has not elaborated enough freedom of parties to contract the level of "penalty interest", has to do with the fact that the SFRY LOR was drafted in a planned economic system in which the state has a crucial role as a regulator of economic relations. Considering that pursuant to Article 10 of the Constitution "market economy with free competition is the basis for economic regulation of the state", Article 277.2 of SFRY LOR should be interpreted and implemented on the basis of this constitutional postulate".*

24. On 5 February 2014, the Supreme Court of Kosovo (Judgment E. Rev. no 24/2013) determined what follows.

The revision of the respondent, filed against the judgment of the Court of Appeal of Kosovo Ae. no 352/2012 of 07.06.2013 and the District Court of Prishtina II. C. no. 272/2011 of 30.01.2012, is rejected as ungrounded in part related to the amount of €44,640,54.

The revision of the respondent in relation to the amount of interest adjudicated by judgment of the Court of Appeal and the District Commercial Court of Kosovo in Prishtina II. C. no. 272/2011 of 30.01.2012, is approved in the amount of €44,640,54, so in this part two judgments are modified the respondent is obliged to pay to claimant the above-mentioned amount plus interest in the amount paid by local banks for term deposits for one year without a specific purpose, starting from 30.09.2011 until the final payment.

25. The Supreme Court reasoned its judgment as it follows.

The claims in the revision that the second instance court has erroneously applied the material law when it assessed the penalty interest as agreed interest, just as the penalty interest was provided by the contract, this Court has assessed as unacceptable, given that these data are in contrast with the assessment of the first instance court, where it is stated the interest rate agreed upon in Article 4.1 c) of the Loan Agreement is contrary to Article 270, paragraph 3 LCT, because the default interest cannot be concluded with monetary claims, since the interest was set by contract.

The claims in revision that the penalty interest provided for in Article 4.1 c) of the interest based on law or on Article 277 LCT is unacceptable and contrary to the content of Article 277 of LCT, given that the default interest does not need to be contracted, payment basis stems from the law and not based on the contract. The default interest shall become effective only if it is stipulated in the contract and there is no legal basis for payment if it is not set by the contract. This form of interest cannot be contracted in monetary obligations.

Applicant's allegations

26. The Applicant claims that *"the Challenged Decision has violated the Applicant's constitutional rights, guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6.1 of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention)".*

27. The Applicant alleges that *"the Supreme Court failed not only to justify the Challenged Decision, but also ignored in an unlawful manner the factual and legal allegations of the Applicant, which were decisive for fair adjudication of this legal matter".*

28. The Applicant further alleges that *"as a consequence of the violation of the constitutional right of the Applicant for fair and impartial trial, the Challenged Decision deprived the Applicant for the constitutional right, sanctioned by Article 32 [Right to Legal Remedies] and Article46 [Protection of Property] of the Constitution".*

29. In sum, the Applicant alleges a violation of its right to fair and impartial trial as guaranteed by Article 6 of the ECHR and 31 of the Constitution and, as a consequence, a violation of its right to protection of property under Article 46 of the Constitution.

30. The Applicant supports his allegations referring to the judgment of this Court in case no. KI72/12 Applicant Veton Berisha and Ilfete Haziri rendered on 7 December 2012.

Assessment of admissibility

31. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

32. In this respect, the Court refers to Article 113 of the Constitution which establishes:

> *1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
> *(...)*
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.*

33. The Court also refers to Article 48 of the Law which provides:

> *In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.*

34. The Court additionally refers to Rules 36 (1) d) and (2) d) of the Rules of Procedure, which provide:

> *(1) The Court may consider a referral if: ... d) the referral is prima facie justified or not manifestly ill-founded.*
> *(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: ... (d) the Applicant does not sufficiently substantiate his claim.*

Scope of the assessment

35. The Court recalls that the Applicant appealed to the Court of Appeals on the grounds of "*Violation of the provisions of the contested procedure; Erroneous and incomplete finding of the factual situation; Erroneous finding of the material law".*

36. The Court further recalls that the Applicant claims that the Court of Appeals responded to its allegations *"without any analysis, giving impression that it did not consider the allegations at all".*

37. In that respect, the Court emphasizes that, in accordance with the principle of subsidiarity, the exhaustion rule followed by the Applicant provided to the Supreme Court with the opportunity to prevent or put right an alleged violation. *"The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the*

Constitution (see Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, KI-41/09, of 21 January 2010, and see mutatis mutandis, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).

38. Therefore, the Court considers that, if the abovementioned claim would be grounded, the Applicant gave to the Supreme Court the opportunity to fix the violation through the exhaustion process, as it will be explained further on.

39. In addition, the Court observes that the Applicants focus its Referral mainly on contesting the main subject of the lasting discussion throughout the proceedings in the regular courts' instances: *"the first instance court found that the statement of claim of the claimant is grounded, due to the fact that the amount paid of €44640.54 has to do with the penalty interest, which was made by erroneous application of the material law because the provisions of Article 4.1 under items c) of the Loan Agreement was agreed monthly default interest rate of 3% for every delayed month for unpaid loan instalments. These provisions are inconsistent with the provisions of Article 270 paragraph 3 of the LCT, according to which contractual penalty cannot be contracted in monetary obligations which is imperative in nature, so that as the default interest includes the penalty interest, and it cannot have any legal effect. So, through pressure, seizure of the mortgage, the claimant and the Guarantors in the executive procedure, the amount of €44.640.54 paid on 30.05.2011 in the name of default interest is the acquisition without ground by the respondent, pursuant to Article 210, paragraph 1 and 2, LCT, decided as in the enacting clause"*.

40. The Court notes that, in the case, the main and continuous key allegation of the Applicant in proceedings before the regular courts concerns an applicability of a law question: how to apply the provisions of Articles 270 (3) and Article 277 of LCT to paragraph 4 (1) c) of the Loan Agreement.

41. In fact, the Applicant claims mainly that:

    i). the decision of the Supreme Court did not examine and address key questions raised by it which were indispensable for a meritorious and just resolution of the said legal matter;

ii). the challenged decision does not contain coherent reasoning;

iii). the challenged decision is contradictory because, inter alia, the Supreme Court failed to explain how is it possible that article 277 of the LOR which envisages penalty interest is applied by automatic action of the law and without contracting the altitude of penalty interest.

42. The Applicant argues in general that the Supreme Court judgment *"not only failed to address serious violations, referred by the applicant during the adjudication of this case by the lower courts, but it made violations of the constitutional and legal rights of the applicant that threaten the rule of law in the country"*.

43. In addition, the Applicant alleges that the Supreme Court *"without any basis found no violation of contested procedure provisions and* [found] *that the factual situation in this matter was correctly determined"*. The Applicant further considers that *"the part of the reasoning provided regarding the application of the material law has not addressed a single essential appealed allegation of the revision. This violation shows better than any other fact the arbitrary nature of the* [judgment of the] *Supreme Court"*.

44. The Court observes that the Supreme Court complied with the requirement of examining the Applicants' main argument by explaining:

i). why the contracted penalty interest is in contravention with the law;

ii). why the designation of the penalty interest as contractual punishment by the lower courts does not change the essence of the legal affair concluded by the parties; and

iii). why the lower courts have correctly applied the material law when they held that the penalty interest cannot be applied vis-à-vis pecuniary obligations.

45. The Court considers that the main allegation on erroneous application, to Article 4 (1) c) of the Loan Agreement, of the legal provisions of Articles 270 (3) instead of 277 of LCT pertains to the domain of legality which falls under the prerogative of the regular courts.

46. The Court also recalls that the Applicant, in its complement to the revision, reasoned the ground on erroneous application of material law arguing that the Court of Appeal violated *"seriously the principle of separation of power established by Article 4 of the Constitution", by disregarding Article 277 of the LOR"*.

47. In addition, in its complement to the revision's reasoning, the Applicant invokes Article 10 of the Constitution which establishes that *"a market economy with free competition is the basis of the economic order of the Republic of Kosovo"*. The Applicant considers that *"Article 277.2 of LOR should be interpreted and implemented on the basis of this constitutional postulate"*.

48. The Court considers that the reference to Articles 4 and 10 of the Constitution, used by the Applicant to reason the ground on erroneous application of the law, does not constitute in itself an allegation on constitutionality. In fact, that reference makes part of its arguments addressed to show which legal provision should have been applied and that there was an error on applying the material law. Thus the ground of appeal is still on the domain of legality; it does not go at the domain of constitutionality.

49. Moreover, the Applicant would not be an authorized party to refer to the Constitutional Court such matters related to the compatibility of laws with the Constitution or questions of constitutional compatibility of a law when it is raised in a judicial proceeding.

50. Indeed, compatibility of laws with the Constitution or constitutional questions raised in judicial proceedings are matters which are in the jurisdiction of the Constitutional Court, but only if they are referred by authorized parties, which in that case are respectively only the Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson (Article 113 2. 1), and the Courts (Article 113 8). (See Cases of the Constitutional Court KO04/11, Applicant *Supreme Court of the Republic of Kosovo* requesting Constitutional Review of Articles 35, 36, 37 and 38 of the Law on Expropriation of Immovable Property, No. 03/L-139, Judgment of 1 March 2012; KO43/10, Applicant *LDK-AAK-LDD, Prizren MA,* Resolution on Inadmissibility of 25 October 2011, paragraphs 19-21; KI230/13, Applicant *Tefik Ibrahimi,* Resolution on Inadmissibility of 19 May 2014, paragraphs 25-27).

51. In this regard, the European Court of Human Rights (hereinafter, the ECtHR), in accordance with its established case law, held that *"The Convention does not institute for individuals a kind of actio popularis for its interpretation and thus does not permit individuals to complain against a law in abstracto simply because they feel that it contravenes the Convention"*. (See *Monnat v. Switzerland*, No. 73604/01, ECtHR, Judgment of 21 September 2006, paragraphs 31-32 and, see *mutatis mutandis*, *Klass and Others v. Germany,* No. 5029/71, ECtHR, Judgment of 6 September 1978, paragraph 33).

52. The Referral is based on Article 113 (7) of the Constitution which establishes that *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution"*. Thus the Applicant cannot obtain a constitutional assessment of constitutionality of a Law through Article 113 (7) where it is possible only through Article 113 (2) 1) and Article 113 (8) of the Constitution and cannot use the alleged constitutional violation of Articles 4 and 10 as an argument to prove an erroneous application of substantive law.

53. The Court acknowledges that the competing interests under dispute in the case is very important for both the parties, may radiate and impact on other individual's liberty and autonomy, and affect the constitutional rights of private parties in civil litigations. However, no such constitutional allegation and argument was brought either before the Supreme Court or before the Constitutional Court.

54. Therefore, the Court will confine itself to the allegations and arguments made by the Applicant:

    (i) violation of Articles 6 (1) and 13 of the ECHR and Articles 31 of the Constitution and

    (ii) violation of Article 46 of the Constitution.

    Both the allegations are logically dependent, as the second is a consequence of the first one. Thus the Court will start analyzing the first one.

Violation of the right to fair and impartial trial

55. The Court, having identified the main matter of the analysis, recalls that, pursuant to Article 53 of the Constitution, it is bound to

interpret human rights and fundamental freedoms guaranteed by the Constitution consistently with the court decisions of the ECtHR.

56. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and material law. (See, mutatis mutandis, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I).

57. In addition, the Constitutional Court reiterates again that the correct and complete determination of the factual situation and applicable law is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, cannot act as a "fourth instance court". (See case *Akdivar v. Turkey,* No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65. See also *mutatis mutandis* the case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

58. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of factual findings or applicable law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

59. Thus, the Court will assess whether the relevant proceedings were in any way unfair or tainted by arbitrariness, in conformity with the case law of the European Court of Human Rights. (See mutatis mutandis*, Shub v. Lithuania*, ECtHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

60. In fact, the Court notes that the Applicant filed the "revision" on the grounds of "v*iolation of the provisions of the contested procedure; erroneous application of the material law"* and it has not invoked the ground on "e*rroneous and incomplete finding of the factual situation*" which it has previously alleged before the Court of Appeals.

61. The Court also notes that the Judgment of the Supreme Court reads that the Applicant *"filed the revision due to substantial violation of the contested procedure provisions and erroneous application of the material law"*. Thus, the Court considers that

the Supreme Court was aware of the grounds of the revision to be taken into account.

62. The Supreme Court found that *"the challenged judgment does not contain any substantial violation of civil procedure alleged by the revision. The enacting clause is clear and there is no contradiction within the reasoning, while in the reasoning are provided full and sufficient reasons for all of the material facts relevant to the trial of this legal matter. Therefore, the allegations in the revision that the lower courts judgments contain substantial violation of contested procedure provisions are ungrounded".*

63. The Supreme Court further found in relation to the erroneous application of the material law that *"the claims in revision that the penalty interest provided for in Article 4.1 c) of the interest based on law or on Article 277 LCT is unacceptable and contrary to the content of Article 277 of LCT, given that the default interest does not need to be contracted, payment basis stems from the law and not based on the contract. The default interest shall become effective only if it is stipulated in the contract and there is no legal basis for payment if it is not set by the contract. This form of interest cannot be contracted in monetary obligations".*

64. Moreover, the Supreme Court "*found that the adopted interest in the adjudicated amount is applied in an unfair way by the provisions of Article 277 of LCT, because the interest rate is determined in accordance with this legal provision, as adopted interest rate of 3.5% may not be the same in all local banks. Therefore, starting from the fact that, in connection with the approved interest rate, the first instance court made an erroneous application of the material law (by rejecting as unfounded the claimant's revision), the same judgment with this part was modified pursuant to Article 224, paragraph 1 of the LCP. The claimant is admitted interest from the time of filing the claim (30.09.2011) in accordance with Article 279, paragraph 2, of LCT the claimant was late to return the agreed amount in the name of compensation of damage. Therefore, pursuant to Article 277, paragraph 1 of the LCT, the claimant is entitled to interest on the amount paid by local banks for savings account for more than one year without a specific purpose".*

65. Furthermore, the Supreme Court also expressly took into account the ground of appeal brought by the Applicant before the Court of Appeals on "e*rroneous and incomplete finding of the factual situation*", meaning that *"the judgment of the first instance court*

is contrary to the minutes when it is concluded that it is not disputed that the claimant paid the amount of €44,640.54".

66. In fact, the Supreme Court Judgment explained that the claim on erroneous and incomplete finding of the factual situation is *"inadmissible because, although from the contents of the case file results that the respondent* [here, the Applicant] *in entire proceedings challenged the claimant's statement of claim, from the banking statement as of 1 January 2011, issued by the respondent, it results that the amount of loans of €300,000, to claimant as debtor was set the certain interests in the amount € 10,799,46 and €38,841,08, or total amount of €44,640,54, which the claimant seeks as penalty. In addition, these data are inconsistent with the contents of the case file and the data in the session of first instance on 04.11.2011, where the respondent claims that the extra-judicial agreement to pay the debt in part of unpaid debt, default interest and contractual penalties concluded after default interest was deducted in the amount of €55,657,47. So accordingly, the claims in the revision that the challenged judgment contains substantial violation of contested procedure provisions are unacceptable".*

67. The Court notes that the Applicant claims in summary that the Supreme Court failed to explain how is it possible that Article 277 of the LOR which envisages penalty interest is applied by automatic action of the law and without contracting the altitude of penalty interest.

68. The Court acknowledges that the importance of the right to a reasoned decision is well established by the case law of the ECtHR. (See, among others, cases *Garcia Ruiz v. Spain,* 1994; *Pronia v. Ukraine,* 2006; *Nechiporuk and Tornkalo against Ukraine,* 2011; *Hirvisaari v Finland, 2001; Hadijanastrassiou v. Greece,* 1992; *Hirvisaari v. Finland,* 2001).

69. In accordance with the ECtHR case law, the right to a reasoned decision encompasses a complex of obligations for the court judgments, namely, to provide the reasons on which the decision is based, to demonstrate to the parties that they have been heard, to provide with the opportunity to appeal the decision, to provide sufficient clarity of the grounds on which the decision is rendered.

70. However, the ECtHR has also acknowledged that the "*the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when*

dealing with criminal cases". (See *Dombo Beheer B.V. v. the Netherlands*, para 32; *Levages Prestations Services v. France*, para 46).

71. Although a regular court has a certain margin of appreciation when choosing arguments and admitting evidence, Article 6 (1) does not require a detailed answer to each and every argument. (See *Suominen v. Finland*, para 36; *Van de Hurk v. the Netherlands*, para 61; *Garcia Ruiz v. Spain* [GC], para 26; *Jahnke and Lenoble v. France* (déc.); *Perez v. France* [GC], para 81; *Ruiz Torija v. Spain*, para 29; *Hiro Balani v. Spain*, para 27).

72. In addition, ECtHR established that Article 6 (1) does not require the Supreme Court to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal on points of law. (*Burg and others v. France*, (dec.); *Gorou v. Greece (No. 2)* [GC], para 41).

73. Furthermore, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (*Garcia Ruiz v. Spain* [GC], para 26). However, the notion of a fair procedure requires that a national court which has given sparse reasons for its decisions did in fact address the essential issues which were submitted to its jurisdiction (*Helle v. Finland*, para 60).

74. In the case, the Court observes that the matter under dispute is a civil case concerning civil rights and obligations; the Supreme Court was aware of the grounds of the revision and dealt with all of them, including the errors of fact only invoked before the Court of Appeals; the main question under dispute has to do with the application of specific legal provisions; and the Supreme Court endorsed some reasons of the lower instances, but it also addressed the essential issues mainly when dealing with errors on factual findings and erroneous application of the substantive law.

75. The Court further recalls that the Applicant, in supporting his arguments, refers to the judgment of this Court in case no. KI72/12 (Applicants *Veton Berisha and Ilfete Haziri*, rendered on 7 December 2012). The Court reminds that, in case no. KI72/12, the regular courts had completely disregarded and did not answered to key questions and proof set forth by the then Applicant.

76. In the instant case, the Court considers that the Applicant was provided with replies to his legal allegations on violation of the

contested procedure, erroneous application of material law and also on erroneous and incomplete finding of the factual situation. Therefore, no parallel lines can be drawn between the two cases: case KI72/12 raises constitutional questions; the present case KI118/14 raises legality matters.

77. The Applicant notes that "*if the appealed judgment will not be quashed and if the instrument of "penalty instrument" or "default interest" is pronounced null it would lead to the collapse of the entire monetary system of obligational relationships in general and especially the financial system in Kosovo".*

78. In this respect, the Court emphasises that it is not a court of appeal or a court which can quash decisions of the regular courts or retry cases heard by them, nor can it re-examine cases in the same way as the Supreme Court, neither it is meant to act as a court of fourth instance nor as a legislative body.

79. Thus it is not up to the Constitutional Court to determine whether the penalty interest can or cannot be applied *vis-à-vis* pecuniary obligations and then caring of "*the entire monetary system (...) and especially the financial system in Kosovo"* or to act as a legislative body enacting a law in order to harmonize the legal system.

80. Therefore, the Court considers that the Applicant has not substantiated and proved its allegation that the Supreme Court violated his rights by not having applied, to Article 4 (1) c) of the Loan Agreement, the provisions of Article 277 instead of Article 270 of the LOC and clarified whether the penalty interest can or cannot be applied *vis-à-vis* pecuniary obligations.

81. Moreover, the Applicant does not convincingly show that the Supreme Court acted in an arbitrary or unfair manner by not having given answers to each and every presented argument. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of the regular courts to assess the presented evidence and determine the applicable law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence was taken and presented. (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

82. The Court considers that the Supreme Court conducted the proceedings in a fair way and justified the decision on the grounds of the revision, including the ones which the Applicant was claiming not having been taken into account by the Court of Appeals.

83. Furthermore, the fact that the Applicant disagrees with the factual and legal outcome assessment of the case cannot of itself raise an arguable claim of a breach of Articles 31 [Right to Fair and Impartial Trial] of the Constitution. (See case *MezoturTiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).

84. In these circumstances, the Applicant has not substantiated its allegation for violation of its right to fair and impartial trial and, consequently, its right to property, because it has not shown that the regular courts had denied it the rights guaranteed by the Constitution.

Violation of the right to protection of property

85. The Court recalls that the Applicant further alleged that "*the Challenged Decision deprived the Applicant from the constitutional right, guaranteed by (...) Article46 [Protection of Property] of the Constitution".*

86. The Court notes that the allegation was made by the Applicant *"as a consequence of the violation of the constitutional right of the Applicant for fair and impartial trial".*

87. The Court has just concluded that the Applicant's allegation on a violation of the right to fair and impartial trial is inadmissible.

88. Therefore, the Court considers that it is not necessary to examine separately the admissibility of the Applicant's allegation on a violation of its right to protection of property under Articles 46 of the Constitution.

89. In sum, the Referral is manifestly ill-founded and thus inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and Rules 36 (1) d) and (2) d) of the Rules of the Procedure, in its session held on 9 March 2015, unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI182/14, Applicant INTERPRESS R. COMPANY/Ruzhdi Kadriu, Constitutional Review of Decision Rev. Mlc. no. 22/2014, of the Supreme Court of Kosovo, of 15 July 2014

KI182 / 14, Resolution on Inadmissibility, of 6 March 2015 published on 18 March 2015

Keywords*: Individual referral, civil and criminal proceedings, subjective and objective liability, right to fair and impartial trial, right to legal remedies, interim measure, repetition of the procedure, super expertise, manifestly ill-founded referral.*

The Supreme Court of Kosovo, by Decision Rev. Mlc. no. 22/2014 of 15 July 2014 rejected as ungrounded the Applicant's revision regarding the repetition of the procedure based on the new findings with super expertise in his case. The complaint essentially was related to civil and criminal liability with respect to the serious bodily injuries of the Applicant he had suffered and the compensation to be paid to third parties.

The Applicant alleged, *inter alia*, violations of the rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution. The Applicant also requested the imposition of interim measures against the challenged decision.

The Constitutional Court found that regular courts responded to all main allegations of the Applicant explaining the concept of civil and criminal liability, the differences and similarities of these liabilities and that the lack of subjective- criminal liability does not exclude objective- civil liability of the Applicant. The Constitutional Court further held that the proceedings conducted before regular courts had not been unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (1) (d) and 36 (2) of the Rules of Procedure. Pursuant to Rule 55 of the Rules of Procedure, the Constitutional Court rejected the Applicant's request for the imposition of the interim measure because there was no *prima facie* case and it was not proven that by the imposition of interim measures would be avoided unrecoverable damage or that imposition of such a measure is in the public interest.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI182/14
Applicant
INTERPRESS R. COMPANY/Ruzhdi Kadriu
Constitutional Review of the Decision Rev. Mlc. no. 22/2014, of the
Supreme Court of Kosovo, of 15 July 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Mr. Ruzhdi Kadriu, the owner of INTERPRESS R. COMPANY, with residence in Prishtina, represented by the Law Firm Sejdiu & Qerkini (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Decision Rev. Mlc. no. 22/2014, of the Supreme Court of Kosovo, of 15 July 2014.

3. The challenged decision was served on the Applicant on 20 August 2014.

Subject Matter

4. The subject matter is the constitutional review of the Decision Rev. Mlc. no. 22/2014, of the Supreme Court of Kosovo, of 15 July 2014 and its annulment.

5. The Applicant claims that the challenged Decision is contrary to Article 31 [Right to Fair Trial and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution, and Article 6 [Right to a fair trial] and Article 13 [Right to an effective remedy] of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

6. At the same time, the Applicant requests the Court to impose the Interim Measure and to annul the Decision Rev. Mlc. no. 22/2014, of the Supreme Court of Kosovo, from the date of submission of Referral until the Decision on merits is rendered on this case.

Legal Basis

7. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

8. On 16 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

9. On 13 January 2015, the President of the Court, by Decision KSH. KI182/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

10. On 23 January 2015, by Decision GJR. KI182/14, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur.

11. On 3 February 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.

12. On 9 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

13. The Review Panel also proposed to the full Court to reject Applicant's request for interim measure, with the reasoning that the Applicant did not submit any convincing evidence that would justify imposition of the interim measure as necessary to avoid any

irreparable damage or any proof that such measure is in the public interest.

Summary of Facts

14. From the case file it follows that at the company, which is in the ownership of the Applicant, on 12 October 2004, an accident occurred in the workplace, resulting in an employee suffering serious injuries.

15. In 2005, the injured employee initiated civil court proceedings against the Applicant regarding the accident, for compensation of his damages caused by his injury at workplace as a result of the accident. In addition to the claim for compensation of damage, in 2007 the injured employee also filed a criminal report against the Applicant, alleging that the Applicant should also be found criminally liable for the aforementioned accident at Applicant's work place.

Proceedings before regular courts for compensation of damage

16. On 27 April 2006, the Municipal Court in Prishtina [Judgment C. no. 405/05] partially approved the civil claim of the injured employee, and obliged the Applicant to monetary compensation of the said worker for the damage caused by injury at work. In the reasoning of its decision, the Municipal Court stated among other:

> *„The three experts assigned by this Court for their specific assessments in relation to the matter of the Claimant, are qualitative and competent experts to make the assessments they have made, and the Court considered that there is no need to assign others, as requested by the Respondent's authorized representative, therefore it did not approve such proposals, and it did not grant the proposal for hearing two times the same witness.*"

17. The Applicant submitted an appeal to the District Court in Prishtina against Judgment C. no. 405/05, of the Municipal Court in Prishtina.

18. On 25 June 2007, the District Court in Prishtina [Judgment AC. no. 114/2007] rejected the Applicant's appeal, but it modified the judgment related to the amount of monetary compensation to be awarded to the injured employee, and remanded it to the first

instance court for re-trial regarding the compensation of expenses and capital rent previously awarded to the injured employee.

19. On 11 September 2007, the Applicant filed a revision to the Supreme Court of Kosovo against the Judgment [AC. no. 114/2007] of the District Court in Prishtina.

20. On 26 April 2008, the Supreme Court [Rev. no. 342/2007], rejected one part of the revision, but approved partly the requested revision by partly modifying the judgment of first and second instance court regarding the compensation of expenses and capital rent. In the reasoning of its decision, the Supreme Court held, among the other:

> *„The allegations of the respondent regarding the legal basis of liability are ungrounded, because, as it results from the administered evidence – the conclusion and the opinion of the mechanical expert that the injury of the claimant was caused due to the lack of assessment of the risk and the lack training of the claimant for using the machine, he worked with and by which he was injured, the lack of provision of instruction of use of the machine in the employee's language, and lack of protective plates on the machine cylinders. Therefore, due to omissions in undertaking these measures, the liability for compensation of damage due to guilt, exists, pursuant to Article 158 in conjunction with Articles 18 and 154 of the LOR. Due to the fact that the protective plate of machine cylinders was not provided, the machine, as such, which is used for carrying out the activities, presents a dangerous object, therefore, as such, if used in carrying out the activities of printing house, it represents an additional risk, for which the care of a good economist is required, and due to the damage caused by such object or activity, the objective liability exists, in terms of Article 173 and 174 of the LOR, as the lower instance courts have correctly found".*

Proceedings upon the criminal report of the injured party/employee

21. In addition to the claim for compensation of damages, in 2007, the injured employee filed a criminal report against the Applicant, considering the Applicant criminally liable for the aforementioned accident at work.

22. Meanwhile, in the criminal proceedings, the pre-trial judge received the request of the Public Prosecutor to conduct a new expert assessment in connection with the investigation conducted against the Applicant, where previously two expert assessments had been conducted. The first expertise was carried out by expert Fehmi Bajrami, in September 2007, under the number GJPPN, no. 892/2007. Given that this expert assessment was contrary to the expert assessment conducted by expert Agim Millaku, the court approved the request of the Prosecutor to conduct a super expert assessment by Prof. Dr. Bajrush Bytyqi, Prof. Dr. Fehmi Krasniqi and Prof. Dr. Hysni Osmani, under the number GJPPN 892/07 of 22 February 2010. Furthermore, after this expert assessment was conducted, the Municipal Public Prosecutor, by Decision PPN. no. 518-8/2007, of 30 June 2010, rejected the criminal report filed by injured employee, against the President of the company "Interpress R. Company" l.l.c. In the reasoning of its decision, the Municipal Public Prosecutor's Office, stated:

> *„Having analyzed the files in the criminal report, the defense of the suspect, the statement of the injured person, the testimonies of the witnesses and the material evidence, and the expertise reports of the above mentioned experts, the Prosecutor did not find any evidence proving that in the actions of the suspect exist the elements of the criminal offence as per enacting clause of this decision, because the omissions of the employer, mentioned in the last expertise report by the experts, are rather of a civil contest nature, for which the injured person has initiated a procedure for compensation of damage with the Municipal Court in Prishtina, due to severe injury suffered at the Employer's workplace, as it can be seen from the evidence found in the case file. Therefore, based on these reasons, it was decided as per the enacting clause of this decision."*

23. On 20 May 2013, the Basic Court in Ferizaj rejected the indictment of the injured employee, as a subsidiary claimant, filed against the Applicant. In the reasoning of its decision, the Basic Court, stated:

> *„It does not result in any way that the defendant wanted this criminal offence to be committed, namely, he did not want the consequences (the severe physical injury of the subsidiary claimant- Lulzim Rexha), and, furthermore, there is no action taken by the defendant, aiming at committing this criminal offence. In the present case, however, we are dealing with a matter of a civil-legal nature, namely of obligational*

relationships nature, because the facts of the matter- opinions of the experts, did not find evidence as regards the criminal liability of the defendant in relation to this criminal offence, because the omissions of the defendant as Employer – mentioned in the expertise report, namely, super-expertise report of the experts – fall into the category of the civil field."

Proceedings upon the request for repetition of procedure

24. On 16 October 2007, the Applicant submitted to the Municipal Court in Prishtina a request for repetition of procedure, basing this request on the findings of a new "super-expertise".

25. On 23 August 2012, the Municipal Court in Prishtina, by Decision C. no. 1160/08 rejected the Applicant's proposal for repetition of procedure. In the reasoning of its decision, the Municipal Court stated:

„The first instance court considers that in the present case the legal requirements to allow the repetition of procedure, as set out in Article 421, paragraph 1, item 9 of the Law on Contested Procedure, have not been met. This is due to the fact that as of the moment the hearing session for administering the evidence, by hearing the workplace safety expert, on 09.01.2006, ended, when the respondent made remarks on the expertise, until 27.04.2007, when the main hearing before the first instance court was finished, the respondent had sufficient time and the procedural right to confirm the fact - if he had the evidence - that the respondent had took the necessary safety and technical measures in the machine where the accident took place; the evidence that he had trained the claimant in the aspect of workplace safety; evidence of job description and responsibilities of the claimant, and by this evidence to reject the opinion of expert-Agim Millaku as regards the responsibility for the accident, and he could also use this procedural right by filing an appeal against the judgment of the first instance court as regards the confirmation of the essential fact, since the burden of proof is borne by the respondent. In addition, the fact of taking workplace safety measures before the accident on 11.10.2004, was not confirmed either by the new evidence of the super-expertise of 20.02.2010, therefore the proposal for repetition of procedure was rejected".

26. The Applicant filed an appeal with the Court of Appeals in Prishtina, against the Judgment [C. no. 1160/08] of the Municipal Court in Prishtina.

27. On 1 November 2013, the Court of Appeals of Kosovo [Decision AC. no. 5143/12] rejected the Applicant's appeal and upheld the Decision C. no. 1160/08, of the Municipal Court. In the reasoning of its decision, the Court of Appeals stated:

> *"This court considers that the appealed allegations, such as the termination of the contested procedure due to the initiation of the criminal procedure..., are not grounded due to the fact that in the contested procedure, the court indeed considers that the criminal offence and criminal liability exist, within the meaning of Article 12, paragraph 3 of the LCP as regards the final judgment of the criminal court, however, the criminal court judgment does not resolve either the issue of the volume of legal-civil liability, and this matter should be adjudicated in the contested procedure in which the facts related to the circumstances of compensation of damage may be determined. The appealed allegation under paragraph 6, item 7 of the appeal is not grounded either, because the first instance court held the hearing session within the meaning of Article 425, paragraph 3 of the LCP, nor are grounded the appealed allegations in paragraphs 8, 9, 10 of the appeal, due to the fact that the criminal liability is a subjective liability, while the civil (obligational) liability is also objective, as in the present case. As regards the other appealed allegations, this Court considers that they could not and did not have a relevant influence on rendering this Decision.*"

28. On 9 December 2013, the Applicant filed a revision with the Supreme Court against the Decision [AC. no. 5143/12] of the Court of Appeals in Prishtina.

29. On 20 January 2014, the Office of the Chief State Prosecutor of Kosovo submitted the request for protection of legality to the Supreme Court of Kosovo, due to violation of the law in the Decision AC. no. 5143/12 of the Court of Appeals in Prishtina.

30. On 15 July 2014, the Supreme Court [Decision Rev. Mlc. no. 22/2014] rejected as ungrounded the Applicant's revision and the request for protection of legality of the State Prosecutor of Kosovo filed against the Decision Ac. no. 5143/12, of the Court of Appeals.

In the reasoning of its decision, the Supreme Court, *inter alia*, stated:

> *„This court also assessed the allegations in the revision, according to which the second instance court did not apply the provisions of Article 204 of the LCP, because it did not consider the appeal on facts which are of decisive importance, i.e. the expertise of court expert- Fehmi Bajrami, the statements of court experts given in the Municipal Public Prosecution Office in Prishtina, as regards the conduct of the criminal procedure against the legal representative of the respondent, but it found that they are ungrounded, because the second instance court assessed the appealed allegations which were of decisive importance for rendering its decision within the meaning of Article 204 of the LCP, providing sufficient reasons, pursuant to the Law, by the mere fact that the second instance court, in the reasoning of its decision approved in entirety the legal stance of the first instance court as fair and lawful, which, in its decision, provided complete reasons for decisive facts in relation to the assessment of the evidence submitted with the proposal for repetition of procedure.*"

Applicant's Allegations

31. The Applicant believes that the Supreme Court, by Decision Rev. Mlc. no. 22/2014 of 15 July 2014, violated the Applicant's right to fair trial as guaranteed by Article 31 of the Constitution of Kosovo and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and that the same decision violated the Applicant's right to an effective legal remedy under Article 32 and 54 of the Constitution of Kosovo, and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

32. The Applicant requests the Court to:

> *„I. Declare the Applicant's Referral admissible;*
>
> *II. Taking into account the violations of Applicant's rights, guaranteed by the Constitution and unrecoverable damage that would be suffered, and pursuant to Article 27 of the Law on Constitutional Court and Articles 54 and 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, to impose interim measure and*

suspend Decision Rev. Mlc. no. 22/2014 of the Supreme Court of Kosovo until final decision on this case;

IV. *Hold that the Applicant's constitutional rights to fair and impartial trial, guaranteed by Article 31 of the Constitution of Kosovo and Article 6 of the European Convention of Human Rights and Freedoms, and right to legal remedies, guaranteed by Articles 32 and 54 of the Constitution of Kosovo and Article 13 of the European Convention of Human Rights and Freedoms have been violated by Decision Rev. Mlc. no. 22/2014, of the Supreme Court of Kosovo;*

V. *Declare invalid the Decision Rev. Mlc. no. 22/2014 of the Supreme Court, of 15 July 2014;*

VI. *Determine and impose any other legal measure that the Constitutional Court deems as grounded on the Constitution and the Law and which is reasonable for the present case".*

Admissibility of the Referral

33. The Court first examines whether the Applicant has met the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure.

34. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

„1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

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

35. The Court also notes Article 48 of the Law, which states that:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".

36. In addition, the Court takes into account Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which read that:

"(1) The Court may consider a referral if::

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(a) the referral is not prima facie justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his claim."

37. The Court notes that in this case the Applicant complains about the fact that the regular courts rejected his proposal for repetition of procedure, and that additional expertise and super expertise was not taken into account throughout the entire court proceedings.

38. In this regard, the Court considers that the Basic Court in Prishtina in the proceedings of repetition of procedure provided extensive reasons for its findings (see paragraph 23). Therefore, the Court of Appeals and the Supreme Court reasoned their decisions and substantiated each Applicant's allegation with respect to the rejection of his proposal.

39. The regular courts specifically described the different types of legal liability between the criminal proceedings in the criminal case and

the civil proceedings in the civil case by summarizing that the burden of proof in the criminal case was both objective and subjective while in the civil proceedings the burden of proof was only objective.

40. In the civil case the regular courts reasoned that all that was needed to be proven was that the Applicant's workplace was negligently dangerous and that danger was a direct cause of the employee's injuries (objective standard only).

41. In the criminal case the regular courts reasoned that before a judgment could be entered against the Applicant it would have to been proven that the workplace was dangerous, and that the Applicant knew that it was dangerous, and the Applicant intentionally did nothing to remedy the danger or to protect the employees working there (objective and subjective standard). Simply because the prosecutor and the regular courts found that there was no evidence that the Applicant intentionally violated work safety standards did not mean that the Applicant's work place was not dangerous for the employees working there and a direct cause of the employee's injuries. Because the two standards of proof are different for a civil case versus a criminal case, it is permissible that there could be different results in the two different proceedings as happened in the Applicant's case.

42. The Supreme Court states in its decision that the content of the assessment of the expertise of the court expert in civil proceedings and the assessment given in the super expertise by the court expert in criminal proceedings are in full compliance with each other in respect of objective liability of the Applicant. The Supreme Court also found that the expertise, conducted in the criminal proceedings does not constitute new evidence, since this evidence was subject of review upon the revision and supplemented the revisions of 5 October 2007 of the Applicant against the judgment of second instance court in the proceedings for compensation of damage.

43. The Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the Supreme Court. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. It is the role of the Constitutional Court to determine whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken (see Case: *Edwards v. United Kingdom*, no.

13071/87, Report of the European Commission of Human Rights, of 10 July 1991).

44. In the present case, the Court did not find that the pertinent proceedings before the Supreme Court were in any way unfair or arbitrary *(*see, *mutatis mutandis, Shub v. Lithuania,* ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009*)*.

45. Therefore, the Court considers that the Applicant did not substantiate his claim on constitutional grounds and did not provide evidence indicating how and why his rights and freedoms, protected by the Constitution, were violated by challenged decision.

46. The Court concludes that the Applicant's Referral is manifestly ill-founded, in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

Assessment of the request for Interim Measures

47. The Court notes that the Applicant in the Referral requests the Court to impose the Interim Measure and to annul Decision Rev. Mlc. no. 22/2014 of the Supreme Court of Kosovo, of 15 July 2014 from the date of submission of the Referral until the decision on merits is rendered by the Constitutional Court on this issue, which is the subject of proceedings.

48. In order for the Court to allow an interim measure, in accordance with Rule 55 (4) (a) of the Rules of Procedure, it needs to determine that:

    (a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

49. As concluded above, the Referral is inadmissible. For this reason, the request for interim measures is to be rejected.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Rules 36 (1) (d), 36 (2), 55 (4) (a) and 56 (2) of the Rules of Procedure, in its session held on 6 March 2015, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the request for Interim Measure;

III. This Decision shall be notified to the Parties and published in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI120/14, Applicant Privatization Agency of Kosovo, Constitutional review of Judgment II. C. nr. 79/2009, of the District Commercial Court in Prishtina, of 27 October 2009 and Judgment Ae. nr. 45/2012,of the Appellate Court of Kosovo of 20 May 2013

KI120 / 14, Resolution on Inadmissibility of 12 February 2015, published on 19 March 2015

Keywords: Individual Referral, civil procedure, the right to fair and impartial, out of time referral.

The Court of Appeal of Kosovo, by Judgment Ae. no. 45/2012, of 20 May 2013 had upheld the decisions of the lower instance courts and rejected the Applicant's appeal as ungrounded regarding compensation of damage to agricultural cooperative "Lavra" in Klina.

The Applicant alleged, *inter alia*, that the Court of Appeal by its decision violated his right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution.
The Constitutional Court found that from the last decision rendered by the regular courts until the day of submitting the Referral to the Constitutional Court have passed more than 4 months. The Referral was declared inadmissible because it was not submitted in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI120/14
Applicant
Privatization Agency of Kosovo
Request for constitutional review of the Judgment of the District Commercial Court in Prishtina, II. C. nr. 79/2009, of 27 October 2009 and Judgment of the Appellate Court of Kosovo Ae. nr. 45/2012, of 20 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is the Privatization Agency of Kosovo, the Regional Office in Peja (hereinafter: PAK), which is represented by Mr. Gëzim Gjoshi, the Legal Officer in PAK.

Challenged decision

2. The challenged decision is the Judgment of the District Commercial Court in Prishtina, II.C.nr.79/2009, of 27 October 2009 and Judgment of the Appellate Court of Kosovo Ae.nr.45/2012, of 20 May 2013, which was served to the Applicant on 17 June 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the District Commercial Court in Prishtina, II.C.nr.79/2009, of 27 October 2009, which rejected the lawsuit

brought by PAK against Municipality of Klina; and Judgment of the Appellate Court of Kosovo Ae.nr.45/2012, of 20 May 2013, which rejected the appeal brought by PAK as ungrounded and reaffirmed the Judgment of District Commercial Court in Prishtina.

Legal basis

4. The Referral I based on Article 113.7 in conjunction with Article 21.4 of the Constitution of Kosovo (hereinafter: the Court), Article 22 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure)

Proceedings before the Court

5. On 22 July 2014 the Applicant submitted the Referral to the Constitutional Court.

6. On 6 August 2014 the President of the Court by Decision Nr. GJR. KI120/14, appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 20 August 2014, the Constitutional Court notified the Applicant on registration of the Referral and sent a copy of the Referral to the Appellate Court.

8. On 17 November 2014 the Court requested from the Basic Court in Prishtina to provide a copy of the letter of receipt indicating the date when the Applicant has received the challenged Judgment.

9. On 1 December 2014 the Basic Court in Prishtina submitted the requested document to the Court, which proves that the Applicant received the challenged Judgment on 17 June 2013.

10. On 12 February 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 6 March 2009, the Applicant filed a lawsuit with the District Commercial Court in Prishtina against Municipality of Klina for

compensation of damages resulting from the demolition of Hotel "Mirusha", part of Agricultural Cooperative "Lavra", which as a socially-owned enterprise in accordance with Law No. 03/L-067 on Privatization Agency of Kosovo (adopted on 21 May 2008), is under PAK administration.

12. On 27 October 2009, District Commercial Court in Prishtina rendered Judgment II.C.nr.79/2009, rejecting the Applicant's lawsuit as ungrounded. In the reasoning of this Judgment, *inter alia*, was stated that: *"In order to establish the legal-civil responsibility for damage compensation pursuant to Article 154 and 158 of the LOR, it is a must that the following criteria are met: that the claimant suffered a damaged due to unacceptable and unlawful action of the respondent; the respondent for its action, by demolishing the facility and loss of goods, is responsible for the caused damage; that these undertaken actions are in contradiction to the law; that the respondent is guilty for the caused damage and existence of interlink between causes through illegal activities of the respondent and caused damages. By assessing the evidences and facts confirmed by the Court, the latter came to conclusion that all legal actions undertaken to demolish the Motel "Mirusha" in Klina have been carried out in terms of provisions of the Law on Constructions given that the Municipality is in possession and administers with the municipal public urban land and with all facilities located on it."*

13. On 14 January 2010, the Applicant submitted an appeal to the Appellate Court of Kosovo challenging Judgment II.C.nr.79/2009 of 27 October 2009, alleging *"Violation of provisions of the substantive law, Erroneous and incomplete confirmation of factual situation, Erroneous application of the substantive law"*.

14. On 20 May 2013, the Appellate Court rendered Judgment Ae.nr.45/2012, rejecting the Applicant's appeal as ungrounded. In the reasoning of this Judgment, the Appellate Court stated that: *"The Court of the first instance correctly applied the substantive law, given that the claimant neither in the proceeding of the first instance nor in the appealing procedure provided any evidence by which would have proven the grounds of the statement of claim, as provided by the Article 319 of LCP, and if the court cannot confirm with certainty any fact on existence of facts, based on administered evidence, then by applying the rules on burden of proof, on this concrete case, it shall conclude that the burden of proofs on the grounds of the claim lies with the claimant, therefore, the court of the first instance acted correctly when*

concluded that the statement of claim of the claimant is ungrounded."

Applicant's allegations

15. The Applicant alleges that the Judgment of the Appellate Court is rendered in violation of its right guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: ECHR), namely:

    " i) Violation of constitutionality and legality, set out in Chapter VII, Article 102, paragraph 3, of the Constitution of the Republic of Kosovo, whereby it is provided that the courts shall adjudicate based on the constitution and on the law;

    ii) Violation of Article 31 of the Constitution of the Republic of Kosovo, whereby it is provided the right to a fair and impartial trial;

    iii) Violation of the European Convention on Human Rights (ECHR), Article 6, whereby it is provided a fair and impartial trial; and

    iv) Violation of general legal principles."

16. The Applicant also alleges that when rendering the challenged Judgment the material law was erroneously applied and that the Judgment contains substantial violations of the contested procedure provisions.

17. The Applicant further stated that the regular courts did not apply the appropriate law when rendering decisions regarding the dispute.

Admissibility of the Referral

18. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary first to examine whether it has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

19. In this respect, the Court refers to the Constitution, where is provided:

Article 113.7

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

And Article 21.4

"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

20. In addition, the Court refers to Article 49 of the Law, which provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision..."

21. The Court also refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

"(1) The Court may only deal with Referrals if:

[...]

c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant."

22. The Court observes that the last decision in the procedures before regular courts was that of the Appellate Court of Kosovo, rendered on 20 May 2013 and was served to the Applicant on 17 June 2013, whereas the Applicant filed the Referral with the Court on 22 July 2014, i.e. more than 4 months from the day upon which the Applicant has been served with the Appellate Court decision.

23. It follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 12 February 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI158/14, Applicant Bahri Veseli, Constitutional Review of Judgment PML. no. 153/2014, of the Supreme Court, of 4 August 2014, Judgment PAKR. no. 314/2013, of the Court of Appeal, of 29 April 2014, and Judgment P. no. 17/2013, of the Basic Court in Prizren, of 7 May 2013

KI158/14, Resolution on Inadmissibility, of 22 January 2015, published on 19 March 2015

Keywords*: Individual Referral, criminal proceedings, imprisonment sentence, sale of narcotic drugs, manifestly ill-founded referral*

The Supreme Court by Judgment Pml. no. 153/2014 modified the decisions of the lower instance courts - only in terms of legal qualification – while it upheld the other part of the decisions with respect to Applicant's imprisonment sentence for the criminal offense of unauthorized possession and sale of narcotics and psychotropic substances.

The Applicant alleged that the regular courts of Kosovo violated the criminal law and the criminal procedure law to his detriment.

The Constitutional Court concluded that the Applicant raises the issues of legality and not of constitutionality, that the decisions of regular courts were reasoned and that the proceedings were not unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (1) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI158/14
Applicant
Bahri Veseli
Request for Constitutional Review of Judgment PML. no. 153/2014, of the Supreme Court, of 4 August 2014, Judgment PAKR. no. 314/2013, of the Court of Appeal, of 29 April 2014, and Judgment P. no. 17/2013, of the Basic Court in Prizren, of 7 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Bahri Veseli, with residence in Prishtina, who is represented by a lawyer, Mr. Mentor Neziri from Prishtina.

Challenged decision

2. The Applicant challenges Judgment PML. no. 153/2014, of the Supreme Court, of 4 August 2014, Judgment PAKR. no. 314/2013, of the Court of Appeal, of 29 April 2014, and Judgment P. no. 17/2013, of the Basic Court in Prizren, of 7 May 2013.

Subject matter

3. The subject matter is the constitutional review of Judgment [PML. no. 153/2014], of the Supreme Court of 4 August 2014, Judgment [PAKR. no. 314/2013] of the Court of Appeal, of 29 April 2014, and

Judgment [P. no. 17/2013], of the Basic Court in Prizren, of 7 May 2013, which allegedly violated the provisions of the criminal procedure to the Applicant's detriment.

Legal basis

4. Article 113. 7 of the Constitution, Article 49 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 21 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 November 2014, the President of the Court, by Decision no. GJR. KI158/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI158/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 14 November 2014, the Court notified the Applicant and the Supreme Court of the registration of Referral.

8. On 22 January 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 7 May 2013, the Basic Court in Prizren rendered the Judgment [P. no. 17/2013] by which the Applicant was sentenced to a period of imprisonment of two (2) years and 6 (six) months, as well as to a fine of 2,500 Euros for the criminal offence of unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, pursuant to Article 229.2, in conjunction with Article 23, of the Provisional Criminal Code of Kosovo.

10. The Applicant filed an appeal within legal time limit against the Judgment of the Basic Court [P. no. 17/2013], of 7 May 2013.

11. On 29 April 2014, the Court of Appeal rendered the Judgment [PAKR. no. 314/2013], by which the Applicant's appeal was partly approved and the imprisonment sentence was decreased from 2 years and 6 months to 2 years, whereas the fine was upheld.

12. The Applicant filed a request for protection of legality with the Supreme Court due to substantial violation of the criminal procedure provisions.

13. On 4 August 2014, the Supreme Court rendered the Judgment [Pml. no. 153/2014] by which the Applicant's request for protection of legality was approved. In its Judgment, the Supreme Court noted: *"By approving the request for protection of legality of the convict's defense counsel, the Judgment P. no. 17/2013 of 07.05.2014 rendered by the Basic Court in Prizren and Judgment PAKR. no. 314/2013 of 29.04.2014 rendered by the Court of Appeal of Kosovo ARE MODIFIED only in terms of legal qualification so that, the Supreme Court of Kosovo, the actions of the convict legally qualifies as a criminal offence of attempted unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances provided in Article 229, paragraph 1, in conjunction with Article 20 of the Criminal Code of Kosovo, whereas in the other part, the judgment is not modified".*

Relevant law

Provisional Criminal Code of Kosovo

Article 20. Attempt*: „Whoever intentionally takes an immediate action toward the commission of an offence and the action is not completed or the elements of the intended offence are not fulfilled has attempted to commit a criminal offence. "*

Article 229. *Unauthorised Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances:*

[…]

Paragraph 2. *„Whoever, without authorization, distributes, sells, transports or delivers substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances, with the intent that that they shall be*

distributed, sold or offered for sale shall be punished by a fine and by imprisonment of one to eight years.“

Applicant’s allegations

14. The Applicant stated in his referral that he considers that all courts committed substantial violations of the criminal procedure to the detriment of the convict, by which the Criminal Code and the Criminal Procedure Code were violated.

15. The Applicant addresses the Court with the request :
„To approve the request for constitutional review of the appealed judgments as grounded, to hold that the three courts, when rendering their judgments, have violated the criminal law and the constitutional provisions on the rights of the accused to fair trial and to annul all these judgments and acquit the convict of the indictment due to lack of evidence.“

Admissibility of Referral

16. In order to be able to adjudicate the Applicant’s Referral, the Court needs to examine beforehand whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

17. In this respect, Article 113, paragraph 7 of the Constitution, provides:

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

18. In this case, the Court refers to Rule 36 (1) (d) of the Rules of Procedure, which provides:

(1) “The Court may only deal with Referrals if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.“

19. The Court notes that the Applicant's referral is examined in terms of violation of the rights and freedoms guaranteed by the

Constitution and the ECHR, however, the Court notes that the Applicant in his Referral has not specified what rights and freedoms guaranteed by the Constitution have been violated by the judgments, challenged by him, despite the fact that Article 48 of the Law provides that:

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

20. In addition, the Court further notes that the Applicant has based his request on violation of the Criminal Code and the Criminal Procedure Code, and therefore, the Court finds that what the Applicant raises in his referral is an issue of legality and not of constitutionality.

21. Furthermore, the Court considers that the Supreme Court in its Judgment [PML. no. 153/2014] responded to Applicant's allegations for violations of the Criminal Code and Criminal Procedure Code, when it stated:... „ *that the criminal law was violated to the detriment of the accused (Applicant) given that he was found guilty on the criminal offence provided in Article 229, paragraph 2 in conjunction with Article 23 of CCK: unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, therefore it decided as per enacting clause of this judgment" [...].* The Supreme Court concluded in its Judgment: „*although it modified the legal qualification of the criminal offences based on which the convict was sentenced, as far as the punishment is concerned, it did not find any circumstance that would have impact on decrease of the imposed sentence, therefore, the judgment in this regard also remained unchanged."*

22. Based on this, the Court considers that the reasoning given in the Judgment of the Supreme Court and in the Judgments of the lower instance courts is clear and legally substantiated, and that the proceedings have not been unfair or arbitrary (see, *mutatis mutandis, Shub v. Lithuania*, no. 17064/06, ECHR decisions of 30 June 2009).

23. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect to the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both

procedural and substantive law. (See case *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

24. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005).

25. In sum, the Court finds that the Applicant's referral does not meet the admissibility requirements, considering that the Applicant has not shown that the challenged decision violates his rights guaranteed by the Constitution or ECHR.

26. Accordingly, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (d) of the Rules of Procedure, in the session held on 22 January 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur Snezhana Botusharova

President of the Constitutional Court Prof. Dr. Enver Hasani

KI186/14, Applicant Sahit Kurti, Constitutional Review of Decision Rev. No. 153/2014, of the Supreme Court of Kosovo, of 17 June 2014

KI186/14, Resolution on Inadmissibility, of 6 February 2015, published on 30 March 2015.

Keywords*: Individual Referral, civil procedure, labor dispute, right to fair and impartial trial, right to legal remedies, manifestly ill-founded referral.*

The Supreme Court of Kosovo, by Decision Rev. no. 153/2014 rejected as ungrounded the Applicant's request for revision regarding the termination of employment relationship.

The Applicant alleged among the other that the right to fair and impartial trial and the right to legal remedies as guaranteed by Article 31 and Article 32 of the Constitution, have been violated to him, because the Supreme Court had erroneously calculated the deadlines for filing a complaint, provided by the labor law.

The Constitutional Court found that the Applicant has failed to point out and substantiate with evidence that the challenged decision violated his constitutional rights and freedoms and that he is not satisfied with the legal qualification of the facts and application of law by regular courts. The Referral was declared inadmissible as manifestly ill-founded as provided by Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI186/14
Applicant
Sahit Kurti
Constitutional Review of Decision Rev. No. 153/2014, of the Supreme Court, of 17 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Mr. Sahit Kurti (hereinafter: the Applicant) from Mitrovica, who is represented by the Law Firm „Sejdiu & Qerkini“ L.L.C. from Prishtina.

Challenged Decision

2. The Applicant challenges Decision Rev. No. 153/2014 of the Supreme Court of 17 June 2014. It rejects as ungrounded the Applicant's revision against Decision of the Court of Appeal CA. No. 3986/2012, of 16 September 2013. The challenged decision was served to the Applicant on 15 October 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the abovementioned Decision of the Supreme Court. The Applicant considers that the regular courts have erroneously calculated the deadlines for filing the lawsuit, and thus Articles 31, 32 and 54 of

the Constitution and Articles 6 and 13 of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 31 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 13 January 2015, by Decision GJR. KI186/14 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date by Decision KSH. KI186/14 the President appointed the Review Panel, composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 23 January 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. On 6 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

9. The Applicant was employed as a police officer in the Kosovo Police Service (KPS) from 24 December 2000 until 4 August 2005, when his employment relationship was terminated by Decision Ref. 459 - KPS – 2004, dated 4 August 2005.

10. Against the Decision the Applicant filed a complaint to the Complaint Commission of the KPS, which was rejected as ungrounded.

11. On 6 October 2005, the Applicant was notified of the decision of the Complaints Commission by a letter of KPS, which was served on him on 14 October 2005.

12. On 25 November 2005, the Applicant filed a lawsuit to the Municipal Court in Prishtina against the decision of the Complaints Commission of KPS.

13. On 14 March 2012, the Municipal Court in Prishtina by Decision C1. No. 264/07, dated 14 March 2012, which was based on Article 83 of the Law on Basic Rights from the Employment Relationship, rejected the Applicant's lawsuit as inadmissible as it was submitted after the deadline of 30 days.

14. On 20 July 2012 the Applicant filed an appeal with the Court of Appeal in Prishtina against the Decision of the Municipal Court in Prishtina.

15. On 16 September 2013, the Court of Appeal in Prishtina by Decision CA. No. 3986/2012 rejected the appeal as ungrounded and upheld Decision C1. No. 264/07, of the Municipal Court in Prishtina, dated 14 March 2012. The reasoning was that *„the first instance court has correctly ascertained that the claimant has filed the claim after the legally set forth deadline, thus has lost his right to seek for judicial protection regarding employment relationship".*

16. On 11 November 2013, the Applicant filed for revision with the Supreme Court against Decision Ca. no. 3986/2012, of the Court of Appeal in Prishtina of 16 September 2013.

17. On 17 June 2014 the Supreme Court of Kosovo with Decision Rev. No. 153/2014 rejected as ungrounded the Applicant's request for revision, with the following reasoning:

> *"... According to the Supreme Court's assessment, the lower instance courts have correctly applied provision of Article 83 of the Law on Basic Rights from the Employment Relationship because this deadline is preclusive and after it expires, the employee loses his right to judicial protection; therefore, the claim filed after this deadline must be rejected as out of time. Therefore, the Supreme Court of Kosovo assessed that the allegations from the revision are ungrounded. In the revision was not stated any circumstance which would have put in doubt the legality of the challenged Decision".*

Applicant's Allegations

18. The Applicant considers, that due to erroneous calculation of the deadlines by the Supreme Court of the Republic of Kosovo, were violated his rights guaranteed by Articles 31 (Right to Fair and Impartial Trial), 32 (Right to Legal Remedies) and 54 (Judicial Protection of Rights) of the Constitution and Articles 6 and 13 of the ECHR.

19. The Applicant requests from the Court the following:

"I. To declare the Applicant's Referral admissible;

II. To hold that the Applicant's constitutional right to fair and impartial trial guaranteed by Article 31 of the Constitution of the Republic of Kosovo and by Article 6 of the European Convention on Human Rights and Freedoms intertwined also with the right to judicial protection of rights and the right to effective legal remedies, guaranteed by Article 54 of the Constitution of Kosovo and Article 13 of the European Convention on Human Rights, have been violated by the Supreme Court of the Republic of Kosovo by Decision Rev. No. 153/2014; to declare as invalid Decision Rev. No. 153/2014 of the Supreme Court, dated 17 June 2014;

III. To declare invalid Decision Rev. No. 153/2014 of the Supreme Court, of 17.06.2014;

IV. To determine and impose any other legal measure which the Constitutional Court deems to be grounded on the Constitution and on the Law and which is reasonable to the case, subject to this referral".

Admissibility of the Referral

20. The Court will examine whether the Applicant has met the admissibility requirements, laid down in the Constitution, as further specified in the Law and the Rules of Procedure.

21. The Court refers to Article 113.7 of the Constitution, which provides:

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

22. The Court also notes Article 48 of the Law, which states that:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".

23. In addition, the Court reminds Rule 36 (2) (b) of the Rules of Procedure, which reads that:

"(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

...

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights".

24. Reviewing the Applicant's allegations regarding erroneous application of the procedural and substantive law by the regular courts, the Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent legal rules. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

25. The Decision of the Supreme Court of Kosovo Rev. No. 153/2014 of 17 June 2014 provides a reasoned response to all Applicant's allegations related to the manner of calculation of the deadlines and the reasons for application of respective rules of the procedural and substantive law.

26. The Court notes that the Applicant is not satisfied mainly with the legal qualification of the facts and the law applied by the regular courts. Legal qualification of the facts and applicable law are issues of legality.

27. The Applicant has not provided any *prima facie* evidence for a violation of his constitutional rights (see, *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application No. 53363/99 of 31 May 2005)

28. Although the Applicant claims that his rights were violated by erroneous determination of facts and erroneous application of the law by regular courts, he has not indicated how these decisions have violated his constitutional rights.

29. The Court further reiterates that the mere fact, that the Applicant is not satisfied with the outcome of the proceedings in his case, does not give rise to an arguable claim of a violation of his rights as protected by the Constitution. (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).

30. The Applicant was provided with numerous opportunities to present his case and to challenge the interpretation of the law as being incorrect, before the Basic Court in Prishtina, the Court of Appeal of Kosovo in Prishtina and the Supreme Court of Kosovo.

31. The Court, after having examined the proceedings in their entirety, does not find that the pertinent proceedings are in any way unfair or arbitrary (see, *mutatis mutandis, Shub v. Lithuania*, ECHR Decision as to the Admissibility of
Application No. 17064/06 of 30 June 2009).

32. The Court considers that the admissibility requirements have not been met. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged decision.

33. It follows that the Referral is manifestly ill-founded and is to be declared inadmissible in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 6 February 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI26/14, Applicant Bajrush Gashi, Constitutional review of request for reconsideration of Resolution on Inadmissibility KI75/13 of the Constitutional Court, of 29 January 2013

KI26/14, Decision to reject the Referral, of 11 February 2015, published on 02 April 2015.

Key words: *Individual Referral, right to fair and impartial trial, repetition of proceedings, rejection of Referral*

The Applicant, *inter alia*, requested the Constitutional Court to reconsider and reassess once more its decisions KI123/12 and KI75/13 regarding the violations, which according to him, are evident in the decisions of the regular courts.

The Constitutional Court found that the Applicant's Referral is in fact a request for repetition of previous proceedings which have already been decided by the Court. The Applicant's Referral was declared inadmissible, as provided by Article 116.1 [Legal Effect of Decisions] of the Constitution as further specified in Rule 32 (5) of the Rules of Procedure

DECISION TO REJECT THE REFERRAL
in
Case no. KI26/14
Applicant
Bajrush Gashi
Request for reconsideration of Resolution on Inadmissibility KI75/13 of the Constitutional Court of the Republic of Kosovo, of 29 January 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Bajrush Gashi, from village Hoçë e Vogël, Municipality of Rahovec.

Challenged decision

2. The Applicant expresses dissatisfaction with the Resolution on Inadmissibility (KI75/13) of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), and with decisions of regular courts in general.

3. The Applicant has attached to the Referral the following decisions: Decision Pzd. no. 67/2011 of the Supreme Court, of 12 December 2011; Decision Kp. no. 265/2008 of the District Court in Prizren, of 4 November 2011; Judgment P. no. 26/2009 of the District Court in Prizren, of 19 May 2009; Decision Ka. no. 231/2008 of the District Court in Prizren, of 22 January 2009; and Decision Kp. no. 309/2008 of the District Court in Prizren, of 26 December 2008.

Subject matter

4. The subject matter of the Referral is the reconsideration of the abovementioned decisions with respect to alleged violations of the rights, as guaranteed by the Constitution and the applicable laws in the Republic of Kosovo.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution (hereinafter: the Constitution), and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Court

6. On 10 February 2014 the Applicant submitted the Referral to the Court.

7. On 6 March 2014 the President of the Court, by Decision no. GJR. KI26/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision No. KSH. KI26/14, the President appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 14 January 2015 the Court notified the Applicant of the registration of Referral.

9. On 11 February 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of Referral.

Summary of the facts

10. Regarding the same allegations raised by the Applicant, the Court has already decided in these cases: Case KI06/12 of 19 May 2012; KI123/12 of 29 January 2013; and KI75/13 of 29 January 2013.

Summary of facts related to Resolution on Inadmissibility of the Constitutional Court in Case KI123/12 of 29 January 2013

11. On 4 December 2012, the Applicant filed a Referral with the Court, requesting constitutional review of Decision Pzd. no. 65/2012 of the Supreme Court of 10 September 2012.

12. In case KI123/12, the Applicant alleged that Decision (Pzd. no. 65/2012) of the Supreme Court had violated his rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.

13. In case KI123/12, the Court considered that the Supreme Court, by Decision Pzd. no. 65/2012, of 10 September 2012, had remedied the violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR, which the Court found in Decision Pzd. no. 67/11 of the Supreme Court of 12 December 2011, when it dealt with the Applicant's Referral KI 06/12, of 9 May 2012.

14. The Applicant had not submitted to the Court any new facts or evidence that would present a ground for a new decision.

15. Consequently, in Decision Pzd. no. 65/2012 of the Supreme Court of 10 September 2012, the Court had not found any violation of the Applicant's rights, as guaranteed by Constitution and the ECHR.

16. Based on all facts and circumstances submitted with Referral KI123/12, on 29 January 2013 the Court concluded that the Applicant's Referral was inadmissible.

Summary of facts related to Resolution on Inadmissibility of the Constitutional Court in Case KI75/13 of 29 January 2013

17. On 28 May 2013, the Applicant again filed a new Referral which was registered with the Court under no. KI75/13. By that Referral, the Applicant requested clarification of the decisions of the Constitutional Court, specifically the Judgment no. KI06/12 of 9 May 2012 and the Court's Resolution on Inadmissibility of 29 January 2013.

18. In Case KI75/13, the Applicant alleged that the Court, in its Judgment KI06/12, had found that there were various violations, which the Supreme Court was to consider in future proceedings and should meritoriously remedy. The Applicant further stated in the Referral that *"the Court later rendered another decision, by*

which his referral was rejected as unfounded, without any reasoning."

19. With respect to the allegations raised in case KI75/13 the Court considered: *"with a view of clarifying the decision, the Court reminds that in the Judgment KI 06/12 of 9 May 2012, the Court found procedural violations of Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR, while as a ground of violation of rights guaranteed by the Constitution, the Court found that "the same judge who presided the Trial Panel of the District Court in Prizren took part in a trial panel in the Supreme Court in adjudicating the request for mitigation of sentence".*

20. Taking into account all the elaborated facts, in Case KI75/13 the Court concluded that the Applicant's referral was manifestly ill-founded and consequently inadmissible.

Applicant's allegations

21. In the present Referral, the Applicant did not specify any violation of the Constitution, but in fact he requests from the Court to reconsider and reassess the violations which, according to him, are evident in the decisions attached to this Referral.

Admissibility of the Referral

22. Before adjudicating the Applicant's Referral, the Constitutional Court has to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law and in the Rules of Procedure.

23. In this respect, the Court refers to Rule 32 (5) of the Rules of Procedure, which provides:

> *"The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous.* (*Amended 28 October 2014)"*

24. The Court notes that the Applicant in his present Referral has not submitted any new fact or evidence, based on which, matters that were not considered or that were evaded in the Court's previous

proceedings would be considered now. On all the issues raised in the present Referral, the Court has already decided.

25. Therefore, the present referral is a request for repetition of proceedings which have already been considered by the Court. The Court has no jurisdiction to decide on the same legal matters it has already decided on. The jurisdiction of the Constitutional Court regarding individual Referrals is clearly defined by Article 113.7 of the Constitution. By individual acts of the public authorities within the meaning of Article 113.7, it should be understood all individual acts of public authorities of the Republic of Kosovo that present a subject of constitutional review within the meaning of this Article, except for acts of the Constitutional Court itself. Therefore, it should be clearly and rightly understood that the Constitutional Court does not have jurisdiction to reopen and adjudicate its own decisions on which it has already decided.

26. In addition, the Constitutional Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

27. In this regard, Article 116.1 [Legal Effect of Decisions] of the Constitution provides*: "Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*

28. As a conclusion, the Court considers that the Applicant's Referral is in fact a request for repetition of previous proceedings which have already been decided by the Court. Therefore, in accordance with Rule 32 (5) of the Rules of Procedure, the Referral is to be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.7, 116.1 of the Constitution and Rules 32 (5) and 56 of the Rules of Procedure, on 26 March 2015, unanimously

DECIDES

I. TO REJECT the Referral;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI64/14, Applicant Afrim Nuredini, Constitutional review of the list of employees entitled to benefits in accordance with Judgment C. No. 340/2001, of the Municipal Court of Ferizaj, dated 11 January 2002, which approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory

KI64/14, Resolution on Inadmissibility, of 11 February 2015, published on 2 April 2015.

Key words: *Individual Referral, civil proceedings, right to compensation, unpaid salaries, non-exhaustion of legal remedies*

The Municipal Court in Ferizaj by Judgment C. no. 340/2001 approved the request for compensation of unpaid salaries of the Trade Union of the Steel Pipe Factory IMK, on which occasion the Applicant was not included on the list of employees for compensation.
The Applicant alleges among the other that he was not in the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, as he was not informed about this because he was outside of Kosovo.

The Constitutional Court found that the Applicant has not indicated whether he has exhausted all legal remedies as a condition of submitting his Referral as provided by Article 113.7 of the Constitution and Article 47.2 of the Law. The Referral was declared inadmissible, due to non-exhaustion of all legal remedies.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI64/14
Applicant
Afrim Nuredini
Constitutional review of the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Afrim Nuredini (hereinafter: the Applicant), with residence in the village Sllatinë e Epërme.

Challenged decision

2. The Applicant in his Referral explicitly requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) for the *"[...] INITIATION OF LEGALITY against final Judgment of the Constitutional Court in Prishtina, KI08/09 [...]"* of 17 December 2010.

Subject matter

3. The Applicant's claim is directed at the Trade Union of the Steel Pipe Factory-IMK, because it did not include his name on the list

of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which, approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory.

4. In this respect, the Applicant alleges a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and requests *"That the Constitutional Court renders a Judgment that I as well, as a former employee possess the right to receive the compensation I am entitled to for nine years pursuant to my salary at the time, as an employee of this enterprise."*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 4 April 2014, the Applicant submitted the Referral to the Court.

7. On 6 May 2014, the President of the Court, by Decision No. GJR. KI64/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI64/14, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 27 May 2014, the Court notified the Applicant of the registration of Referral.

9. On 15 September 2014, the President, by Decision No. GJR. KI64/14, appointed Judge Ivan Čukalović as Judge Rapporteur to replace Judge Robert Carolan.

10. On 11 February 2015, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 19 February 1990, the Applicant's employment relationship with the Socially-Owned Enterprise Steel Pipe Factory was terminated with the justification that he had been absent from work for five consecutive working days. The termination of the employment relationship was based on Article 75, paragraph 2, item 3, of the Law on Fundamental Rights regarding Employment Relationship, Official Gazette SFRY No. 60/89 (Decision No. 1386).

12. The Court notes that the Applicant submitted only three pages of the Referral composed of: 1. Request for *"[...] INITIATION OF LEGALITY against final Judgment of the Constitutional Court in Prishtina, KI08/09 [...]"*; 2. Decision on termination of employment relationship no. 1386 of 19 February 1990.

Applicant's allegations

13. The Applicant alleges that he was not in the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory. The Applicant claims that he was not informed about this because he was outside of Kosovo.

14. Consequently, the Applicant alleges that *"the Law on Labor has been violated because just like all other employees of this enterprise I am also entitled to be compensated for the money I am legally entitled to."*

15. Thus, the Applicant requests from the Court that *"[...] as other former employees, to be entitled the right to compensation for nine years based on the salary I had at that time as former employee of this enterprise"*.

Admissibility of the Referral

16. The Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

17. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

18. In addition, Article 47.2 of the Law also provides:

> *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".*

19. Furthermore, Rule 36 (1) (b) reads:

> *"The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".*

20. In the present case, the Applicant's claim is directed at the Trade Union of the Steel Pipe Factory IMK, because it did not include his name in the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory.

21. The Court reiterates that the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in regular proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of fundamental rights.

22. The rationale for the exhaustion rule is to afford the concerned authorities, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

23. The Applicant has not indicated whether he has exhausted all of his available legal and constitutional remedies as a condition of submitting his Referral as provided by Article 113.7 of the Constitution and Article 47.2 of the Law.

24. It follows that the Referral is inadmissible pursuant to Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 (1) (b) and 56 (b) of the Rules of Procedure, on 11 February 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI89/14, Applicant Ministry of Agriculture, Forestry and Rural Development, Kosovo Forestry Agency, Constitutional review of Judgment, Rev. no. 287/2013, of the Supreme Court, of 18 December 2013

KI89/14, Resolution on Inadmissibility, of 11 February 2014, published on 2 April 2015

Key words: *Individual Referral, administrative procedure, interpretation of legal provisions, manifestly ill-founded referral*

The Supreme Court approved the revision of the third party regarding the obligation of the Applicant to reinstate him to his work and work duties as a financial officer.

The Applicant claimed, among the other, that the Supreme Court incorrectly assessed the factual situation and erroneously applied the substantive law.

The Constitutional Court found that the Applicant has not substantiated its allegation on constitutional grounds and it did not provide evidence, indicating how and why its rights and freedoms, protected by the Constitution have been violated by the challenged decision. The Referral was declared inadmissible as manifestly ill-founded as provided by Rules 36 (1) (d) and (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI89/14
Applicant
Ministry of Agriculture, Forestry and Rural Development, Kosovo Forestry Agency
Constitutional review of the Judgment, Rev. no. 287/2013, of the Supreme Court, of 18 December 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by the Ministry of Agriculture, Forestry and Rural Development, Kosovo Forestry Agency (hereinafter: the Applicant), represented by Mr. Murat Lepaja.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 287/2013, of the Supreme Court, of 18 December 2013, which was served on the Applicant on 7 March 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment Rev. no. 287/2013, of the Supreme Court, of 18 December 2013, for which the Applicant has not specified any violation of the constitutional provisions.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 21.4 of the Constitution and Articles 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 19 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 June 2014, the President of the Court, by Decision no. GJR. KI89/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI89/14, appointed members of the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Altay Suroy and Snezhana Botusharova.

7. On 19 June 2014, the Court sent a copy of the Referral to the Supreme Court of Kosovo and to Ms. M. G. as third party in the proceedings.

8. On 23 July 2014, the Court notified the Applicant of the registration of Referral.

9. On 25 July 2014, the Court requested from the Applicant to submit the acknowledgement receipt, proving the date when the Applicant was served with Judgment Rev. no. 287/2013 of the Supreme Court of Kosovo.

10. On 1 August 2014, the Applicant submitted the documents required by the Court.

11. On 19 September, 2014, the Court requested from the Applicant to submit the claim for Administrative Conflict Ref. SP-575/06 of 2 November 2006, submitted to the Supreme Court, Decision A. No. 28881/2006, of the Supreme Court of Kosovo, of 14 March 2007, Judgment Ca No. 34441/2012, of the Court of Appeals, of 14 June

2013, and Judgment C. no. 340/2008, of the Municipal Court in Peja, of 26 April 2012.

12. On 26 September 2014, the Applicant submitted the documentation requested by the Court, the Decision A, 02, 100/2006, of the Independent Oversight Board, of 8 July 2006, and evaluation performance form for Ms. M.G. of 23 November 2007.

13. On 11 February 2015, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts in administrative procedure

14. Ms. M.G. was employed from 5 April 2001 until 31 December 2007, as an Economic- Finance Officer at Forestry Agency - Regional Office in Peja, under the Ministry of Agriculture, Forestry and Rural Development of Kosovo.

15. On 28 February 2006, the Applicant by Decision Ref. KE-61/06 suspended Ms. M. G, with temporary dismissal from work. The Applicant found that, *"during working hours she did not respect obligations and work duties under Article 30.1 paragraph (b), (c), (d), (e) and (j) of Administrative Direction no. 2013/2 Implementing UNMIK Regulation no. 2001/36 on the Kosovo Civil Service [...]".*

16. On 18 May 2006, the Disciplinary Committee of the Applicant (Employment Authority of Kosovo Forestry Agency) rendered Decision Ref. KE- 02/2/166/06 on termination of employment to Ms. M. G., by determining that *"[...] after the presentation of additional evidence mentioned above contradicted the Civil Service of Kosovo, and it was determined that she did not respect the reasonable instructions of the head of the employment authority, refuses and sabotages the work in the Economic-Financial Service of specifications, invoices for payment slips for public and private forests , and she also slanders and uses banal vocabulary and insults his colleagues, technical staff, but she also despises and insults the senior staff of the Ministry of Agriculture, Forestry and Rural Development, namely the Regional Office of KFA in Peja [...]".*

17. On an unspecified date, Ms. M. G. filed complaint with the Applicant's Appeals Committee (Employment Authority of Kosovo Forestry Agency).

18. On 8 June 2006, the Applicant's Appeals Committee rendered Decision no. 02/2/174/06, on rejection of the complaint of Ms. M. G.

19. On 22 June 2006, Ms. M. G. filed complaint with the Independent Oversight Board of Kosovo against Decision (02/2/174/06) of the Applicant's Appeals Committee.

20. On 8 July 2006, the Independent Oversight Board, by Decision A, 02, 100/2006, approved the complaint of Ms. M. G. as grounded and annulled the Decision (02/2/174/06) of the Applicant's Appeals Committee and Decision (Ref. 02/2/166/06) of the Applicant's Disciplinary Committee.

21. On 2 November 2006, the Applicant initiated administrative conflict before the Supreme Court of Kosovo against the Decision (A, 02, 100/2006) of the Independent Oversight Board.

22. On 14 March 2007, the Supreme Court of Kosovo, by Decision A. no.. 2881/2006 in an administrative conflict upon the Applicant's claim, rejected the Applicant's claim as inadmissible, by assessing "[...] *that the contested decision and the procedure which preceded the rendering of that decision does not have the character of the act and the Administrative Procedure as provided for by Article 6 of the Law on Administrative Conflict considering the provisions of the laws mentioned above finds that the Municipal Court in Prishtina is competent to decide on this contest [...]".*

23. On 26 November 2007, Ms. M. G. filed complaint with the Applicant's Appeals Committee against the evaluation of the work performance of 23 November 2007.

24. On 30 November 2007, the Applicant by letter Ref. KE. 934/07 notified Ms. M.G. on non-extension of the contract, pursuant to Regulation no. 2001/36 on the Kosovo Civil Service and Administrative Direction no. 2003/2 on the implementation of the said Regulation, and evaluation of work by the head of the Office of the KPA in Peja.

25. On 31 December 2007, the Appeals Committee rendered Decision no. 1604/13, on rejection of the complaint of Ms. M. G. as ungrounded and unsubstantiated.

26. On 24 January 2008, Ms. M. G. filed complaint with the Independent Oversight Board of Kosovo.

27. On 24 April 2008, the Independent Oversight Board by Decision No. 815/08, rejected the complaint of Ms. M. G. as ungrounded and upheld the Notification Ref. KE-934/07, of 30 November 2007 and also upheld Decision (no. 1604/13) of the Applicant's Appeals Committee.

Summary of facts in judicial procedure

28. After having exhausted all legal remedies in the administrative procedure, Ms. M. G. filed a claim with the Municipal Court in Peja, whereby she requested *"[…]* the *annulment of the respondent's Decision no. 1604/13, the Ministry of Agriculture, Forestry and Rural Development of the Republic of Kosovo in Prishtina, of 31.12.2007 and Decision no. 815/08 of Independent Oversight Board of Kosovo, of 24.04.2008 as unlawful and the respondent, Ministry of Agriculture, Forestry and Rural Development of the Republic of Kosovo, Kosovo Forestry Agency- the regional office in Peja be obliged to reinstate the claimant to employment relationship, with work duties and responsibilities that she performed before, as a financial officer […]".*

29. On 26 April 2012, the Municipal Court in Peja, by Judgment C. No. 340/2008, rejected the statement of claim of the claimant Ms. M. G as ungrounded.

30. Ms. M. G. filed an appeal within legal time limit with the Court of Appeals against Judgment C. No. 340/08 of the Municipal Court in Peja.

31. On 14 June 2013, the Court of Appeals, by Judgment Ca. Nr. 3441/2012, rejected as ungrounded the appeal of the respondent Ms. M. G. and upheld Judgment C. No. 340/2008, of the Municipal Court in Peja.

32. On an unspecified date, Ms. M. G. filed revision with the Supreme Court against Judgment Ca. No. 3441/2012, of the Court of Appeals due to substantial violations of the contested procedure provisions and erroneous application of the substantive law.

33. On 18 December 2013, the Supreme Court, by Judgment Rev. no. 287/2013 approved as grounded the revision of the claimant Ms. M.G. and decided to modify Judgment Ca. no. 3441/2012 of the Court of Appeals, of 14 June 2013 and Judgment C. no. 340/2008 of the Municipal Court in Peja, of 26 April 2012.

34. Referring to the part of the decision on the approval of the revision as grounded, the Supreme Court reasoned:

> *"[...] the lower instance courts based on correct determination of factual situation have erroneously applied the material law, when they found that the claimant's statement of claim is ungrounded in the part, referring to the respondent's obligation to reinstate the claimant to employment relationship, with work duties and responsibilities that she performed before as finance officer.*
>
> *The claimant was employed with the respondent from 5.4.2001 for a fix period of time, in work and work duties, assigned based on her professional background. The works performed by the claimant in the job position Officer for economic finance issues do not have the temporary or from time to time character, but they are of the permanent nature, which results that in that job position was hired another person.*
>
> *The fact that the non-extension of the contract was preceded by negative appraisal of work duties performance by the KFA Head of the Office, was assessed by the Supreme Court, but pursuant to Article 12 of the Administrative Direction no. 2003/2 Implementing UNMIK Regulation no. 2001/36 on Civil Service of Kosovo, the work evaluation of each civil servant is subject to official discussion together with the assessment of the manager on annual basis and by and subsequent endorsement by the next higher manager in accordance with performance assessment procedures to be set out by the Ministry, whereas pursuant to Article 13 of the Law above, the employment authority shall provide appropriate training to civil servants, including the evaluation of the work duties".*

35. Referring to the part of the decision, by which the matter is remanded for retrial, the Supreme Court reasoned:

> *"[...] As regards the part, dealing with the respondent's obligation to compensate the claimant with the salary as she*

was in the employment relationship from 1.1.2008 and on, and regarding the determination of the interest for the amount mentioned above, because of the erroneous application of the material law, the factual situation was not correctly determined and for this reason there are no conditions for modification of the judgment. Therefore both judgments of the lower instance courts were quashed in this part and the matter was remanded to the first instance court for retrial […]".

Applicant's allegations

36. The Applicant alleges that *"[…] the erroneous conclusion of Supreme Court of Kosovo that in the case of the claimant we have to do with mere non-extension of the employment contract, is not grounded, because the non-extension was preceded by the preliminary measure of the competent authority of the respondent, the Disciplinary Committee, which by reviewing the request for disciplinary procedure against her, pursuant to legal provisions in force rendered decision on merits and declared her responsible and imposed adequate measure-termination of employment relationship. This is the main point of this request addressed to this respected institution of the Republic of Kosovo, which is responsible for interpretation of any legal provision from all fields of life, under specific existing circumstances in Kosovo".*

Admissibility of the Referral

37. The Court notes that in order to be able to adjudicate the Applicants' referral, it needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

38. In this respect, the Court refers to Article 48 of the Law, which provides:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".

39. In addition, Rule 36 (1) (d) and 36 (2) (d) of the Rules of Procedure, provide:

(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,

[...]

(d) the Applicant does not sufficiently substantiate his claim;

40. The Court notes that in the present case the Applicant mainly complains regarding erroneous determination of factual situation and erroneous application of substantive law (legality) and does not in way substantiate its allegation on constitutional grounds (see*, Applicant's allegations in paragraph 35 of this document).*

41. The Court notes that the Applicant's allegation mentioned above are of the nature of legality and the Court considers that they fall under the full jurisdiction of the Supreme Court, which assesses *ex-officio* the legality of decisions of lower instances courts.

42. Furthermore, the Court should not act as a court of fourth instance, with respect to the decision rendered by the Supreme Court. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken, (see case *Edwards v. United Kingdom*, No. 13071/87, the Report of the European Commission of Human Rights of 10 July 1991).

43. In the present case, the Court does not find that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis*,
Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

44. As for the part of the decision, by which the matter is remanded for retrial, the Court considers that the case is still pending in regular court proceedings (see, *reasoning of the Judgment of the Supreme Court in paragraph 33 of this document).*

45. In fact, the Court notes that the Applicant has not substantiated its allegation on constitutional grounds and it did not provide evidence, indicating how and why its rights and freedoms, protected by the Constitution, have been violated by the challenged decision.

46. The Court concludes that the Applicant's Referral is manifestly ill-founded pursuant to Article 48 of the Law and Rule 36 (1) (d) and Rule 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) (d), 36 (2) and 56 (b) of the Rules of Procedure, on 11 February 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI127/14, Applicant Agron Latifaj, Constitutional Review of Judgment Pml. no. 57/2014, of the Supreme Court, of 25 March 2014

KI127/14, Resolution on Inadmissibility of 30 March 2015, published on 2 April 2015

Keywords: *Individual Referral, criminal procedure, unauthorized possession of weapons, imprisonment sentence, right to fair and impartial trial, criminal offense of murder, manifestly ill-founded referral*

The Supreme Court of Kosovo, by Judgment PML. no. 57/2014 rejected the Applicant's request for protection of legality as ungrounded and upheld the judgments of the Court of Appeal and of the District Court in Mitrovica, where the Applicant was found guilty of murder and of unauthorized possession of weapons and was sentenced to 10 years imprisonment.

The Applicant claimed that the challenged decision violated the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights].

The Constitutional Court found that the facts presented by the Applicant do not in any way justify the alleged violation of constitutional rights and that the referral raises questions of legality and not of constitutionality. The Applicant's Referral was declared inadmissible as manifestly ill-founded as provided by Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI127/14
Applicant
Agron Latifaj
Constitutional Review of Judgment Pml. no. 57/2014, of the Supreme Court, of 25 March 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Agron Latifaj from Kladernica village, Municipality of Skenderaj, who is currently serving imprisonment sentence in Dubrava Prison, represented by Mr. Mahmut Halimi, lawyer from Mitrovica.

Challenged Decision

2. The Applicant challenges Judgment PML. No. 57/2014 of the Supreme Court, of 25 March 2014, by which the Supreme Court rejected the Applicant's request for protection of legality as ungrounded and upheld the Judgments of the Court of Appeal and of the Basic Court in Mitrovica.

3. The Judgment was served on the Applicant on 2 May 2014.

Subject Matter

4. The subject matter is the constitutional review of Judgment, PML. No. 57/2014 of the Supreme Court, dated 25 March 2014, which

allegedly violated Article 31 [Right To Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] and Article 102 [General Principles of the Judicial System] par.2 and 3 of the Constitution of the Republic of Kosovo and Article 3 paragraph 2 of the Law on Criminal Procedure of Kosovo (hereinafter: CPCK).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 6 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 September 2014, the President of the Court by Decision, GJR. KI127/14 appointed Judge Robert Carolan as Judge Rapporteur and by Decision, KSH. KI127/14 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 15 September 2014 the Court sent a copy of the Referral to the Supreme Court.

9. On 24 September 2014 the Court informed the Applicant about the registration of the Referral.

10. On 6 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

11. On 25 May 2012 the District Court in Mitrovica by Judgment, P. No. 43/2010 found the Applicant guilty of the criminal offence: murder and unauthorized ownership, control, possession or use of weapons. The District Court sentenced him to 10 years of imprisonment for criminal offence provided by Article 146 of CCK (enacting clause II) and 3 years of imprisonment provided by Article 328 par.2 of CCK (enacting clause II), with the aggregate imprisonment sentence of 12 years.

12. On 18 October 2013, the Court of Appeal of Kosovo by Judgment PAKR no. 1108/2012 deciding on the appeals of the injured party, E. N. and the Applicant (defendant) and the response to the appeals filed by the Special Prosecutor, approved the appeal of the injured party, E. N., and in the Judgment P. No. 43/2010 of the District Court of Mitrovica, modified the decision on punishment with an aggregate sentence imprisonment of 15 years. In its revised sentence, it gave the Defendant/Applicant credit for the time served during detention from 5 March 2010. The appeal filed by the defence of the accused Agron Latifaj, was rejected as ungrounded.

13. After this, the Applicant filed with the Court of Appeal of Kosovo a request for protection of legality against Judgment PAKR No. 1180/2012 dated 18 October 2013, alleging essential violation of the criminal law and requested that the appealed judgments be modified so that it is determined that because of the mental distress, suffered by the Defendant in this case, pursuant to Article 148 of the Criminal Code, he should be imposed a more lenient imprisonment sentence, and the appeal of the injured party be considered as out of time.

14. On 25 March 2014 the Supreme Court of Kosovo by Judgment PML. No. 57/2014 rejected the appeal of the Applicant as ungrounded.

15. The Supreme Court held that:

> "*Allegations in the request regarding the lack of reasoning by the defence of the convicted person related to that the court of the second instance acted in contradiction with Article 400, par.2 of CPCK when it did not dismiss the appeal of the injured party since it was not announced, are ungrounded. The court of the second instance acted in a fair manner when it took into consideration the review of the appeal of the injured party although it was not announced, since, according to Article 400, par.2 of the CPCK, it has been foreseen that if a person entitled to appeal fails within the legally stipulated time period to announce an appeal, he or she shall be deemed to have waived the right to appeal, except in instances from paragraph 4 of the present article, when to the accused is announced the imprisonment punishment. In this case, the appeal of Enver Nika as an injured party authorized to file the appeal is permissible although it was not announced. Conclusion of the*

defence, whereby the injured party in its appeal has also talked on the flow of the events, stands, however, those allegations have not been assessed by the court of the second instance but only the allegations related to the punishment announced against wich the appeal has been filed, have been assessed."

16. With respect to the Applicant's request for a more lenient sentence the Supreme Court held that:

"Allegations of the defence in its request for announcement of a more lenient sentence for the convicted party are ungrounded since by the judgment of the court of the first instance have been provided assessed circumstances by the court of the first instance, in relation to the measurement of the punishment as well as the circumstances that led the court of the second instance, by its judgment to change the decision on the punishment whereby the convicted person was sentenced with an aggregated imprisonment punishment of 15 (fifteen) years, justifying it with aggravating circumstances and by providing reasoning on them. The appeal of the defence was rejected as ungrounded by the court of the second instance since it did not provide any circumstance that had not been assessed by the court of the first instance. In the reasoning of the judgment of the second instance have been provided proper sufficient reasons whereby the decision on the punishment has been justified.
Based on what is stated above and in terms of Article 456 of PCCK, it has been decided as in the enacting clause of the Judgment."

17. Currently, the Applicant is serving his imprisonment sentence which was upheld and thus became final by Judgment PML. No. 57/2014, of the Supreme Court of Kosovo, of 25.03.2014.

Applicant's allegations

18. The Applicant alleges that the challenged decision violates his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] par.2 and 3 of the Constitution of the Republic of Kosovo and Article 3 par.2 of CPCK.

19. The Applicant requests the Court: *"to declare Judgment, PAKR. No. 1108/2012 of the Court of Appeal in Prishtina and Judgment PML. No. 57/2014 of the Supreme Court of Kosovo as anti-*

constitutional and to order these judgments to be quashed and the matter to be remanded for retrial and reconsideration before the Court of Appeal in Prishtina."

20. The Applicant in the end of Referral also requests: *"The appeal of the injured party filed against the Judgment of the first instance to be considered as inadmissible since it has been filed in contradiction with Article 400, paragraph 1 and 2 of the CPCK which affects the provision of Article 102, paragraph 2 and 3, as well as Article 31 of the Constitution."*

Admissibility of the Referral

21. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met the admissibility requirements, laid down the Constitution and further specified in the Law and Rules of Procedure.

22. In this respect, the Court refers to Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure, which provide that:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) The referral is prima facie justified or not manifestly ill-founded.*
>
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,*
>
> *[...]"*

23. As mentioned above, the Applicant alleges that Judgment PML. No. 57/2014 of the Supreme Court and Judgment PAKR. No. 1108/2012 of the Appeal Court was rendered in violation of Articles 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] par. 2 and 3 of the Constitution.

24. In relation to these allegations, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegations of violation of the law and substantial violation of procedural provisions (see paragraph 15).

25. The Court also notes that the Applicant's allegations in his request for a more lenient sentence for the convict were reasoned by the Supreme Court (see paragraph 16).

26. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

27. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).

28. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case does not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.

29. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* Case *Edwards v. United Kingdom*, Application No. 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

30. In that respect, the Court notes that the reasoning referring to the request for considering the appeal of injured party against the Judgment of the first instance as inadmissible and the request for decision of a more lenient sentence in the Judgment of the Supreme Court are clear. After having reviewed all the

proceedings, the Court has also found that the proceedings before the Court of Appeal have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

31. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights invoked by the Applicant.

32. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible pursuant to Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) (d) and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 30 March 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI183/14, Applicant Ilir Berisha, Request for Constitutional Review of the Notification Ref. ZVVGJ/0389/14 of the Appointment Committee of the Kosovo Judicial Council, of 22 September 2014

KI183/14, Resolution on Inadmissibility of 12 February 2015, published on 2 April 2015

Keywords: *Individual referral, administrative procedure, the right to legal remedies, right to work and exercise profession, the principle of subsidiarity, non-exhaustion of legal remedies*

The Appointment Committee of the Kosovo Judicial Council rejected the application of the Applicant for the position of a judge in the Municipal Court in Peja.
The Applicant alleged among the other that the Appointment Committee of the Kosovo Judicial Council had violated his rights and freedoms guaranteed by the Constitution of Kosovo and the European Convention on Human Rights.

The Constitutional Court found that in the present case there is no final decision of the competent authority which could be considered and further reiterated that the principle of subsidiarity requires that the Applicant exhaust all possibilities in the regular proceedings. The Referral was declared inadmissible because of non-exhaustion of all remedies as laid down in Article 113.7 of the Constitution and further specified in Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI183/14
Applicant
Ilir Berisha
Request for Constitutional Review of the Notification Ref. ZVVGJ/0389/14 of the Appointment Committee of the Kosovo Judicial Council, of 22 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Mr. Ilir Berisha (hereinafter: the Applicant), with residence in Peja.

Challenged Decision

2. The Applicant requests the constitutional review of the Notification Ref. ZVVGJ/0389/14 of the Appointment Committee of the Judicial Council of Kosovo (hereinafter: KJC) of 22 September 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the Notification [Ref. ZVVGJ/0389/14] of the KJC, of 22 September 2014, which allegedly violates the Applicant's rights and freedoms as guaranteed by: Article 3 (Equality Before the Law), Article 7 (Values), Article 24 (Equality Before the Law), Article 32 (Right to Legal Remedies), Article 49 (Right to Work and Exercise

Profession) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6, 7 and 14 of the European Convention of Human Rights (hereinafter: ECHR).

Legal Basis

4. Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 19 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 13 January 2015, the President of the Court, by Decision GJR. KI183/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI183/14, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 27 January 2015, the Court informed the Applicant and the KJC about the registration of the Referral.

8. On 12 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

9. On 4 February 2014, the KJC announced a vacancy for the positions of a certain number of Judges. In the vacancy announcement, the KJC set the requirements which the Applicants had to meet in their applications, which are specified by Article 26 paragraph 1 of the Law on Courts.

10. The Applicant applied within the time limit specified in the vacancy announcement for the position of Judge of the Municipal Court in Peja.

11. On 25 September 2014, the KJC decided to reject the Applicant's application for a position as a judge at the Municipal Court of Peja. The KJC sent a letter of notification [Ref. ZVVGJ/0389/14] of this decision to the Applicant explaining the reasons for its decision. The application had been rejected because the Applicant did not comply with the years of professional experience requirements contained in the Law (Article 26, paragraph 1 of the Law on Courts).

12. On 29 September 2014, the Applicant considered that the KJC had committed an error in determining the facts regarding his work experience. Therefore, he filed an objection to the second instance committee of the KJC requesting the re-consideration of his application.

Applicant's Allegations

13. The Applicant stated in his Referral: "*... that he considers that in his case were violated his rights and freedoms under Article 3 (Equality Before the Law) Articles 7 (Values), Article 24 (Equality Before the Law), Article 32 (Right to Legal Remedies), Article 49 (Right to Work and Exercise Profession) of the Constitution of Kosovo, as well as Article 6, 7 and 14 of the ECHR, and that these violations still continue*".

14. In his Referral, the Applicant requests from the Court:

- *To declare the Referral admissible;*
- *To hold that there have been violations of Articles 3, 7, 24, 32 and 49 of the Constitution of Kosovo, and Articles 6, 7 and 14 of the ECHR;*
- *To annul the Notification Ref. ZVVGJ/0389/14, of the Appointment Committee of the Kosovo Judicial Council, of 22 September 2014, as unconstitutional;*
- *To order the Kosovo Judicial Council to rectify the abovementioned violations of the Constitution and of the ECHR.*

Assessment of the Admissibility of the Referral

15. In order to be able to adjudicate the Applicant's Referral, the Court has to examine whether he has met the admissibility requirements, laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.

16. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

17. In addition, Article 47.2 of the Law also provides:

> *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".*

18. Furthermore, Rule 36 (1) b) reads:

> *"The Court may consider a referral if all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".*

19. The Applicant states in his Referral that Notification [Ref. ZVVGJ/0389/14] of KJC, of 22 September 2014, violated his rights and freedoms guaranteed by the Constitution of Kosovo and the ECHR, as cited in paragraph 12 of this report.

20. The Applicant has not submitted to the Court the response, if any, of the KJC to his objection and request of 29 September 2014. In addition, the Applicant has not indicated whether he has made any other attempts through other legal remedies to insure the constitutional rights, that he now alleges were violated before filing his referral with this Court.

21. Therefore, the Court considers that, in the present case, the Referral of the Applicant is premature, as the Applicant's proceedings for reconsideration of his application initiated before the second instance authority of the KJC has not been concluded.

22. In addition, the Court notes that there are other administrative remedies available to the Applicant which can address his complaints.

23. The Court reiterates that the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in regular proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of fundamental rights.

24. The rationale for the exhaustion rule is to afford the concerned authorities, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo,* KI41/09, of 21 January 2010, and see *mutatis mutandis,* ECHR, *Selmouni vs. France,* no. 25803/94, Decision of 28 July 1999).

25. In conclusion, the Court considers that in the present case there is no final decision of the competent authority which could be considered, and which could be the basis of the alleged violation.

26. It follows that the Referral is inadmissible pursuant to Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) b) of the Rules of Procedure, in the session held on 26 March 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KO26/15, Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. *05-433/DO-318*

KO 26/15, Judgment of 14 April 2015, published on 15 April 2015.

Keywords: *Referral filed by institution, preventive control of constitutionality, constitutional amendments, Specialized Chambers and the Specialized Prosecutor's Office, the rights and freedoms guaranteed by Chapter II and III of the Constitution*

The President of the Assembly of the Republic of Kosovo, in accordance with Articles 113.9 and 144.3 of the Constitution referred Amendment no. 24 to the Constitution to the Constitutional Court of the Republic of Kosovo, proposed by the Government of the Republic of Kosovo. The proposed Amendment consists in adding a new article, Article 162, after Article 161 [Transition of Institutions] of the Constitution. The subject matter of the Referral is the prior assessment by the Court whether the proposed Amendment to the Constitution diminishes the rights and freedoms guaranteed by Chapter II and III of the Constitution.

The proposed amendment of the Constitution contains four structural elements related to the justice system of the Republic of Kosovo, namely with the establishment of Specialist Chambers, the Specialist Prosecutor's Office, a Specialist Chamber within the Constitutional Court, the appointment of a special Ombudsperson with exclusive responsibilities for Specialist Chambers and Specialist Prosecutor's Office.

The Constitutional Court found that the four new structural elements introduced in the Constitution by amendment: (a) shall be established by law, (b) shall be in accordance with the existing structure of the justice system of the Republic of Kosovo, (c) shall have specific scope of jurisdiction, (d) will operate within the legal framework of criminal justice, and (d) are necessary for the Republic of Kosovo so that it can fulfill its international obligations.

The Constitutional Court confirmed that the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II and III of the Constitution and it is in harmony with its letter and spirit as established in the case law of the Court. Therefore, the Constitutional Court concluded that the proposed Amendment is in compliance with the Constitution.

JUDGMENT
in
Case No. KO26/15
Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433/DO-318

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

The Applicant

1. On 9 March 2015 the President of the Assembly of the Republic of Kosovo (hereinafter: the "Applicant"), in accordance with Articles 113.9 and 144.3 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), referred an Amendment (Amendment no. 24) to the Constitution to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), proposed by the Government of the Republic of Kosovo (hereinafter: the "Government").

Subject matter

2. The subject matter of the Referral is the prior assessment by the Court whether the proposed Amendment to the Constitution *"[…] does not diminish any of the rights and freedoms guaranteed by Chapter II of the Constitution"* in accordance with Article 113.9 of the Constitution.

3. The proposed Amendment consists in adding a new Article 162 after Article 161 [Transition of Institutions] of the Constitution.

Legal basis

4. The Referral is based on Articles 113.9 and 144.3 of the Constitution and Articles 20 and 54 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law").

Proceedings before the Court

5. On 9 March 2015 the Applicant referred the Amendment to the Court.

6. On 10 March 2015 the President of the Court, by Decision No. GJR. KO26/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KO26/15, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 11 March 2015 the Court notified the Applicant of the registration of the Referral and a copy of the Referral was communicated to the President of the Republic of Kosovo, the Prime Minister, the Deputies of the Assembly and the Ombudsperson.

8. On 18 March 2015 the Parliamentary Group of Vetëvendosje submitted their comments in respect to Case KO26/15.

9. On 14 April 2015 the Judge Rapporteur presented the Report to the Review Panel. The Review Panel endorsed it and unanimously recommended to the full Court that the Referral be declared admissible for consideration and to confirm that the proposed Amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

10. On the same date, the Court deliberated and voted on the case.

11. Judge Kadri Kryeziu did not participate in the Court's proceedings and ruling on the current Case KO26/15 based on Decision KK124/14 of 19 August 2014 of the Constitutional Court.

Summary of facts

12. On 7 March 2015 the Government decided to propose to the Assembly of the Republic of Kosovo an Amendment to the Constitution.

13. On the same date the Government, pursuant to Article 144 [Amendments], paragraph 1, of the Constitution, proposed to the President of the Assembly the Amendment to the Constitution.

14. On 9 March 2015 the President of the Assembly referred to the Court the Amendment to the Constitution, requesting the Court to make a prior assessment whether the proposed Amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution.

Admissibility of the Referral

15. In order for the Court to adjudicate the Applicant's Referral it is necessary to examine whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law.

16. Firstly, the Court needs to determine if the Referral has been submitted by an authorized party and, secondly, whether it has jurisdiction to assess the Amendment to the Constitution proposed by the Government in accordance with Article 113.9 of the Constitution.

17. The Court recalls that, pursuant to Article 113.9 of the Constitution, *"The President of the Assembly of Kosovo refers proposed Constitutional Amendments [...]"*.

18. The Court notes that the President of the Assembly, Mr. Kadri Veseli, referred the proposed Amendment. Thus, the Court concludes that it was submitted by the authorized party, pursuant to Article 113.9 of the Constitution.

19. Therefore, pursuant to the same Article 113.9, the Court has *"[...] to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution"*.

20. Consequently, the Court has jurisdiction to assess whether or not the proposed Amendment diminishes the rights and freedom guaranteed by Chapter II of the Constitution.

21. Since it is referred by the authorized party and the Court has jurisdiction to adjudicate the case, the Referral is admissible.

Scope of the assessment

22. The scope of the assessment of the proposed Amendment is based on Chapter II [Fundamental Rights and Freedoms], Chapter III [Rights of Communities and their Members] and the letter and spirit of the Constitution (See, Cases Nos. KO29/12 and KO48/12, Applicant: *President of the Assembly of the Republic of Kosovo,* Judgment of 20 July 2012; see, also Case No. KO61/12, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 31 October 2012).

Proposed Amendment no. 24: new Article 162 of the Constitution to be added following Article 161 of the Constitution

23. The proposed Amendment consists in adding a new Article 162 of the Constitution, reading as follows:

> *"...*
>
> *Article 162 [The Specialist Chambers and the Specialist Prosecutor's Office]*
>
> *Notwithstanding any provision in this Constitution:*
>
> *1. To comply with its international obligations in relation to the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011, the Republic of Kosovo may establish Specialist* [N.B. The word "Specialist" in the English text reads as "Specialized" in the Albanian text and as "Special" in the Serbian text.] *Chambers and a Specialist Prosecutor's Office within the justice system of Kosovo. The organisation, functioning and jurisdiction of the Specialist Chambers and Specialist Prosecutor's Office shall be regulated by this Article and by a specific law.*

2. *The Specialist Chambers and Specialist Prosecutor's Office shall uphold the protections enshrined within Chapter II of the Constitution, and in particular shall act in compliance with the international human rights standards guaranteed by Article 22 and subject to Article 55.*

3. *A Specialist Chamber of the Constitutional Court, composed of three international judges appointed in addition to the judges referred to in Article 114 (1), shall exclusively decide any constitutional referrals under Article 113 of the Constitution relating to the Specialist Chambers and Specialist Prosecutor's Office in accordance with a specific law.*

4. *The Specialist Chambers and the Specialist Prosecutor's Office shall have full legal and juridical personality and shall have all the necessary powers and mandate for their operation, judicial co-operation, assistance, witness protection, security, detention and the service of sentence outside the territory of Kosovo for anyone convicted, as well as in relation to the management of any residual matters after finalisation of the mandate. Arrangements arising from the exercise of these powers are not subject to Article 18.*

5. *Before entering into any international treaty with a third state relating to judicial cooperation, which would otherwise require ratification under Article 18, the Specialist Chambers shall seek the agreement of the Government.*

6. *The Specialist Chambers may determine its own Rules of Procedure and Evidence, in accordance with international human rights standards as enshrined in Article 22 and be guided by the Kosovo Code of Criminal Procedure. The Specialist Chamber of the Constitutional Court shall review the Rules to ensure compliance with Chapter II of the Constitution.*

7. *The Specialist Chambers and the Specialist Prosecutor's Office may have a seat in Kosovo and a seat outside Kosovo. The Specialist Chambers and the Specialist Prosecutor's Office may perform their functions at either seat or elsewhere, as required.*

8. Consistent with international law and pursuant to international agreements, any persons accused of crimes before the Specialist Chambers may be detained on remand and transferred to the Specialist Chambers sitting outside the territory of Kosovo. If found guilty and sentenced to imprisonment, any such persons may be transferred to serve their sentence in a third country, outside the territory of Kosovo, pursuant to arrangements concluded under paragraph 4.

9. The official languages of the Specialist Chambers and the Prosecutor's Office shall be Albanian, Serbian and English. The Specialist Chambers and the Specialist Prosecutor may decide on the official use of language(s) for the exercise of their mandate.

10. Appointment and oversight of judges and prosecutors and the oversight and administration of the Specialist Chambers and Specialist Prosecutor's Office shall be in accordance with a specific law.

11. A separate Ombudsperson of the Specialist Chambers with exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office shall be appointed and his/her function and reporting obligations determined by [a specific law]. Articles 133(2), 134, 135 (1) and (2) shall not apply to the Ombudsperson for the Specialist Chambers. The Ombudsperson of Kosovo may also refer matters as provided by Article 135 (4).

12. Specific administrative procedures, modalities, the organisation and functioning of the Specialist Chambers and Specialist Prosecutor's Office, the oversight, budgeting, auditing and other functions will be regulated by international agreement, by a specific law and through arrangements made under paragraph 4.

13. The mandate of the Specialist Chambers and the Specialist Prosecutor's Office shall be for a period of five years, unless notification of completion of the mandate in accordance with Law No. 04/L-274 occurs earlier.

14. In the absence of notification of completion of the mandate under paragraph 12, the mandate of the

Specialist Chambers and the Specialist Prosecutor's Office shall continue until notification of completion is made in accordance with Law No. 04/L-274 and in consultation with the Government.

II.

Constitutional amendments shall enter into force immediately upon their adoption by the Assembly of the Republic of Kosovo.

…".

Comments of the Parliamentary Group of Vetëvendosje

24. On 18 March 2015 the Parliamentary Group of Vetëvendosje submitted their comments to the Court in respect of the Amendment to the Constitution. Their comments state that the Amendment is in contradiction with the character and legal status of the Republic of Kosovo and not in compliance with Article 1 [Definition of State], paragraphs 1 and 2, Article 3 [Equality Before the Law], Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution in connection with Article 7 of the Universal Declaration of Human Rights, Article 24 [Equality Before the Law], Article 35 [Freedom of Movement], Article 45 [Freedom of Election and Participation], Article 65 [Competencies of the Assembly], point 4 of the Constitution in connection with Article 18 [Ratification of International Agreements], Article 102 [General Principles of the Judicial System], Article 103 [Organization and Jurisdiction of Courts], Article 104 [Appointment and Removal of Judges], Article 114 [Composition and Mandate of the Constitutional Court], Article 132 [Role and Competencies of the Ombudsperson], Article 134 [Qualification, Election and Dismissal of the Ombudsperson], Article 135 [Ombudsperson Reporting] of the Constitution.

25. They allege that the Draft Amendment aims to create parallel judicial bodies whereas nowhere in the Draft Amendment are any *"[…] elements of dependence of these parallel bodies […]"* specified in respect of the constitutional bodies. Thus, appointments, selection and responsibility are not sanctioned in the Draft Amendment.

26. According to the Parliamentary Group of Vetëvendosje, the Draft Amendment is creating *"[…] the constitutional basis that in the legal system of the judiciary of the Republic of Kosovo are*

established legal norms of sui generis nature, which will recognize the right of a completely separate body which would not be subject to generalis regulation of Kosovo."

27. They consider that *"The specialized chamber, as named by the sponsor, is in full contradiction with the provisions of Article 114 of the Constitution in terms of its composition. Another element regarding the collision that these norms are creating in this draft amendment is the subject matter jurisdiction of this "specialized" chamber in relation to Article 112 and 113 of the Constitution."*

28. Moreover, according to the Parliamentary Group of Vetëvendosje, *"Under paragraph 4, the specialized Chambers and specialized Prosecutor's Office will have full legal capacity that in a general sense enter the international relations and thus [...] the Assembly of Kosovo was excluded from ratification, or granting of internal instrument (consent) for the conclusion of these agreements with international character."*

29. The Parliamentary Group of Vetëvendosje, in respect to the proposed Amendment of Article 162, paragraph 5, of the Constitution consider that *"[...] with this draft amendment, the provisions of paragraph 5 violate the competencies of the Assembly of Kosovo, as provided by Article 65, item 4 of the Constitution related to the competence for ratification of international agreements. Thus, the consent for conclusion of international agreements by the specialized chambers and office of specialized prosecutor will be taken only by the Government and not by the Assembly of Kosovo as provided by Article 18 of the Constitution."*

30. They allege that *"Under paragraph 6 of the draft amendment [...] with granting of constitutional authority that these chambers and Office of the Prosecutor to have the right to issue new procedural rules, make the accused in conducted procedures before them discriminated against in terms of their protection from the law and use of legal remedies through rules that are provided with the applicable laws of the state, which citizens they are."*

31. In respect to the proposed Amendment of Article 162, paragraphs 7 and 8, of the Constitution, it *"[...] relates to the extradition of citizens of the Republic of Kosovo and which under Article 35, paragraph 4, the extradition of citizens of Kosovo, within their fundamental right to free movement shall not be extradited from*

Kosovo against their will except for cases when otherwise required by international law and agreements."

32. The Parliamentary Group of Vetëvendosje considers that *"Paragraph 10 of the draft amendment excludes in entirety application of the provisions of Article 104 of the Constitution of Kosovo. Making available that the issue of appointment of judges be left to legal regulation, which again under preclusive clause to regulate the appointment of judges outside the standard prescribed by Article 104 of the Constitution and the provisions of the Law on the Kosovo Judicial Council [...]."*

33. They further submit that *"Under paragraph 11 of the draft amendment is envisaged the establishment of a special Ombudsperson of Specialized Chambers which will not be elected, nor shall report to the Assembly of Kosovo under the provisions of Article 132, par. 2 and Articles 134 and 135 par. 1 and 2 of the Constitution of Kosovo."*

34. In conclusion, the Parliamentary Group of Vetëvendosje considers that *"It is not foreseen either in theory or practice of drafting constitutional norms that the constitutional provisions are referred to a legal act which is subordinate to the constitutional act. This creates legal and constitutional uncertainty and such a norm violates legal order in general because while constitutional provisions undergo special constitutional procedure and approval by the double qualified majority in accordance with Article 144, par. 2, of the Constitution [...]".*

Assessment of the proposed Amendment

35. The proposed Amendment will be reviewed by the Court in accordance with the scope of assessment defined above. Initially, the Court will examine the structural elements introduced by the Amendment for their inter-relationship with the existing structures of the justice system of the Republic of Kosovo.

36. The Court notes that the proposed Amendment to the Constitution contains four structural elements related to the justice system of the Republic of Kosovo.

    a. The first one is to establish Specialist Chambers within the justice system of the Republic of Kosovo;

b. The second one is to create a Specialist Prosecutor's Office within the justice system of the Republic of Kosovo;

c. The third one is to introduce a Specialist Chamber within the Constitutional Court composed of three international judges, who shall exclusively decide any constitutional referrals under Article 113 of the Constitution relating to the Specialist Chambers and Specialist Prosecutor's Office;

d. The fourth one is to appoint an Ombudsperson of the Specialist Chambers with exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office.

37. The Court recalls that the introduction of the above Constitutional Amendment derives from the International Agreement between the Republic of Kosovo and the European Union dated 14 April 2014.

38. On 23 April 2014 the Assembly, by a two-thirds majority, adopted Law No. 04/L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union, on the European Union Rule of Law Mission in Kosovo (hereinafter: Law No. 04/L-274). This Law entered into force on 30 May 2014.

39. The Court notes that the Amendment states that the establishment of Specialist Chambers and a Specialist Prosecutor's Office within the justice system of the Republic of Kosovo is a requirement for the Republic of Kosovo to comply with its international obligations in relation to the Report of the Parliamentary Assembly of the Council of Europe (Doc. 12467) of 7 January 2011.

40. In order to examine the inter-relationship of the structural elements of the Amendment with the justice system, the Court refers to Article 4 [Form of Government and Separation of Power], paragraph 5, of the Constitution which provides that: *"The judicial power is unique and independent and is exercised by courts."*

41. The nature of the exercise of judicial power is further developed in Chapter VII of the Constitution, which determines the structure of the Justice System of the Republic of Kosovo. Article 102 [General Principles of the Judicial System] of the Constitution reads as follows:

> *"1. Judicial power in the Republic of Kosovo is exercised by the courts.*
>
> *2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.*
>
> *3. Courts shall adjudicate based on the Constitution and the law.*
>
> *4. Judges shall be independent and impartial in exercising their functions.*
>
> *5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal."*

42. Furthermore, Article 103 [Organization and Jurisdiction of Courts], paragraph 7, of the Constitution foresees a constitutional right of the Republic of Kosovo to establish specialized courts. It reads as follows: *"Specialized courts may be established by law when necessary, but no extraordinary court may ever be created."*

43. The Court considers that a specialized court, as foreseen by this provision, means a court with a specifically defined scope of jurisdiction, and which remains within the existing framework of the judicial system of the Republic of Kosovo and operates in compliance with its principles. Unlike a specialized court, an "extraordinary court" would be placed outside the structure of the existing court system and would operate without reference to the existing systems.

44. As such, the Court finds that, in order for a specialized court to be in compliance with the constitutional provision authorizing the establishment of such courts, the structure, scope of jurisdiction and method of functioning of such a court need to be in compliance with the rights provided by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law related to the overall framework of the judicial system of the Republic of Kosovo.

45. In addition, the Court notes that there are two formal requirements foreseen under Article 103, paragraph 7, of the Constitution for the creation of a specialized court. Firstly, it needs to be based upon law and secondly, there needs to be a necessity for its establishment.

46. As to the first requirement, the Court notes that the proposed Amendment foresees under Article 162, paragraph 1, that:

    a. The Specialist Chambers will be established within the already established existing courts within the justice system of the Republic of Kosovo similar to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters. This Special Chamber was established by the Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, No. 04/L-033, dated 31 August 2011, which based on Article 21.2 of the Law on Courts No. 03/L-199, is part of the Supreme Court.

    b. The establishment of the Specialist Chambers will be established through the adoption of a specific law by the Assembly, which will regulate its *"[…] organisation, functioning and jurisdiction […]."*

47. In this respect, the Court refers to the European Court of Human Rights (hereinafter: the "ECtHR") case of *Fruni v Slovakia (See Case Fruni v. Slovakia,* application no. 8014/07, Judgment of 21 June 2011).

48. In this case, the ECtHR held that *"[…] Article 6 § 1 cannot be read as prohibiting the establishment of special criminal courts if they have a basis in law* (see *Erdem v. Germany* (dec.), no. 38321/97, 9 December 1999). The ECtHR reiterated that *"[…] the object of the term "established by law" in Article 6 of the Convention is to ensure "that the judicial organisation in a democratic society [does] not depend on the discretion of the Executive, but that it [is] regulated by law emanating from Parliament".*

49. Consequently, given that the proposed Amendment aims to establish the Specialist Chambers by law, it is in compliance with that requirement of Article 103, paragraph 7, of the Constitution.

50. As to the second requirement contained in Article 103, paragraph 7, namely that the Specialized Court must be "necessary", the Court

notes that the proposed Amendment states that the establishment of Specialist Chambers and a Specialist Prosecutor's Office within the justice system of the Republic of Kosovo is a requirement for the Republic of Kosovo to comply with its international obligations.

51. These international obligations stem from the Report of the Parliamentary Assembly of the Council of Europe (Doc 12462) of 7 January 2011, which outlines a number of highly specific criminal allegations and recommends them for investigation and prosecution. These obligations were incorporated into the legal framework of the Republic of Kosovo through the adoption by a two-thirds majority by the Assembly of Law No. 04/L-274.

52. In this respect, the Court refers to the above-mentioned ECtHR case of Fruni v Slovakia, wherein the ECtHR acknowledged that *"[…] fighting corruption and organised crime may well require measures, procedures and institutions of a specialised character."*

53. Therefore, the Court finds that the scope of jurisdiction of the Specialist Chambers as provided by the Amendment is also in compliance with the requirement of "necessity" contained in Article 103, paragraph 7, of the Constitution.

54. In addition, on the basis of the jurisprudence of the ECtHR as quoted above, the specialized court chambers to be established by the Amendment are also in compliance with the requirement to be based in law and to come within a specialized scope of jurisdiction. Therefore, the Amendment complies with the requirements of an independent and impartial tribunal, as stipulated by Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR.

55. Furthermore, the Amendment provides that the specific administrative procedures, modalities, organization and functioning of the Specialist Chambers, oversight, budgeting, auditing and other functions will be regulated, *inter alia*, by a specific law. The Specialist Chambers may determine Rules of Procedure and Evidence, in accordance with international human rights standards as enshrined in Article 22 of the Constitution, which shall be reviewed by the Specialist Chamber of the Constitutional Court for compliance with Chapter II of the Constitution. Such rules shall be guided by the provisions of the Kosovo Code of Criminal Procedure.

56. The Court also notes that it is envisaged in paragraphs 13 and 14 of Amendment no. 24 that the mandate of the Specialist Chambers is

foreseen to be for a period of five years, unless a notification of completion of the mandate is made in accordance with the Law 04/L-274 and in consultation with the Government.

57. In addition, the Court notes that, pursuant to the proposed Amendment of Article 162, paragraph 2, the Constitution shall be upheld by the established Specialist Chambers, in particular the protections enshrined within its Chapter II, and they shall act in compliance with the international human rights standards guaranteed by Article 22 and subject to Article 55. These are procedural guarantees for those who will be subject to the jurisdiction of the Specialist Chambers.

58. Therefore, the Court finds that the means of functioning of the Specialist Chambers is within the framework of the justice system of the Republic of Kosovo.

59. The Court concludes that the proposed Specialist Chambers will be established within the *unique and independent judicial power that is exercised by courts* based on the Constitution. The structure, scope of jurisdiction and functioning of the Specialist Chambers will be regulated by further laws in compliance with the Constitution. Therefore, the Specialist Chambers do not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

60. As far as the proposal to establish the Specialist Prosecutor's Office is concerned, the Court notes that its establishment follows the same principle as for the Specialist Chambers. The scope of jurisdiction of the Specialist Prosecutor's Office will be for the same specific crimes as for the Specialist Chambers. Furthermore, as with the Specialist Chambers, under paragraph 2 of the Amendment, the Specialist Prosecutor's Office has to apply and uphold standards and principles enshrined within Chapter II of the Constitution and act in compliance with the international human rights standards guaranteed by Articles 22 and 55 of the Constitution.

61. The Court also notes that it is envisaged in paragraphs 13 and 14 of Amendment no. 24 that the mandate of the Specialist Prosecutor's Office is foreseen to be for a period of five years, unless a notification of completion of the mandate is made in accordance with the Law 04/L-274 and in consultation with the Government.

62. As such, the Specialist Prosecutor's Office will be established within the already existing prosecutorial system of the Republic of Kosovo. The Specialist Prosecutor's Office will be established by law, which will regulate its *"[…] organisation, functioning and jurisdiction […]."*

63. Accordingly, the Court finds that the proposed Amendment is in compliance with Constitutional safeguards for the protection of human rights, and that further laws and regulations will be established within the framework of the justice system to further protect the fundamental rights of persons coming within the jurisdiction of the Specialist Prosecutor's Office.

64. The Court concludes that the Amendment to establish a Specialist Prosecutor's Office does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

65. As to the proposed Amendment to establish a Specialist Chamber of the Constitutional Court, the Court reiterates it's above findings and notes also that the Specialist Chamber will be established within the existing Constitutional Court. This Specialist Chamber will exercise, through its Constitutional review of proposed Rules of Procedure and Evidence, and through the mechanism of individual constitutional complaints, a supervisory jurisdiction over the Specialist Chambers within the regular courts and the Specialist Prosecutor's Office.

66. Therefore, the Court concludes that the proposed Amendment to establish a Specialist Chamber within the Constitutional Court does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

67. As to the proposed Amendment to establish a separate Ombudsperson of the Specialist Chambers with the exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office, the Court reiterates its above findings and concludes that the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

68. In conclusion, the Court finds that the four new structural elements introduced into the Constitution by the Amendment will (a) be established by law, (b) conform with the existing structure of the justice system of the Republic of Kosovo, (c) have a specific scope of jurisdiction, (d) function within the legal framework of criminal justice, and (e) is necessary for the Republic of Kosovo to comply with its international obligations. Therefore, the Court concludes that the establishment of the four structural elements to the justice system of the Republic of Kosovo comes within the existing justice system of the Republic of Kosovo and responds to the characteristics of the Constitutional system of independent judicial power.

69. With respect to the comments submitted by the Parliamentary Group of Vetëvendosje, the Court observes that these comments are exclusively directed at the fact that the Amendment establishes new structural elements which have not been foreseen previously by the Constitution. However, the Court has found that the establishment of these new structural elements does not, in and of itself, create any contradiction with the provisions of the Constitution, because their structure, scope and functioning are in compliance with Chapter II and Chapter III of the Constitution and with the letter and spirit of the Constitution as established in the Court's case-law.

70. The Court will review the Amendment paragraph by paragraph of the proposed Article 162.

Amendment to the Constitution, Article 162, paragraph 1, of the Constitution

71. As to the proposed Amendment of Article 162, paragraph 1, of the Constitution, the Court notes that the creation of the four structural elements within the justice system stems from the sovereignty of the Republic of Kosovo, whereby the Assembly, by a two-thirds majority, adopted Law No. 04/L-274. This is in compliance with Article 103, paragraph 7, and Article 31 of the Constitution, because these new structural elements to the justice system of Kosovo are done by law and for the purpose of fighting specific crimes, which, in accordance with the case law of the ECtHR, requires measures, procedures and institutions of a specialized character.

72. Therefore, the Court confirms that paragraph 1 of the proposed Amendment does not diminish the constitutional rights

guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 2, of the Constitution

73. As to the proposed Amendment of Article 162, paragraph 2, of the Constitution, the Court notes that it entails the procedural guarantees for persons who will be subject to the jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office.

74. Paragraph 2 obliges the Specialist Chambers and the Specialist Prosecutor's Office to uphold the protections enshrined within Chapter II of the Constitution. In this respect, it is noted that, through Article 53 of the Constitution, the jurisprudence of the ECtHR must also be applied.

75. In addition to these procedural guarantees that are enshrined in Chapter II of the Constitution, it is noted that the Specialist Chambers and the Specialist Prosecutor's Office must act in compliance with the international human rights standards as guaranteed by Articles 22 and 55 of the Constitution, meaning that any limitation of fundamental human rights and freedoms must be done in accordance with Article 55. However, as foreseen by Article 56 of the Constitution, the derogation of some of the fundamental human rights and freedoms enshrined in Chapter II of the Constitution shall not be permitted under any circumstances.

76. Therefore, the Court confirms that paragraph 2 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 3, of the Constitution

77. As to the proposed Amendment of Article 162, paragraph 3, of the Constitution, the Court notes that the creation of a Specialist Chamber within the Constitutional Court is an additional guarantor of the Constitution. The Specialist Chambers and the Specialist Prosecutor's Office will be under its supervisory jurisdiction through possible constitutional complaints in accordance with Article 113 of the Constitution.

78. This Specialist Chamber within the Constitutional Court will follow the same standards and principles enshrined in the Constitution as the existing Constitutional Court. However, the scope of Referrals that can come before this Chamber will be exclusively in respect to the Specialist Chambers and the Specialist Prosecutor's Office.

79. Therefore, the Court confirms that paragraph 3 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 4, of the Constitution

80. As to the proposed Amendment of Article 162, paragraph 4, of the Constitution, the Court notes that it ensures that the Specialist Chambers and the Specialist Prosecutor's Office will take full care of all elements of the right to a fair and impartial trial and other procedural guarantees towards the persons who will be subject to the jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office. This will be done through powers and mandate necessary for their operation, judicial co-operation, assistance, witness protection, security, detention and the service of sentence outside the territory of the Republic of Kosovo for anyone convicted, as well as in relation to the management of any residual matters after finalization of the mandate.

81. Therefore, the Court confirms that paragraph 4 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 5, of the Constitution

82. As to the proposed Amendment of Article 162, paragraph 5, of the Constitution, the Court notes that, although the arrangements arising from the exercise of the powers mentioned in paragraph 4 are not subject to Article 18, nonetheless these arrangements shall seek the agreement of the Government. Therefore, before entering into any international treaty on judicial cooperation, the procedure

for seeking the agreement of the Government shall be in compliance with the provisions of the Constitution.

83. Therefore, the Court confirms that paragraph 5 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 6, of the Constitution

84. As to the proposed Amendment of Article 162, paragraph 6, of the Constitution, the Court notes that these are additional guarantees which will be included in the Rules of Procedure and Evidence of the Specialist Chambers. The Rules of Procedure and Evidence will follow international human rights standards and the existing Kosovo legislation of the Code of Criminal Procedure.

85. Moreover, the Rules of Procedure and Evidence will be subject to review for their compliance with the Constitution by the Specialist Chamber within the Constitutional Court, as an additional guarantee that the procedural rights under Chapter II of the Constitution are respected.

86. Therefore, the Court confirms that paragraph 6 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 7, of the Constitution

87. As to the proposed Amendment of Article 162, paragraph 7, of the Constitution, the Court notes that it is linked to the established structural elements within the Justice System of the Republic of Kosovo and the established procedural guarantees.

88. Therefore, the Court confirms that paragraph 7 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 8, of the Constitution

89. As to the proposed Amendment of Article 162, paragraph 8, of the Constitution, the Court notes that any actions to be taken in respect to a person that will become subject to the jurisdiction of the Specialist Chambers and the Specialist Prosecutor's must be consistent with the standards established by international law.

90. Therefore, the Court confirms that paragraph 8 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 9, of the Constitution

91. As to the proposed Amendment of Article 162, paragraph 9, of the Constitution, the Court notes that the use of language is one of the guarantees of the right to fair trial. As such, the official use of Albanian and Serbian, which are the official constitutional languages of the Republic of Kosovo, is envisaged.

92. Therefore, the Court confirms that paragraph 9 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 10, of the Constitution

93. As to the proposed Amendment of Article 162, paragraph 10, of the Constitution, the Court notes that the appointment and oversight of judges and prosecutors will be determined by law.

94. As such, all laws are subordinated to the principles enshrined in the Constitution when being adopted by the Assembly.

95. Therefore, the Court confirms that paragraph 10 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 11, of the Constitution

96. As to the proposed Amendment of Article 162, paragraph 11, of the Constitution, the Court notes that it is an additional guarantee that the values, principles and standards of the Constitution will be protected. The foreseen exclusion of some of the constitutional provisions related to the Ombudsperson of the Republic of Kosovo is a consequence of the exclusive competence of the separate Ombudsperson to deal with the Specialist Chambers and the Specialist Prosecutor's Office. The specific competence of this Ombudsperson will be determined by law.

97. Therefore, the Court confirms that paragraph 11 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraph 12, of the Constitution

98. As to the proposed Amendment of Article 162, paragraph 12, of the Constitution, the Court notes that this Amendment is of a technical nature which will be foreseen in the law that will be adopted by the Assembly.

99. The Court reiterates that the law will be subordinate to the principles of the Constitution when being adopted by the Assembly.

100. Therefore, the Court confirms that paragraph 12 of the proposed Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Amendment to the Constitution, Article 162, paragraphs 13 and 14, of the Constitution

101. As to the proposed Amendment of Article 162, paragraphs 13 and 14, of the Constitution, the Court notes that this is in compliance with the principle of legal certainty.

102. Therefore, the Court confirms that paragraphs 13 and 14 of the proposed Amendment do not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

Entering into force of Amendment no. 24

103. As to the entering into force of Amendment no. 24, the Court notes that the text under roman number II that regulates it is identical to Article 144, paragraph 4, of the Constitution which reads as follows:

> *"Amendments to the Constitution enter into force immediately after their adoption in the Assembly of the Republic of Kosovo."*

104. Therefore, the Court confirms that this text of the Amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law.

105. In conclusion, for the above reasons, the Court confirms that the proposed Amendment no. 24 does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law. Therefore, the proposed Amendment is in compliance with the Constitution.

FOR THESE REASONS

The Court, pursuant to Article 113.9 and Article 144.3 of the Constitution, Article 20 of the Law and Rule 56 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, in its session of 14 April 2015, unanimously

DECIDES

I. TO DECLARE admissible the Referral by the President of the Assembly submitted on 9 March 2015 with Amendment no. 24 to the Constitution of the Republic of Kosovo;

II. TO CONFIRM that the Amendment no. 24 does not diminish human rights and freedoms set forth in Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law;

III. TO NOTIFY this Judgment to the Parties and to publish it in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Judgment effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Prof. Dr. Enver Hasani

KI159/14, Applicant Elife Murseli, Constitutional review of Decision Ac. no. 1235/2014 of the Court of Appeal of Kosovo, of 5 May 2014

KI159 / 14, Resolution on Inadmissibility of 11 February 2015, published on 16 April 2015.

Keywords*: Individual referral, administrative procedure, right to fair and impartial trial, right to work and exercise profession, referral manifestly ill-founded*

The Court of Appeal of Kosovo, by Decision Ac. nr. 1235/2014 upheld the Decision of the Basic Court in Ferizaj regarding the reinstatement to the working place and unpaid salaries to the Applicant.

The Applicant claimed *inter alia* that in her case the regular courts have erroneously interpreted the Law on Local Self-Government with respect to her reinstatement to her job position and the payment of unpaid salaries.

The Constitutional Court found that the Applicant was afforded the opportunity to challenge the interpretation of the law which she considers as being incorrect before the regular courts, and moreover, the proceedings conducted before the regular courts had not been unfair or arbitrary. Applicant's Referral was declared inadmissible as manifestly ill-founded as provided by Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI159/14
Applicant
Elife Murseli
Constitutional review of Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Ms. Elife Murseli (hereinafter: the Applicant) from village Doganaj, Municipality of Kaçanik, who is represented by lawyer Mr. Rifat Abdullahi from Ferizaj.

Challenged decision

2. The Applicant challenges Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 2014, which was served on the Applicant on 4 August 2014.

Subject matter

3. The subject matter is the constitutional review of Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 2014, which according to the Applicant's allegations violated Articles 31 (Right to Fair and Impartial Trial) and 49 (Right to Work and Exercise Profession) of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 24 October 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 November 2014 the President of the Court, by Decision no. GJR. KI159/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI159/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 10 November 2014 the Court notified the Applicant and the Court of Appeal of Kosovo of the registration of Referral.

8. On 11 February 2015 the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of the facts

9. On 16 December 2008 by Decision 01 no. 8467/08 of the President of the Municipality of Kaçanik it was ordered that the Applicant's employment relationship in the work place Director of the Center for preschool education "Agimi" in Kaçanik be terminated as of 15 December 2008.

10. Decision 01 no. 8467/08 of the President of the Municipality of Kaçanik, of 16 December 2008, was upheld by Decision 01 no. 8550/08 of the Appeals Committee of the Municipality of Kaçanik, of 5 February 2009.

11. On 6 February 2009 the Applicant filed a complaint with the Independent Oversight Board of Kosovo (hereinafter: the IOBK)

against the Decision 01 no. 8467/08 of the President of the Municipality of Kaçanik, of 16 December 2008, and Decision 01 no. 8550/08 of the Appeals Committee of the Municipality Kaçanik, of 5 February 2009.

12. On 21 April 2009 IOBK by Decision no. 794/09 approved the Applicant's complaint and quashed Decision 01 no. 8467/08 of 16 December 2008 and Decision no. 01. 8550/08 of the Appeals Committee of the Municipality of Kaçanik, of 5 February 2009.

13. By IOBK Decision no. 794/09 of 21 April 2009, paragraph II of the enacting clause, the Municipality of Kaçanik was ordered the following *"Director of the Education and Culture Department, Head of Administration and Staff in the Municipality of Kaçanik is obliged to reinstate the Appellant to the work position as Director of the "Agimi" Pre-school Education Center in Kaçanik and compensate to her the personal income in a retroactive manner, from 15 December 2008 until the Employing Authority repeats the vacancy announcement, and the entire interviewing procedure and the selection of the candidate on the basis of merit are conducted, pursuant to Decision No. 782/09 of the IOBK, of 15 April 2009, within the time limit of 15 (fifteen) days from the date of receipt of this decision".*

14. On 21 September 2010 the Applicant filed a proposal with the Municipal Court in Kaçanik to allow the execution of IOBK Decision No. 794/09 of 21 April 2009.

15. On 17 January 2011 the Municipal Court in Kaçanik by Decision E. no. 390/2010 rejected as inadmissible the proposal to allow the execution of the IOBK Decision.

16. On 28 June 2011 the District Court in Prishtina, by Decision Ac. no. 89/2011, upheld Decision E. no. 390/2010 of the Municipal Court in Kaçanik.

17. The State Prosecutor of Kosovo timely filed a request for protection of legality against Decision E. no. 390/2010 of the Municipal Court in Kaçanik, of 17 January 2011, and Decision Ac. no. 89/2011 of the District Court in Prishtina, of 28 June 2011, due to erroneous application of the substantive law, proposing that both abovementioned decisions be quashed and the case be remanded to the first instance court for retrial.

18. On 16 January 2013, based on minutes no. 19/2013 of handover of duty, the Municipality of Kaçanik executed the IOBK Decision no. 794/09 and reinstated the Applicant to the work place Director at the Center for preschool education "Agimi" in Kaçanik.

19. On 3 June 2013 the Supreme Court of Kosovo, by Decision MLC. no. 2/2012, approved the request of the State Prosecutor of Kosovo as grounded and quashed Decision Ac. no. 89/2011 of the District Court in Prishtina, of 28 June 2011, and Decision E. no. 390/2010 of the Municipal Court in Kaçanik, of 17 January 2011, and the case was remanded to the first instance court for retrial.

20. On 4 March 2014 the Basic Court in Ferizaj - Branch in Kaçanik, by Decision no. 269/13, decided as follows:

> *"I. The Proposal for execution filed by the Creditor- Elife Murseli, from "Doganaj" Village, Municipality of Kaçanik, is partially APPROVED as grounded, and the Debtor- the Municipality of Kaçanik is OBLIGED to pay to the Creditor the amount of € 6.522.35, with the same interest rate as the money deposited in the bank without specific destination, for more than one year, starting from 01 January 2009 until 16 January 2013, for the unpaid salaries,.*
>
> *II. The amount of €9.351,30 is REJECTED as ungrounded, because the Creditor has already received this amount, and also her request for reinstatement to the work place she previously had, is rejected as UNGROUNDED.*
>
> *III. Objection of the Debtor- Municipality of Kaçanik, Education and Culture Department, filed on 01 June 2009 against the Decision E. no. 229/09 on allowing the execution, dated 15 May 2009, is REJECTED as ungrounded.*
>
> *IV. The Debtor is OBLIGED to pay to the Creditor the costs of executive proceedings in amount of €927, which shall be made in the bank account of the authorized person of the Creditor, which number is: 1170172318000108 in ProCredit Bank in Ferizaj, and all these payments shall be made within a time limit of 7 days from the day this decision becomes final".*

21. The creditor filed an appeal against this decision within legal time limit due to essential violation of contested procedure provisions, erroneous and incomplete determination of factual situation and

violations of the provisions of the Law on Contested Procedure, with the proposal to approve the appeal as grounded.

22. On 5 May 2014 the Court of Appeals of Kosovo, by Decision AC. no. 1235/2014, rejected the Applicant's appeal and upheld Decision E. no. 269/2013 of the Basic Court in Ferizaj - Branch in Kaçanik, of 4 March 2014, reasoning:

> *"The Court of Appeals finds that the first instance court acted correctly when, upon presenting the evidence by the financial expertise of 26 December 2013, whereby the amounts belonging to the Creditor- Elife have been certified, it partially approved her Proposal for execution as grounded, and obliged the Debtor- Municipality of Kaçanik to pay to her the amount of €6.522,35, for the unpaid salaries, with an interest rate equal to that of the deposited money in bank without specific destination for more than one year, from 1 January 2009 until 16 January 2013 and to also pay the contribution in the Pension Trust, by rejecting as ungrounded the amount of €9.351,30 (from which, the net amount of the entire compensation in amount of 15.873,65 Euro for the contested period from 1 January 2009 until 16 January 2013, was deducted), with correct determination and reasoning according to which the Creditor has realized this amount from the Debtor, as a delegate of the Municipal Assembly (during the time she was out of the employment relationship), together with her request for reinstatement to the work she previously had, since the Debtor was reinstated to work by the Debtor itself, therefore this request is unsubstantial, hence, all the appealed allegations of the Creditor result as ungrounded and not substantiated by anything."*

23. The Applicant submitted two decisions of the IOBK No. 02/370/2013 of 20 November 2013 and No. A/02/46/2014, of 17 April 2014 as evidence that the process of appointment of the Director of the Center for preschool education "Agimi" - Kaçanik has not been finalized.

Applicant's allegations

24. The Applicant alleges that "*the stance of the regular courts that according to the notification from the Debtor, the Creditor was reinstated to work on 16 January 2013 and that the request for reinstatement to work is unsubstantiated, is not legally grounded, and it is essentially an erroneous stance, because the*

reinstatement to work, pursuant to the Decision of the IOBK would last until a final decision on the selection of the candidate for the Director of "Agimi" PEC in Kaçanik would be rendered, and not as it has been acted against the Creditor in which case the selection of the Director had not been completed yet, while she was forcefully dismissed from the job position. It is worth mentioning that by the decision of the President of the Municipality, the duration of validity of that decision is not even mentioned".

25. The Applicant further alleges that „*as regards the rejection of the Creditor's request for the payment of the amount of €9.351,30, the Applicant considers that by the court decisions, Article 65 of the Law on Local Self-Government has been erroneously applied, because the Creditor was unlawfully dismissed from work position as Director of PEC, and then, as an unemployed person, she was entitled to be elected as delegate in the Municipal Assembly. Therefore, as regards the rejection of the payment of this amount, the abovementioned courts have violated the law as regards the payment of the amount for unpaid salaries, the rights that were violated by the challenged decisions of the regular courts".*

26. The Applicant requests from the Constitutional Court the following:

"I. TO DECLARE the Referral admissible.

II. TO HOLD that the Article 31 (Right to Fair and Impartial Trial), Article 49 (Right to Work and Exercise Profession, and the rights to compensation of unpaid salaries) of the Constitution of the Republic of Kosovo, have been violated.

III. TO ANNUL the Decision Ac. no. 1235/14 of the Court of Appeal of Kosovo, of 5 May 2014 and the Decision E. no. 269/13 of the Basic Court in Ferizaj, Kaçanik Branch, of 04 March 2014, in the paragraph II of the enacting clause.

IV. TO OBLIGE the Municipality of Kaçanik to reinstate the Creditor- Elife Murseli, to work as Director of the "Agimi" PEC in Kaçanik in order to act as Director until the vacancy announcement for that job position is published and the procedure is conducted until a final decision on the selection of the candidate for Director of PECK and to pay to the Creditor retroactively the unpaid salaries from 01 October 2013 until

the Director of "Agimi" PEC in Kaçanik shall be finally selected in lawful proceedings, pursuant to Decision No. 794/2009 of the IOBK of 21 April 2009.

V. TO OBLIGE the Municipality of Kaçanik to pay to the Creditor the amount of €9.351,30 for the amount of salaries unpaid from 01 January 2009 until 16 January 2013".

Admissibility of the Referral

27. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

28. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

29. The Court refers also to Article 48 of the Law, which provides:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."

30. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

„(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

...

b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights ".

31. Considering the Applicant's allegations in relation to the request for reinstatement to the work place, the Court notes that IOBK Decision No. 794/09 of 21 April 2009 obliges the Municipality of Kaçanik *"to reinstate the Applicant to the work position of Director of the Centre for preschool education „Agimi" in Kaçanik,*

and to compensate personal income in a retroactive manner from 15.12.2008, until the employment authority re-advertises the vacancy announcement".

32. The Municipality of Kaçanik, based on Minutes No. 19/2013 of handover of duty of 16 January 2013, acted in compliance with the IOBK Decision no. 794/09, by reinstating the Applicant to the job position of Director at the Center for preschool education "Agimi" in Kaçanik.

33. This factual situation was determined by Decision E. no. 269/13 of the Municipal Court in Ferizaj - Branch in Kaçanik, of 4 March 2014.

34. Considering the Applicant's allegations for the rejection of the property claim regarding the payment of the amount of €9.351.30, and the allegation that in the present case, in the court decisions was erroneously applied Article 65 of the Law on Local Self-Government, the Constitutional Court emphasizes that the Constitutional Court is not a court of appeal, which reviews the decisions taken by regular courts.

35. The role of the regular courts is to interpret and apply the relevant rules of procedural and substantive law (see, *mutatis mutandis, García Ruiz v. Spain* [GC], no. 30544/96, § 28, the European Court of Human Rights [ECHR] 1999-I).

36. Decision AC. no. 1235/2014, of the Court of Appeals of Kosovo, of 5 May 2014, and Decision E. no. 269/13, of the Municipal Court in Ferizaj - Branch in Kaçanik, of 4 March 2014, in their detailed reasoning, responded to the Applicant's allegations regarding the request for reinstatement to the work place and the property claim in the amount of €9.351,30, and give reasons for the application of the respective rules of both procedural and substantive law. The Applicant repeats these allegations before the Constitutional Court too.

37. The Court notes that the Applicant does not challenge IOBK decisions No. 02/370/2013, of 20 November 2013 and No. A/02/46/2014 of 17/04/2014, but he has attached these two IOBK decisions as evidence that the process of the appointment of director at the Center for preschool education "Agim" in Kaçanik has not been yet finalized.

38. As the constitutionality of these decisions has not been challenged by the Applicant, the Court considers that the constitutional review of these IOBK decisions is not the subject matter before the Constitutional Court and it will not conduct a review of their constitutionality.

39. The Constitutional Court reiterates that the Applicant has not submitted any *prima facie* evidence indicating a violation of her constitutional rights (see, *Vanek v. Republic of Slovakia*, ECHR Decision on the admissibility of the application, no. 53363/99, of 31 May 2005.).

40. In the present case, the Applicant was afforded opportunities to present her case and challenge the interpretation of the law which she considers as being incorrect, before the IOBK, the Municipal Court in Ferizaj - Branch in Kaçanik, the Court of Appeals of Kosovo in Prishtina and the Supreme Court of Kosovo.

41. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see, *mutatis mutandis, Shub v Lithuania,* ECHR Decision on the admissibility of application, no. 17064/06, of 30 June 2009).

42. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that her constitutional rights and freedoms have been violated by the challenged decisions.

43. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (2) b) of the Rules of Procedure, in its session held on 14 April 2015, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur **President of the Constitutional Court**
Ivan Čukalović Prof. Dr. Enver Hasani

KK109/15Implementation of Judgment of the Constitutional Court of the Republic of Kosovo in Case KI99/14 and KI100/14 of 8 July 2014

Mr. Sylë Hoxha
Acting Chief State Prosecutor and Head of Prosecutorial Council
Prishtina, Republic of Kosovo

Re: Implementation of Judgment of the Constitutional Court of the Republic of Kosovo in Case KI99/14 and KI100/14 of 8 July 2014

Dear Mr. Hoxha,

Following up the communication, the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") reiterates that to request information is in compliance with the authority of the Court to monitor the execution of its decisions, pursuant to Article 116 [Legal Effect of Decisions] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Rule 63 [Enforcement of Decisions] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, as well as in accordance with its constant constitutional practice.

After having reviewed the entirety of the documents you submitted, the Court considers that Judgment of the Constitutional Court of the Republic of Kosovo in Case KI99/14 and KI100/14 of 8 July 2014 has been enforced by annulling the challenged Decisions KPK No. 146/ 2014 and KPK No. 151/ 2014 on the Nomination of the candidate for Chief State Prosecutor and by repeating the election procedure for the position of Chief State Prosecutor.

As far as any other issues which might have arisen from the repeated election procedure, they are not within the Court's jurisdiction, as no Referral was filed with the Court by an authorized party.

Therefore, the Court cannot comment on any eventual constitutional aspect of the repeated election procedure.

Thus, the Court recalls that any matter related to the repeated proceedings, that might have a constitutional basis to discuss, should be referred to the Court in a legal manner, since the Court cannot act *ex officio*.

The Court reiterates that it is an independent organ in protecting the Constitution and in ensuring the respect of the separation of powers and rule of law.

This letter was discussed and decided by the full Court in its session of 17 April 2015.

Sincerely yours,

Prof. Dr. Enver Hasani,
President of the Constitutional Court of the Republic of Kosovo

KO22/15, Applicant the Ombudsperson of the Republic of Kosovo, Request for reconsideration in case KO 155/14 of the Constitutional Court of the Republic of Kosovo of 13 November 2014

KO 22/15, Resolution on Inadmissibility endorsed by the Review Panel of the Constitutional Court on 17 April 2015 and adopted and published by the Constitutional Court on 30 April 2015

Key words: *Ombudsperson of the Republic of Kosovo, request for reconsideration of resolution, quorum and legality in decision-making, referral manifestly ill-founded*

The crux of this Referral rests on the Applicant's allegation that Resolution on Inadmissibility of the Constitutional Court in case no. KO 155/14 is invalid and undecided because it was taken without quorum and thus contrary to Article 19 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo.

The Court expounded (i) the duties and prerogatives conferred upon the Applicant by the Constitution in relation to protection of fundamental human rights and freedoms, (ii) noted the delimitation placed on the prerogatives and duties of the Applicant by the Constitution vis-a-vis other branches of the government and in particular of judicial bodies in decision-making process, (iii) made a comparative analysis of the Applicant's counterparts duties and prerogatives with respect to the countries of the region, (iv) explained the lack of connection between the Applicant's duties and prerogatives and the present Referral and (v) explained in great detail its own decision-making process in order to rebut the Applicant's allegation about invalidity of Resolution on Inadmissibility KO 155/14. Bearing in mind the above-stated rationale, the Court rejected the Applicant's Referral as manifestly ill-founded, pursuant to Article 29 of the Law and Rule 36 (1) (d) and (2) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KO22/15
Applicant
Ombudsperson of the Republic of Kosovo
Request for reconsideration of Resolution on Inadmissibility
in
Case KO155/14 of the Constitutional Court of the Republic of Kosovo, dated 13 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge and
Bekim Sejdiu, Judge.

Applicant

1. The Applicant is the Ombudsperson of the Republic of Kosovo, Mr. Sami Kurteshi.

Challenged decision

2. The Applicant challenges the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) in Case KO155/14 dated 13 November 2014.

Subject matter

3. The Applicant requests reconsideration of the Resolution on Inadmissibility of the Court in Case KO155/14. He alleges that the Resolution is invalid and is undecided, because it was taken without quorum and thus contrary to Article 19 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law").

Legal basis

4. The Referral is based on Articles 113.2 (1) and 135.4 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Articles 29 and 30 of the Law.

Proceedings before the Court

5. On 26 February 2015 the Applicant submitted the Referral to the Court.

6. On 27 February 2015 the President of the Court, by Decision No. GJR. KO22/15, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KO22/15, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Enver Hasani.

7. On the same date, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the President of the Republic of Kosovo.

8. On 2 March 2015 Judge Robert Carolan requested the President of the Court in writing to be allowed to be excluded *"from participating in the deliberations and voting in this case"*, in accordance with Article 18, paragraph 1.1, of the Law and Articles 1 and 2 of the Code of Judicial Conduct for Judges of the Constitutional Court.

9. On 17 April 2015 the Court, in the absence of the President of the Court, deliberated on the Applicant's request to recuse the President of the Court and decided, unanimously, to reject it. *(See Decision on the request for recusal of the President of the Constitutional Court of the Republic of Kosovo of 17 April 2015).*

10. On the same date, the Court, following the provisions of the Law and the Rules of Procedure and its well established practice, deliberated on the request of Judge Robert Carolan to exclude him and decided, by majority, to grant his request and to exclude him from participating in Referral KO22/15, since Judge Robert Carolan might encounter a conflict of interest.

11. Article 18 [Exclusion of a Judge], paragraphs 4 and 5, of the Law, state:

"[…]

4. The decision for exclusion of a judge should be reasoned.

5. Any judge who is aware that he fulfills at least one of the conditions for exclusion from proceedings should inform the President of the Constitutional Court in writing and should request his/her exclusion from the proceedings. In such a case, Paragraphs 3 and 4 shall apply as appropriate."

12. Furthermore, Rule 7 [Recusal Procedures], paragraphs 1 and 6, of the Rules of Procedure states:

"(1) As soon as a Judge learns of any of the reasons for recusal as foreseen in Article 18 of the Law on Court or if a Judge believes that other circumstances exist that raise a reasonable suspicion as to his or her impartiality, he or she shall recuse from participating in the proceedings and explain the reason in writing to the President of the Court. A copy of that explanation shall be delivered to all Judges.

[…]

(6) When a Judge is recused from a proceeding, the Court shall note in any written decision or judgment that the recused Judge did not take part in the proceedings."

13. According to the well established practice of the Court based on the Law and the Rules of Procedure, the request for exclusion is made as soon as the judge learns of any of the reasons for exclusion. The request for exclusion of a judge from proceedings is discussed and voted in the absence of the judge concerned. If the request is granted, the judge does not participate in the deliberations and voting in the case, and his/her name does not appear in the composition of the Court in the final decision. (See Cases: KI88/10, Applicant *Agim Paca*, Resolution on Inadmissibility of 22 December 2010; KI70/11, Applicants *Faik Hima, Magbule Hima, Bestar Hima*, Resolution on Inadmissibility of 16 December 2011; and KI79/12, Applicant *Tanasko Djordjević and others*, Resolution on Inadmissibility of 2 December 2013).

14. On 17 April 2015 the Review Panel endorsed the Report of the Judge Rapporteur and unanimously recommended to the Court the Referral to be declared inadmissible.

15. On 20 April 2015 the Resolution on Inadmissibility was distributed to the Judges of the Court.

Summary of facts

16. On 13 November 2014 the Court issued the challenged Resolution on Inadmissibility in Case KO155/14 submitted by the Ombudsperson, who is also the Applicant in the present Referral. The Court held that Case KO155/14 was inadmissible as manifestly ill-founded pursuant to Rule 36, paragraphs 1.c and 2, of the Rules of Procedure. The Court also rejected the request for interim measures.

17. The subject matter of the Referral in Case KO155/14 was the review of the constitutionality of Decree no. DKGJK-001-2014 of the President of the Republic of Kosovo dated 31 August 2014 on the Confirmation of the Continuation of the Mandate of the International Judges of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Decree"). The Applicant alleged that the Decree was in contradiction with the constitutional procedure for the election of the Judges of the Constitutional Court as laid down in Articles 114.2 [Composition and Mandate of the Constitutional Court], 65 (11) [Competences of the Assembly] and 84 (19) [Competencies of the President] of the Constitution.

18. The Applicant maintains that he started an *ex officio* investigation about the procedure having lead to the decision of the Constitutional Court on his Case KO155/14. During the investigation, the Applicant received a letter from Judge Robert Carolan (See Chapter – Applicant's allegations).

19. On 26 February 2015 the Applicant submitted Referral KO22/15 to the Court.

Applicant's allegations

20. The Applicant alleges that the challenged Resolution on Inadmissibility KO155/14 had not been adopted in accordance with Article 19 [Taking of the decisions], paragraph 2, of the Law, which provides that *"The Constitutional Court shall have a quorum if seven (7) judges are present"*.

21. It surfaces that the Applicant started an investigation *ex officio* into the proceedings that lead to the Resolution on Inadmissibility and as a response Judge Robert Carolan informed him the following:

> *"I did not participate in the deliberations or decision of the Court because I had previously recused myself from participating in the deliberations and decision of the Court with respect to* [Case KO155/14]*".*

22. According to the Applicant, *"Judge Carolan sent also a copy of the internal communication of the Constitutional Court, which, according to him, confirms his recusal from the proceedings of the case".*

23. In this letter, Judge Robert Carolan also informs:

> *"I was present in the Court when Referral KO155/14 was filed and discussed in the Court".*

24. The Applicant also requests that the President of the Constitutional Court of the Republic of Kosovo be excluded from participating in the new proceedings related to the present Referral. The Applicant considers that the President of the Court should be excluded, allegedly, *"[...] due to (1) his engagement in internal discussions of EULEX related to the procedure for the appointment of the three international judges; and (2) his explicit statement according to which bypassing the Assembly would not represent a constitutional violation in this case."*

Admissibility of the Referral

25. In order for the Court to adjudicate the Applicant's complaint it is necessary to examine whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

26. The Court recalls that the Applicant alleges that no valid decision was taken by the Court in his previous Case KO155/14 due to a lack of quorum when the Court decided on it.

27. The Court reiterates that it deals with Referrals submitted under Article 113 [Jurisdiction and Authorized Parties], paragraph 2, of the Constitution which provides:

> *"2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:*
>
> *(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;*
>
> *(2) the compatibility with the Constitution of municipal statutes."*

28. It stems from that constitutional provision that the Court can, in principle, deal with Referrals submitted by the Ombudsperson.

29. However, this complaint does not come within the scope of this constitutional provision as it can be concluded from the analysis and case law of the Court (See, Case KO97/12, Applicant: *The Ombudsperson,* Judgment of 12 April 2013).

30. The Court also refers to Article 132 [Role and Competencies of the Ombudsperson] of the Constitution which provides:

> *"1. The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.*
>
> *2. The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo."*

31. Consequently, the Court concludes that, in the present Referral KO22/15, the Applicant does not raise any issue that possibly would fall within its competence, as provided by the constitutional provisions. Therefore, the Applicant, when submitting the Referral, did not exercise his constitutional functions and competencies. Moreover, the Applicant fails to claim a violation of a specific constitutional provision related to his rights and fundamental freedoms or of an individual or a group of individuals.

32. The Court reminds that any applicant, including the Applicant in the current Referral, has to submit the Referral within its competences and scope provided by the Constitution and the Law.

33. In this respect, the Court refers to a decision (No. 29, of 31 May 2010) of the Constitutional Court of the Republic of Albania, which reviewed a referral brought by the Ombudsperson of the Republic of Albania requesting the annulment of a law concerning the review of the legal validity of the establishment of ownership titles of agricultural land.

34. In this case, the Court notes that the Constitutional Court of the Republic of Albania held:

> *"According to Article 60 of the Constitution, the Ombudsperson protects rights, freedoms and legitimate interests of the individuals from illegal or irregular actions or omissions of administrative public bodies. Therefore, his interest to set in motion the Constitutional court must be related to its constitutional exercised function, in cases when as a consequence of the application of the law, a sub-legal act, or an action or omission of the public administration, fundamental rights and freedoms of the individuals have been violated. These violations must be recorded in the process of its Ombudsperson's activities, reviewing the complaints, requests and notifications submitted to the Ombudsperson institution."*

35. In addition, the Constitutional Court of Albania held that the initiation of a procedure by the Ombudsperson *"[…] shall be considered as justified, if it can be proven by the applicant that the consequence is direct, thus it comes directly from the subject matter; that it is actual/current and, based on the case, it is strongly connected with the functions and responsibilities of the respective organisation"*.

36. Finally, the Constitutional Court of Albania held:

> *"No institution or public body, which falls under one of the branches of power or not, may not interfere in treating and resolving issues which by its nature, would be central subject of the activity of constitutional institutions or bodies"*
>
> *[…]*
>
> *"This means that, in constitutional and legal terms, the power to administer justice, namely the power to resolve civil disputes were given to the courts."*

37. The Court refers also to a decision (No. 40 of 16 November 2007) of the Constitutional Court of the Republic of Albania, where the Ombudsperson of the Republic of Albania challenged the constitutionality of the notion "residence" in the "Electoral Code of the Republic of Albania".

38. In this case, the Constitutional Court of the Republic of Albania held:

> *"As previously emphasized, in the case law of this Court, the Ombudsperson, as one of the parties which can set in motion the Constitutional Court, based on Article 143/2 of the Constitution, must justify its interest in the concrete case. Its interest must be related to its constitutional exercised function, in cases when as a consequence of the application of the law, a sub-legal act, or an action or omission of the public administration, fundamental rights and freedoms of the individuals have been violated. These violations must be recorded in the process of its Ombudsperson's activities, reviewing the complaints, requests and notifications submitted to the Ombudsperson institution."*
>
> *[...]*
>
> *"The Constitutional Court deems it necessary to explain once again the definition of the concept of "interest" in the context of cases brought by the Ombudsperson, based on Article 134/2 of the Constitution, where is provided that this body can bring a request before this Court, only for cases related to its interests. According to Article 60 of the Constitution, the Ombudsperson is a constitutional body, established to protect the rights and legitimate interests of the individual from illegal or irregular actions or omissions of the public administration."*

39. Moreover, it is stated in that decision of the Constitutional Court of the Republic of Albania that *"It is not the Ombudsperson's role to act on behalf of an individual in court. Legal remedies must be used first and foremost by the individual affected. Yet, whenever an individual for whatever reason does not have effective access to such remedies, it is appropriate for the Ombudsperson to have the capacity to verify whether there has been any violation of human rights. Such a possibility is provided in some countries by the constitutional complaint."* (See *"The Relationship between Ombudsmen and Judicial Bodies", Conference of national*

ombudspersons from European countries, held in Ljubljana in 2001).

40. The Court also notes that *"The powers of the Ombudsperson in relation to the judicial branch of power may only be such that they do not jeopardise the independence of judges and their impartiality in making judicial decisions."* (See *"The Relationship between Ombudsmen and Judicial Bodies", Conference of national ombudspersons from European countries, held in Ljubljana in 2001*).

41. The Court notes that the Ombudsperson, and other public authorities, have no constitutional competence to investigate the decision making process of independent judicial bodies.

42. According to the Ombudsperson, the *ex officio* investigation was initiated in respect of the procedure that lead to the Resolution on Inadmissibility adopted in Case KO155/14.

43. The Court reiterates that it is an independent body in protecting the Constitution and is the final interpreter of the Constitution. In fact, Article 112 of the Constitution provides that:

> *"1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.*
>
> *2. The Constitutional Court is fully independent in the performance of its responsibilities."*

44. In addition the Court recalls that "*Kosovo is a democratic Republic based on the principle of the separation of powers and the checks and balances among them as provided in this Constitution"*. (See Article 4.1 of the Constitution).

45. The role of the Constitutional Court *vis-à-vis* the legislative, the executive and the judiciary is to ensure that their actions are in compliance with the Constitution.

46. Further, the Court reiterates that the Constitution provides to the Judges of the Court immunity for decisions made or opinion expressed within the scope of their mandate. In fact, Article 117 [Immunity] of the Constitution provides that *"Judges of the Constitutional Court shall be immune from prosecution, civil lawsuit and dismissal for actions taken, decisions made or*

opinions expressed that are within the scope of their responsibilities as Judges of the Constitutional Court."

47. The Court also refers to its case law where it held that, *"According to constitutional theory and practice, different legal systems recognize and implement two categories of, or sides to, the concept of parliamentary immunity. The first category is non-liability in judicial proceedings of any nature over the opinions expressed, votes cast or decisions taken in their work as deputies and other actions taken while performing their duties. This type of immunity extends after their mandate comes to the end and it is of unlimited duration. They will never be liable to answer to anyone or any court for such actions or decisions. This is clearly provided for by the Constitution of Kosovo. This is functional immunity."* (See Case KO98/11, Applicant: *The Government of the Republic of Kosovo,* Judgment of 20 September 2011). This functional immunity also guarantees the independence of the Court.

48. The Court reminds that, *"In the performance of their judicial function, judges are independent under the law, and their decisions should not be the subject of any revision outside appeals procedures as provided for by law. The executive and legislative powers should ensure that judges are independent, and that steps are not taken which could endanger the independence of judges. It should also be stressed that judges are independent in the public interest."* (See *"The Relationship between Ombudsmen and Judicial Bodies", Conference of national ombudspersons from European countries, held in Ljubljana in 2001*).

49. The Court recalls that the main allegation of the Applicant for reconsidering Case KO155/14 is the lack of quorum when the Resolution was adopted.

50. The Court reminds that Article 22 of the Law regulates the procedure which the Court has to follow when deciding on admissibility and inadmissibility of Referrals.

51. In fact, after a Referral having been assigned by the President of the Court to a Judge Rapporteur and a Review Panel of three Judges, the Judge Rapporteur presents a Report to the Review Panel on the inadmissibility of the Referral. The Review Panel discusses it and recommends to the Court the inadmissibility of the Referral. No further deliberation and voting takes place.

52. At this stage of the proceedings as no further deliberation and voting takes place, no quorum of seven (7) judges is required by the Law. The procedure takes place between the Judge Rapporteur and the Review Panel of three judges, who are present, deliberate and vote.

53. If the proposed inadmissibility of the Referral is unanimously endorsed by the Review Panel, then a Resolution on Inadmissibility is submitted to all the Judges.

54. Further, according to Article 22, paragraphs 8 and 9, the Judges who are not members of the Review Panel, within 10 days after the submission of the draft Resolution, can oppose the proposal of inadmissibility. The Resolution is adopted if no Judge from the Court objects to the inadmissibility.

55. When adopted, the Judge Rapporteur and the President of the Court sign the Resolution on Inadmissibility which is published and becomes final.

56. The Court recalls Article 22, paragraphs 6 to 9, of the Law which provides:

> *"[...]*
>
> *6. The Review Panel assesses the admissibility of the referral. The Review Panel is composed of three judges appointed by the President of the Constitutional Court according to the procedure established in the Rules of Procedure.*
>
> *7. If the Review Panel unanimously concludes that the referral does not meet formal requirements for further proceeding and is therefore inadmissible, the panel sends to all judges a draft decision that rejects the referral due to the lack of admissibility. The Review Panel shall take all necessary measures to ensure that a copy of the draft decision is effectively sent to judges who may not be on the territory of the Republic of Kosovo.*
>
> *8. If, within a period of ten (10) days from receiving the draft decision, judges who are not members of Review Panel do not oppose the draft decision, then the President of the Constitutional Court signs and issues the decision rejecting the claim on the basis of inadmissibility.*

9. If the Review Panel concludes that the claim is admissible, or if one or more of the judges not on the Review Panel opposes the draft decision to reject the claim, the case shall be referred to the Court. The Court during the oral hearing then considers admissibility and the grounds for the claim in its entirety and decides according to the provisions of this law."

57. The Court specifies that Case KO155/14 was preliminary discussed on 27 October 2014 and on 4 November 2014 the Review Panel unanimously approved the Report of Judge Rapporteur and the Draft Resolution on Inadmissibility.

58. On the same date the Resolution on Inadmissibility was sent for ten (10) days comments to all the Judges pursuant to Article 22, paragraphs 7 and 8 of the Law. After the time elapsed for objections against Resolution on Inadmissibility, it was signed by the President of the Court and the Judge Rapporteur. It was published in the Official Gazette on 17 November 2014.

59. Consequently, the procedure followed in Case KO155/14 was in conformity with Articles 19 and 22 of the Law.

60. Therefore, the Court emphasizes that its decision related to Referral KO155/14 is final and binding on the judiciary and all persons and institutions of the Republic of Kosovo, pursuant to Article 116.1 [Legal Effect of Decisions] of the Constitution.

61. The Court recalls that the Decree of the President of the Republic of Kosovo is constitutional as it was issued based on international obligations between the Republic of Kosovo and the European Union as defined in a bilateral agreement. The constitutionality of the content of this Agreement cannot be reviewed by the Court. (See, Case KO95/13, Applicant: *Visar Ymeri and 11 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 9 September 2013).

62. The content of the Decree of the President of the Republic of Kosovo is determined by the bilateral agreement between the Republic of Kosovo and the European Union. The Decree was ratified by 2/3 majority of the Assembly of the Republic of Kosovo. It is a constitutional obligation of the President of the Republic of Kosovo to transfer the text, as it is, from the bilateral agreement into her Decree and to execute it through her Decree.

63. The Decree of the President of the Republic of Kosovo was declared compatible with the Constitution. Thus, the question of the constitutionality of the Decree of the President of the Republic of Kosovo has become *res judicata*.

64. In these circumstances, the Court recalls that it has already decided on Case KO155/14. It had concluded that the Decree of the President of the Republic of Kosovo was declared compatible with the Constitution.

65. Based on the foregoing, the Court rejects Referral KO22/15 as manifestly ill-founded, pursuant to Article 29 of the Law and Rule 36 (1) (d) and (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 29 of the Law and Rule 36 (1) (d) and (2) and Rule 56 of the Rules of Procedure, on 30 April 2015, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Applicant and the President of the Republic of Kosovo;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20(4) of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KO22/15, Applicant Ombudsperson of the Republic of Kosovo, Request for recusal of the President of the Constitutional Court of the Republic of Kosovo

KO 22/15, Decision of 17 April 2015, published on 30 April 2015

Keywords: *Ombudsperson of the Republic of Kosovo, request for recusal, referral inadmissible*

In this Referral, the Ombudsperson of the Republic of Kosovo requested exclusion of the President of the Constitutional Court because of his alleged engagement in the appointment procedure of three international judges of the Constitutional Court of the Republic of Kosovo.

The Court noted that the Ombudsperson did not submit any evidence or arguments showing that there exists any valid reason for recusal of the President of the Constitutional Court. The Court rejected the Ombudsperson request on the grounds that it is unjustified, irrelevant and unsubstantiated.

DECISION
in
Case No. KO22/15
Applicant
Ombudsperson of the Republic of Kosovo
Request for recusal of the President of the Constitutional Court of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is the Ombudsperson of the Republic of Kosovo, Mr. Sami Kurteshi.

Subject matter

2. The Applicant requests reconsideration of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo in Case KO155/14.

3. In this Referral the Applicant also requests the recusal of the President of the Constitutional Court of the Republic of Kosovo pursuant to Article 18 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 7 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Legal basis

4. The request is based on Article 18 [Exclusion of a Judge] of the Law and Rule 7 [Recusal Procedures], paragraphs 2, 3 and 4, of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 26 February 2015 the Applicant submitted the Referral KO22/15 containing the request for recusal of the President of the Court.

6. On 17 April 2015 the Court followed the prescribed procedure under Rule 7.4 of the Rules of Procedure which provides the following:

> *"[…] the Court, by majority vote of the Judges, shall decide on the petition for recusal. Before rendering a decision on a recusal request, a statement shall be taken from the Judge whose disqualification is sought and, if need be, other clarifications shall be obtained. The Judge for whom recusal is requested may not participate in the decision. The decision of the Court shall be issued to the parties to the proceedings."*

7. On 17 April 2015 the Court took a statement from the President of the Court pursuant to Rule 7.4 of the Rules of Procedure.

8. On the same date, in the absence of the President of the Court, the Court deliberated on the Applicant's request and voted, unanimously, to reject it.

Allegations of the Applicant

9. The Applicant considers that the President of the Court should be excluded, allegedly, *"[…] due to (1) his engagement in internal discussions of EULEX related to the procedure for the appointment of the three international judges; and (2) his explicit statement according to which bypassing the Assembly would not represent a constitutional violation in this case."*

Assessment of the request

10. As to the request of the Applicant, the Court notes that the Applicant has not submitted any evidence or arguments showing that there exists any valid reason for his recusal.

11. The Court assesses that the request of the Applicant is unjustified, irrelevant and unsubstantiated.

12. Therefore, the Court rejects the Applicant's request.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 29 of the Law and Rule 36 (1) (d) and (2) and Rule 56 of the Rules of Procedure, on 17 April 2015, unanimously,

DECIDES

I. TO REJECT the Request by the Applicant for recusal of the President of the Constitutional Court of the Republic of Kosovo;

II. TO NOTIFY this Decision to the Applicant and the President of the Constitutional Court of the Republic of Kosovo;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20(4) of the Law;

IV. TO DECLARE this Decision effective immediately upon voting.

Deputy President of the Constitutional Court
Prof. Dr. Ivan Čukalović

KI175/14, Applicant Sylejman (Daut) Dibra, Constitutional review of Judgment AC-I -13-0095-A0001-A0005, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 20 May 2014.

KI 175/14, Resolution on Inadmissibility of 27 March 2015, published on 6 May 2015

Keywords*: Individual Referral, civil procedure, right to work and exercise profession, privatization of SOEs, out of time referral*

The Appellate Panel of the Special Chamber rejected the appeal of the Applicant and upheld the Judgment of Specialized Panel regarding the Applicant's right to 20% share of proceeds from the privatization of SOE "Liria" in Prizren. The Appellate Panel of the Special Chamber found that the Applicant did not present other evidence, indicating that he was on the payroll at the time of privatization.

The Applicant alleges that the Appellate Panel violated his right to work and exercise profession guaranteed by Article 49 of the Constitution, by terminating his employment relationship without any legal basis.
The Constitutional Court found that the Applicant's Referral was filed out of time. The Referral was declared inadmissible because it was not filed within the legal time limit of 4 months prescribed by Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI175/14
Applicant
Sylejman (Daut) Dibra
Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-13-0095-A0001-A0005, dated 20 May 2014.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Sylejman (Daut) Dibra (hereinafter: the "Applicant"), residing in Prizren.

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the "Appellate Panel"), AC-I-13-0095-A0001-A0005, of 20 May 2014, which was served on the Applicant on 22 May 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Appellate Panel by which the Applicant alleges that Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") has been

violated, *"[...] because the contract of employment was not terminated in accordance with applicable law."*

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law"), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 9 December 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 13 January 2015 the President of the Court, by Decision No. GJR. KI175/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI175/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 20 January 2015 the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Appellate Panel and the Privatization Agency of Kosovo (hereinafter: "PAK").

8. On 12 February 2015 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 10 May 2013 the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the "Specialized Panel") rejected as ungrounded the claim of the Applicant to be enrolled on the list of employees entitled to 20% share from the proceeds of privatization of the Socially Owned Enterprise "Lirija" from Prizren (Judgment C-II.-12-0007-C9). The Specialized Panel held that the Applicant did not fulfill the criteria stipulated in Article 10.4 of UNMIK Regulation 2003/13 on the transformation of the right of use to Socially Owned immovable property (hereinafter: "UNMIK

Regulation 2003/13"). The Applicant appealed this Judgment to the Appellate Panel.

10. On 20 May 2014 the Appellate Panel (Judgment AC-I-13-0095-A0001-A0005) rejected as unfounded the appeal of the Applicant and upheld the judgment of the Specialized Panel, dated 10 May 2013. The Appellate Panel held that the Applicant had not presented evidence, proofs and other evidence confirming that he was on the payroll at the time of privatization.

Applicant's allegations

11. The Applicant alleges that the contract of employment was not terminated in accordance with applicable law because he never received a decision on termination of the contract of employment which he could have challenged in accordance with applicable law. He claims that he was only notified orally that his contract of employment was terminated.

Admissibility of the Referral

12. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

13. In this respect, the Court refers to Article 49 of the Law, which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. […]".*

14. The Court also refers to Rule 36 (1) (c) of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if: (c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or […]."*

15. The final judgment of the Appellate Panel, AC-I-13-0095-A0001-A00051, was taken on 20 May 2014, and was served on the Applicant on 22 May 2014, whereas the Applicant filed the Referral with the Court on 9 December 2014, i.e. more than 4 months from

the day upon which the Applicant has been served with the Appellate Panel judgment.

16. It follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rules 36 (1) (c) and 56 (b) of the Rules of Procedure, on 27 March 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Arta Rama-Hajrizi	Prof. Dr. Enver Hasani

KI160/14, Applicant Ejup Jakupi, Constitutional Review of the Decision Rev. 215/2014, of the Supreme Court, of 1 September 2014

KI 160/14, Resolution on Inadmissibility, of 15 April 2015, published on 14 May 2015

Keywords*: Individual Referral, administrative procedure, jubilee salary, manifestly ill-founded Referral*

The Supreme Court of Kosovo, by Decision Rev. no. 215/2014, of 1 September 2014 rejected the Applicant's request for revision because the value of the claim was below the limit established by law. The essence of the Applicant's complaint against the decisions of the lower instance courts had to do with the Applicant's right to a jubilee salary.

The Applicant alleged that the Supreme Court had violated his rights guaranteed by the Constitution, but without a reference to any particular constitutional provision.

The Constitutional Court found that the Applicant did not submit any *prima facie* evidence to justify his allegation and that the proceedings conducted before the regular courts were not unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded in accordance with Rules 36 (1) (d), 36 (2) (b) and 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI160/14
Applicant
Ejup Jakupi
Constitutional Review of the Decision Rev. 215/2014,
of the Supreme Court, of 1 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Ejup Jakupi, with residence in Gjilan (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Decision Rev. No. 215/2014, of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 1 September 2014, which was served on the Applicant on 21 October 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the Decision Rev. no. 215/2014, of the Supreme Court, of 1 September 2014. The Applicant claims that by rejecting his request for revision as inadmissible, the Supreme Court has violated his rights protected by the Constitution of the Republic of Kosovo

(hereinafter: the Constitution). The Applicant does not specify any provisions of the Constitution.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 27 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 7 November 2014, the President, by Decision GJR. KI160/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision KSH. KI160/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 18 November 2014, the Court notified the Applicant of the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.

8. On 25 November 2014, the Applicant submitted, on its own initiative, the additional documents to the Court.

9. On 15 April 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

10. The Applicant worked as a property recorder at the Department of Finance, Economy and Development in the Municipality of Gjilan, from 20 August 2002 until 1 June 2011, when he was retired.

11. On an unspecified date, the Applicant filed a lawsuit with the Basic Court in Gjilan, requesting that the Department of Finance, Economy and Development in the Municipality of Gjilan pay him a certain amount, in the name of a jubilee salary, on the occasion of his retirement.

12. On 9 September 2013, the Basic Court in Gjilan, by Judgment C. no. 794/2012, partially approved the Applicant's lawsuit regarding the request fora jubilee award in a certain amount of money, with an annual interest rate of 3.5%, while it rejected the Applicant's request that the responding party pays another amount of money, in the name of the allowance.

13. On 30 September 2013, the Municipality of Gjilan submitted an appeal to the Court of Appeal of Kosovo (hereinafter: the Court of Appeal) against the Judgment C. No. 794/2012 of the Basic Court in Gjilan due to *"1. Substantial violations of the contested procedure provisions; 2. Erroneous and incomplete determination of factual situation; and 3. Erroneous application of the material law"*.

14. On 8 April 2013, the Court of Appeal rendered Judgment AC. no. 3310/13, by which it approved the appeal of the Municipality of Gjilan.. The Court of Appeal ruled that the collective contract, in which the Applicant based his request for the jubilee salary, was concluded in 2005 and was valid for 3 (three) years, respectively it expired in 2008. Therefore, the Judgment of the Basic Court was quashed.

15. On 20 May 2013, the Applicant submitted a request for revision to the Supreme Court of Kosovo against Judgment AC. no. 3310/13 of the Court of Appeal. According to the Applicant, the Court of Appeal had committed *"substantial violation of contested procedure provisions under Article 182 para. 2, letter n etc. of LCP and erroneous application of the substantive law "*.

16. On 1 September 2014, the Supreme Court (Rev. 215/2014) rejected as inadmissible the Applicant's request for revision, because the value of the claim was below the legal limit for considering claims for Revision.

17. In the part of the reasoning of its Decision, the Supreme Court stated:

> *"From the case file it results that the value of this contest in the claimant's claim submitted on 06.10.2011 was set at the amount of 1.664,25 €, and that later this value of the contest was not changed by the claiming party.*

Setting from this factual situation, the Supreme Court of Kosovo, after having considered the admissibility of filing of this revision, found that the same is inadmissible. Pursuant to Article 211.2 of the LCP, the revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items (returning items) *or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3, 000 €".*

Applicant's Allegations

18. The Applicant alleges that by Decision Rev. 215/2014, of 1 September 2014, rejecting his revision as inadmissible, the Supreme Court violated his rights protected by the Constitution, but without specifying any constitutional provisions.

19. In his letter submitted on 25 November 2014, the Applicant alleges that the regular courts *"have not worked in a lawful manner, but worked in an unjust manner, acting with nepotism, social, friendly connections, etc".*

Assessment of the Admissibility of the Referral

20. The Court first examines whether the Applicant is an authorized party to submit the Referral to the Court, in accordance with requirements of Article 113.7 of the Constitution.

Article 113, paragraph 7 of the Constitution provides:

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

21. In this respect, the Court refers to Article 48 of the Law, which provides:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated (...)".

22. In addition, the Court refers to Rule 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure, which provides:

"(1) The Court may consider a referral if:

[…]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[…]

b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

[…], or

d)) the Applicant does not sufficiently substantiate his claim".

23. The Applicant alleges that the Decision Rev. 215/2014, of the Supreme Court, of 1 September 2014, violated his rights guaranteed by the Constitution, without specifying any specific provision of the Constitution, but alluding to a violation of the right to a fair trial.

24. In this regard, the Applicant did not at all explain how and why the Decision of the Supreme Court violated his rights guaranteed by the Constitution.

25. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in respect of the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (See, case *Garcia Ruiz v. Spain,* no. 30544/96, ECHR, Judgment of 21 January 1999; see also case Kl70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

26. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See *inter alia*, case *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights, of 10 July 1991).

27. Based on the case file, the Court notes that the reasoning given in the Decision of the Supreme Court is clear and having examined all the proceedings, the Court found that the proceedings before regular courts were not unfair or arbitrary (See, case *Shub v. Lithuania*, No. 17064/06, ECHR Decision of 30 June 2009).

28. Therefore, the Court considers that the Applicant has not substantiated his allegations nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution, the European Convention of Human Rights or the Universal Declaration of Human Rights (See, case No. KI19/14 and KI21 14, Applicants *Tafil Qorri and Mehdi Syla*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision CA. no. 2129/2013 of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013 of the Court of Appeal of Kosovo, of 5 December 2013).

29. For the above reasons, the Court considers that the facts presented by the Applicant do not in any way justify his allegation of a violation of his constitutional rights, and the Applicant has not sufficiently substantiated how and why the Decision of the Supreme Court violated his rights guaranteed by the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law and Rules 36 (1) c), 36 (2) b) and 36 (2) d) of the Rules of Procedure, on 7 May 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Kadri Kryeziu	Prof. Dr. Enver Hasani

KI149/14, 150/14, 151/14, Applicant Liridon Aliu, Request for Constitutional review of the work of some institutions of the Republic of Kosovo

KI149/14, 150/14, 151/14, Decision to strike out the Referral, of 16 April 2015, published on 21 May 2015

Keywords*: Individual Referral, actio popularis, striking out the referral*

The Applicant in his Referral challenges the work of the institutions of the law and order, the courts and the Assembly of Kosovo, but did not refer to any constitutional provision and he did not indicate that his rights and freedoms guaranteed by the Constitution, were violated to him.

The Court reiterated that the constitutional system of Kosovo does not provide *actio popularis,* where individuals can address the Constitutional Court concerning the issues of public interest, and, moreover, it found that this Referral does not reach the minimum threshold to be considered a Referral. The Referral was declared inadmissible because it does not present a case or controversy as required by Rule 32 (4) of the Rules of Procedure.

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI149/14, KI150/14 and KI151/14
Applicant
Liridon Aliu
Request for Constitutional Review of the work of some institutions of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Liridon Aliu, President of the Non-Governmental Organization (NGO) "Ngrite zërin dhe ti" (NZT), from village Hajvali, Municipality of Prishtina and he did not clarify whether he filed the Referral on his behalf or on behalf of the NGO he runs.

Challenged Decision

2. The Applicant does not challenge any specific decision of any public authority.

Subject Matter

3. The Applicant requests the Court to assess the work of some of the institutions of Kosovo, especially those of law and order, the courts and the Assembly of Kosovo. The Applicant has not specified the violation of any constitutional provision.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 7 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 30 October 2014, the Applicant submitted the additional documents to the Court in support of his Referral.

7. On 6 November 2014, the President of the Court, by Decision GJR. KI149/14, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On the same date, in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered that the Referrals KI150/14 and KI151/14 join the Referral KI149/14 and that the Judge Rapporteur and Review Panel for both cases (KI150 and KI151/14) are the same as it was decided for Referral KI149/14.

9. On 24 March 2015, the Constitutional Court notified the Applicant on the registration of the Referral.

10. On 16 April 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of
the Referral.

Summary of Facts

11. The Applicant did not present concrete evidence to the Court regarding the Referral, but he instructs the Court to a number of web-pages and newspaper extracts, illustrated with pictures, and expressed readiness to assist the Court in finding the facts which are allegedly the subject of the appeal.

Applicant's Allegations

12. The Applicant alleges that the institutions of the country, especially those of the prosecution, of the law and order and the courts have failed to prevent and punish the corruption-related offenses, "theft and robbery", i.e. criminal offenses. He alleges that the Assembly of Kosovo adopts unconstitutional and unnecessary laws, referring in particular to the Law against participation in foreign wars, which at the time of filing the Referral, was at the stage of review.

13. The Applicant further alleges that certain individuals were unlawfully arrested by the Kosovo Police. The Applicant did not state that any right guaranteed by the Constitution was directly violated to him.

Admissibility of the Referral

14. In order to adjudicate the Applicant's Referral, the Court needs to first examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

15. In this respect, the Court refers to Article 113.1 of the Constitution, which provides:

> *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

16. The Court also refers to Rule 32 (4) of the Rules of Procedure, applicable at the time of the Referral, which provides:

> *Rule 32*
>
> *Withdrawal of Referral and reply*
>
> *(4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.*

17. As stated above, the Applicant does not challenge any specific act of any public authority, he does not establish any violation of any constitutional right against him, he does not specify what is the basis of the contest but, in general, setting from his view, he

requests abstract assessment of the constitutionality of actions or inactions of state authorities and institutions of the Republic of Kosovo.

18. The Court recalls that Kosovo's constitutional-legal system does not provide *actio popularis,* what is the modality of individual complaints that provides any individual, who wants to protect the public interest and constitutional order, the possibility to address the Constitutional Court regarding such violation, even when he/she does not have the status of the direct victim.

19. In sum, the Court considers that the abovementioned Referral does not reach the minimum threshold to be considered a Referral (See case KI143/13, Applicant *Nebih Sejdiu,* Decision to strike out the Referral, of 24 April 2014; see also, *mutatis mutandis,* case *Starodub v. Ukraine,* No. 5483/02, ECHR, Decision of 7 June 2005), therefore, it considers that this Referral does not present a case or controversy and it is to be declared inadmissible, and in accordance with Rule 32 (4) of the Rules of Procedure, it should be struck out from the list.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 23 of the Law and Rule 32 of the Rules of Procedure, on 18 May 2015, unanimously:

DECIDES

I. TO STRIKE OUT the Referral;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI02/15, Applicant Social, Sports, Cultural and Economic Centre, "Pallati i Rinisë", Constitutional review of Judgments, AC-1.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, AC-1.- 14-0079-AOOOI and AC-I.-14-0080-AOOOI, of the Special Chamber of the Supreme Court, of 15 September 2014

KI 02/15, Resolution on Inadmissibility of 14 April 2015, published on 21 May 2015

Key words: *Individual Referral, civil proceedings, right to fair and impartial trial, right to legal remedies, equality before the law, interim measure, manifestly ill-founded*

The Appellate Panel of the SCSC rendered decisions AC-I.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, AC-I,-14-0079-AOOOI, and AC-I.-14-0080-AOOOI, by which it rejected the request for revision and the request for protection of legality as inadmissible, with the reasoning that all judgments and decisions of the Appellate Panel are final and not subject to any further appeal. The core of the contested decisions had to do with the order for compensation of damage by the Applicant to the third parties.

The Applicant alleges, *inter alia*, that the Special Chamber of the Supreme Court violated the right to a fair and impartial trial when it ruled that the decisions of the Appellate Panel of the SCSC are not subject to any further appeal, so they do not contain any reference to any extraordinary legal remedy to be pursued. The Applicant also requested the Court to impose an interim measure until the constitutional review of the challenged decisions, in order to avoid unaffordable payment of compensation.

The Court concluded that the SCSC decisions cannot be subject to any further proceedings, even the court proceedings, except the subject of review in the Constitutional Court. The Applicant did not provide any evidence to substantiate his case or that the court proceedings were unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded. The Court also rejected the request for Interim Measure, as there is no *prima facie* case.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI02/15
Applicant
The Social, Sports, Cultural and Economic Centre, "Pallati i Rinisë"
Prishtina
Constitutional Review of the Judgments of the Special Chamber of the Supreme Court: AC-I.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, AC-I.-14-0079-AOOOI, and AC-I.-14-0080-AOOOI, of 15 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is the Social, Sports, Cultural and Economic Centre in Prishtina represented by Acting Director, Mr. Fatmir Gashi, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Judgments of the Special Chamber of the Supreme Court (hereinafter: the SCSC): AC-I.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, AC-I.-14-0079-AOOOI, and AC-I.-14-0080-AOOOI, of 15 September 2014. The Applicant reiterates as disputable the Judgments SCC-05-0080, SCC-06-0029, SCC-06-0470, SCC-06-0482, SCC-06-0524, all of 15 October 2009; SCC-04-0010, SCC-04-0011, SCC-04-0012, SCC-04-0098, SCC-04-0116, SCC-04-0121, SCC-04-0199, SCC-05-0028, SCC-05-

0067, SCC-05-0072, SCC-05-0073, all of 29 October 2009; and ASC-09-0084, ASC-09-0101, of 13 September 2012, on which the Court decided in the Resolution on Inadmissibility in Case KI23/14, filed by the same Applicant.

Subject Matter

3. The subject matter is the request for constitutional review of the judgments mentioned above of the SCSC, which allegedly violated the Applicant's rights guaranteed by the Constitution, the European Convention of Human Rights (ECHR) and the Universal Declaration on Human Rights. By these Judgments, the Applicant was ordered to compensate the material damage to 16 (sixteen) claimants caused by fire in the building of the Social, Sports, Cultural and Economic Centre in Prishtina. By Judgments of the Appellate Panel of the SCSC, the Applicant's appeals against the first instance decisions were rejected.

4. In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an Interim Measure in order to suspend the execution of the SCSC judgments, until the decision of the Court is rendered.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 21.4 of the Law on Constitutional Court of the Republic of Kosovo, (hereinafter: the Law), and Rules 54, 55 and 56 of the Rules of Procedure.

Proceeding before the Court

6. On 9 January 2015, the Applicant submitted the Referral to the Court.

7. On 13 January 2015, the President, by Decision GJR. KI02/15, appointed Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision KSH. KI02/15 appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 19 February 2015, the Court notified the Applicant on the registration of the Referral. On the same date, the Court submitted a copy of the Referral to the SCSC.

9. On 14 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. On 7 February 2014, the Applicant submitted to the Court another Referral which was registered as case KI23/14, with the same appeal allegations and most of the same evidence, which did not include only the last challenged judgments of 2014.

11. Full summary of facts, except new facts regarding the Judgments AC-I.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, of 15 September 2014, AC-I.-14-0079-AOOOI, of 15 September 2014; AC-I.-14-0080-AOOOI, of 15 September 2014 was dealt and presented in a chronological order in the Resolution on Inadmissibility of the Court, KI23/14, of 3 March 2014.

12. The Court however recalls that the basic issue of the Referral, is the fact that between 2004 and 2005, 16 (sixteen) claimants filed their claims with the SCSC, seeking compensation for damages from the Applicant, for goods that were inside the warehouses they rented, which were destroyed by fire.

13. By Judgments as in item 2 of this report, the SCSC in 2009 approved individual claims of the claimants and the amount of compensation that should be paid to claimants, while the Appellate Panel of the SCSC, following the appeal of the Applicant in 2012, partially modified the judgments only related to the part of the amount of compensation, by reducing it.

14. On 18 October 2012, the Applicant submitted a request for revision to the SCSC for the Supreme Court, claiming erroneous application of the substantive law in the judgments of the Appellate Panel (ASC-09-0101 and ASC- ASC-09-0084).

15. On 23 October 2012, based on the proposal of the Applicant, the State Prosecutor filed with the Supreme Court the requests for protection of legality KMLC. no. 101/12-1 and KLMC. no. 101/12-2 request for protection of legality for all SCSC decisions related to this case.

16. On 15 September 2014, the Appellate Panel of the SCSC rendered decisions AC-I,-14-0077-AOOOI, AC-I.-14-0078-AOOOI, AC-I,-14-0079-AOOOI, and AC-I.-14-0080-AOOOI, by which it rejected the request for revision and the request for protection of legality as inadmissible.

17. The four decisions had almost similar reasoning, where it was stated:

> *"Pursuant to Article 10, paragraph 14 of the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (LSC), all judgments and decisions of the Appellate Panel of the SCSC are final and not subject to any further appeal"* and that "*The LSC and its Annex do not contain reference to any extraordinary legal remedy to be pursued against the decisions and judgments of the Appellate Panel. Such extraordinary legal remedies have not been also provided either by UNMIK Regulation No. 2008/4 or in the UNMIK Administrative Direction no. 2008/6."*

Applicant's allegation

18. The Applicant alleges that the judgments and the decisions of the Special Chamber of the Supreme Court violated its rights guaranteed by the Constitution, namely Article 24 [Equality Before the Law] in conjunction with Article 7 of the Universal Declaration of Human Rights (UDHR), Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 and 13 of the European Convention of Human Rights (ECHR), Article 32 [Right to Legal Remedies] in conjunction with Article 8 of (UDHR) and Article 41, para. 1 and 2 of the Constitution [Right of Access to Public Documents].

19. In this regard, the Applicant alleges as following:

> *"The Supreme Court of Kosovo, in terms of provision of Article 21 and Article 22, paragraph 1, sub-paragraph 1.1 of the Law on Courts (Law no. 03/L-199), has exclusive jurisdiction to review and decide over the extraordinary legal remedies filed AGAINST the final court decisions. Therefore, in the present case, the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, was obliged to further refer the request for REVISION and the request for protection of legality filed by the State Prosecutor, along with*

the case, to the Supreme Court of Kosovo and not to render a decision on which the law does not give to it authority for review."

Admissibility of the Referral

20. The Court notes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113.7 of the Constitution which provides:

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

22. The Court also refers to Rule 36 of the Rules of Procedure which provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim.

23. The Court finds that, for all the SCSC judgments of 2009 and 2012 and which are again challenged by the Applicant, it has already made a constitutional assessment, and by Resolution on Inadmissibility KI23/14 it decided the case and cannot reconsider it.

24. In these circumstances, the Court will assess the main issue of the existence of a legal remedy against the decisions of the SCSC Appellate Panel and its eventual effectiveness in light of recent decisions of the SCSC Appellate Panel regarding the violations alleged by the Applicant.

25. In view of the above, the Court refers to the Constitution of Kosovo, which provides:

Article 32 [Right to Legal Remedies]

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

Article 54 [Judicial Protection of Rights]

"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated".

26. The Court also takes into account the Law on SCSC on PAK related matters, LAW No. 04/L-033, published in the Official Gazette no. 20, on 22 September 2011, which provides:

Article 1 paragraph 3

"The Special Chamber is a part of the Supreme Court of Kosovo, as provided by Article 21 of Law No.03/L-199 on Courts".

Article 3 paragraph 14

"*The appellate panel shall have final and exclusive appellate jurisdiction over all appeals from Decisions or Judgments of a specialized panel or any court with respect to matters or cases that have previously been referred to such court by the Special Chamber".*

Article 10 paragraphs 14 and 15

"14. All Judgments and Decisions of the appellate panel are final and not subject to any further appeal.

15. Nothing in the present law shall be interpreted or applied as limiting or attempting to limit the constitutional right of any person to petition the Constitutional Court of Kosovo, in accordance with the law and procedural rules governing such a petition, to review the constitutionality of any Decision or Judgment issued by the Special Chamber or another court."

27. As stated above, it follows that the Applicant had submitted a request for revision against the final decisions of the Appellate Panel of the SCSC, and that the State Prosecutor had filed the request for protection of legality against the same decisions, whereas the SCSC-Appellate Panel rejected these requests as inadmissible.

28. The Court points out that the Constitution of Kosovo in Article 32 provided that "*Every person has the right to pursue legal remedies…in the manner provided by law"* and recalls that the Law on SCSC on PAK related matters in Article 10 par. 14 explicitly provided that *"all Judgments and Decisions of the appellate panel are final and not subject to any further appeal"*.

29. It is quite clear that the SCSC decisions cannot be subject to any further proceedings, even the court proceedings, except the subject of review in the Constitutional Court, therefore as such are implementable and the SCSC by its judgments only reconfirmed this fact. The Applicant knew this fact also from the Resolution on Inadmissibility of this Court in the case KI23/14, when this matter was dealt (See Resolution on case KI23/14, para. 31, of 3 March 2014, by the same Applicant).

30. The Court notes that to assess efficacy of the legal remedy *"The existence of such remedies must be sufficiently certain not only in theory but also in practice" (*See, *Vernillo v. France*, Judgment of 20 February 1991, Series A no. 198, para. 27). In the present case the legal remedy was not provided in theoretical aspect in the law, and it was not tried in practice and could not produce legal effects regarding substantial aspects of the case.

31. In fact, the Applicant did not substantiate before the Court by any concrete evidence that the Supreme Court has dealt with cases of revision against the decisions of the SCSC Appellate Panel, in order for them to be indicative of unequal treatment before the law, and in such circumstances the Court cannot find any evidence that the court proceedings were unfair or arbitrary, and that its right to a legal remedy has been violated.

32. Consequently, when the Applicant does not sufficiently substantiate the alleged violations, the Court cannot find violation of Article 31 of the Constitution in conjunction with Articles 6 and 13 of the ECHR.

33. Furthermore, as to the allegation of violation of Article 54 of the Constitution, the Court considers that the Applicant was allowed "judicial protection of its rights" because a court established by law and with procedures provided by law assessed its appeals and rendered a final decision.

34. Considering the fact that under Article 1 of the Law on SCSC, the Special Chamber is part of the Supreme Court, and taking into account its special specifics in the functioning of the judicial system of the Republic of Kosovo, and also considering the procedures which are conducted in this judicial institution, the Court does not find that by decisions which rejected the revision and the request for protection of legality, were violated the rights guaranteed by the Constitution, the UDHR and the ECHR.

35. In conclusion, the Court finds that the Applicant did not sufficiently substantiate its allegations.

36. Therefore, the Referral is manifestly ill-founded, and thus inadmissible.

Request for Interim Measure

37. The Applicant requests the Court *"to render a decision granting the interim measure until the Constitutional Review of challenged decisions, in order to avoid the Applicant to pay the compensation in the amount set by the SCSC, as the amount is extremely high and unbearable taking into account that the orders for execution have already been rendered by private executors."*

38. Furthermore, the Applicant claims that "*the execution of the above mentioned Judgments will cause financial hardship for the Applicant and possibly cause the privatization of the enterprise if an interim measure is not granted."*

39. In order that the Court grants the Interim Measure, in accordance with Rule 55 (4) of the Rule of Procedure of the Court, it is necessary to find that:

> *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted.

(...)

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".

40. As mentioned above, the Referral is inadmissible and, there is no *prima facie* case for imposing an Interim Measure, therefore, the request for Interim Measure is rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court and Rule 56 of the Rules of Procedure, on 18 May 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the request for Interim Measure;

III. TO NOTIFY this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Prof. Dr. Enver Hasani

KI166/14, Applicant Mentor Paqak, Request for reconsideration of the case KI 78/14

KI 166/14, Decision to reject the Referral, of 16 April 2015, published on 28 May 2015.

Keywords*: Individual Referral, reconsideration of decision, ethnic discrimination, legal effect of decisions, rejection of the Referral*

The Constitutional Court had declared the case KI78/14 inadmissible because it was submitted by the Applicant's son after expiry of legal deadline. The Applicant in his Referral requested a reconsideration of the case on the grounds that his son's health condition has deteriorated and that their rights have been violated because they are a minority.

The Constitutional Court held that the decision rendered in the case KI78/14 is final and binding and that the health condition of his son does not affect or modify the circumstances of the Referral. The Referral was summarily rejected in accordance with Article 116.1 of the Constitution and Rule 32 (5) of the Rules of Procedure.

DECISION TO REJECT THE REFERRAL
in
Case No. KI166/14
Applicant
Mentor Paqak
Request for reconsideration of the case KI78/14

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. Mr. Ibrahim Paqak submitted a claim to the Court on behalf of his son Mentor Paqak from Prizren. Mr. Ibrahim Paqak also represented his son (then, the Applicant) in the case KI78/14.

Challenged Decision

2. Mr. Ibrahim Paqak does not specifically refer to a decision of the Constitutional Court. However, it appears that the Applicant requests reconsideration of the Resolution taken in the Case KI78/14.

Subject Matter

3. The subject matter is the request for reconsideration of the case KI78/14.

Legal Basis

4. The claim filed by Mr. Ibrahim Paqak is a continuation of the Referral 78/14, which was based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 10 November 2014, Mr. Ibrahim Paqak submitted the request for reconsideration to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 December 2014, the President of the Court by Decision no. GJR. KI166/14 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI166/14 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 17 December 2014, the Court sent to the Applicant the official referral form of the Court, requesting him to specify what decision he wants to be reconsidered and to submit additional documents which substantiate his request.

8. On 16 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

9. On 5 May 2014, Mr. Ibrahim Paqak, on behalf of his son Mentor Paqak, filed with the Court the Referral KI78/14, challenging the Decision PN. no. 637/2013 of the Court of Appeals, dated 16 October 2013 and served on him in November 2013.

10. On 20 October 2014, the Court declared the Referral KI78/14 as inadmissible, because it was filed out of the legal.

Allegations of Mr. Ibrahim Paqak

11. Mr. Ibrahim Paqak requests the reconsideration of the case, as his son now has health problems

12. Mr. Ibrahim Paqak states that *"three lawyers had every record and a medical report in the file, but I do not know why they were not listed in the court sessions"*.

13. In addition, Mr. Ibrahim Paqak says that *"perhaps our right as human beings is violated, just because we are minority"*. .

Assessment of the Admissibility of the request

14. In this respect, the Court refers to Article 116 (1) [Legal Effect of Decisions] of the Constitution which provides:

> *Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.*

15. In addition, the Court refers to Rule 32 (5) of the Rules of Procedure, which provides*:*

> *The Court may summarily reject a referral if (…) the referral is repetitive of a previous referral decided by the Court.*

16. The Court notes that the Mr. Ibrahim Paqak points out to the health problems of his son as a ground for reconsideration of the decision taken in the case KI78/14.

17. In this regard, the Court considers that the health condition of his son does not affect or modify the circumstance of the Referral being filed out of the legal deadline, which was the reason of inadmissibility.

18. Therefore, the Court concludes that the decision taken in the case KI78/14 is final and binding and the alleged reason for reconsideration is without effect on the previous decision.

19. In sum, in accordance with Article 116 of the Constitution and Rule 32 (5) of the Rules, the Court summarily rejects the request and thus it must be striken out.

FOR THESE REASONS

The Constitutional Court pursuant to Article 116 (1) of the Constitution and Rule 32 (5) of the Rules of Procedure, in its session held on 22 May 2015, unanimously

DECIDES

I. TO REJECT summarily the Request;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Prof. Dr. Enver Hasani

KI171/14, Applicant Agim Vuniqi, Constitutional Review of Notification No. 919, of the Ministry of Labor and Social Welfare/ Pension Department, of 24 October 2014

KI 171/14, Resolution on Inadmissibility of 15 April 2015, published on 28 May 2015

Keywords*: Individual Referral, administrative proceedings, suspension of pensions unauthorized party, unauthorized representation*

The Applicant had submitted a request to the Pension Department seeking the suspension of interruption of payment of pension to his parents. The Pension Department had suspended payment of pensions to the parents of the Applicant due to non-compliance with the legal rules on reporting.

The Applicant without referring to the violation of any constitutional provision alleged that the Pension Department of MLSW had violated the law drastically without following the budget lines by interrupting the payment of pensions to both his parents.

The Constitutional Court emphasized that the Applicant did not submit the power of attorney to represent his parents before the Court, and therefore was not "an authorized party", either in his personal capacity or as an authorized representatives of his parents. The Referral was declared inadmissible because it was not submitted in a legal manner as provided by Article 113.1 of the Constitution and further specified in Rule 36 (1) (a) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KI171/14
Applicant
Agim Vuniqi
Constitutional Review of Notification No. 919, of the Ministry of Labor and Social Welfare/ Pension Department, of 24 October 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Agim Vuniqi, with the residence in Prishtina (hereinafter: the Applicant), on behalf of his parents Mr. Hafir Vuniqi and Mrs. Qamile Vuniqi, with the same residence.

Challenged Decision

2. The challenged decision is the Notification [No. 919] of the Pension Department of the Ministry of Labor and Social Welfare (hereinafter, the Pension Department), of 24 October 2014**,** which notified the Applicant's parents that the payment of pensions was suspended due to non-fulfillment of formal requirements.

3. The notification was served on the Applicant's parents on 4 November 2014.

Subject Matter

4. The subject matter is the constitutional review of the challenged decision. The Applicant does not mention specific Articles of the Constitution that may have been violated.

Legal Basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 26 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 8 December 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 23 January 2015, the Court sent a copy of the Referral to the Pension Department. On 28 January 2015, the Court received a reply from the Pension Department.

9. On 23 January 2015, the Court notified the Applicant on the registration of the Referral and requested him to submit to the Court the power of attorney, by which Mr. Hafir Vuniqi and Mrs. Qamile Vuniqi authorize their son Mr. Agim Vuniqi to represent them before the Constitutional Court.

10. The Applicant has not submitted any response.

11. On 15 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

12. On an unspecified date in 2002, the Pension Department approved the basic pension to the Applicant's parents. The Applicant's

parents received their pension on regular basis until October 2013, when the payment of their pensions was suspended.

13. On 30 September 2014, the Applicant submitted the request to the Pension Department, seeking the suspension of interruption of payment of pension and retroactive payment for the period from November 2013 and onwards.

14. On 24 October 2014, the Pension Department responded that *"you have not complied with the legal rules on reporting, you have been suspended from the payment of the pension whereas further payment shall continue after your reporting, respectively starting from the month you report."*

Applicant's Allegations

15. The Applicant claim that *"drastic legal violations during the processing and distribution of the funds have taken place, the budgetary line has not been followed, and the funds dedicated to pensioners, the specific case of my parents Hafir and Qamile Vuniqi, were suspended and confiscated in an unnatural manner from their pocket"*.

16. The Applicant requests the "*the restitution of dignity and establishing of legality so that the pensioners Qamile and Hafir Vuniqi get their smiles back, that they are paid for two months November and December 2014 including the commercial interest"*.

Admissibility of the Referral

17. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

18. In this respect, the Court refers to Article 113 (1). of the Constitution, which provides:

> 1. *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*

19. Article 21 of the Law, also provides:

> *"During the process before the Constitutional Court, parties are either represented in person or by a person authorized by the party."*

20. In addition, the Court takes into account Rules 36 (1) (a) of the Rules of Procedure, which foresees:

> *(1) The Court may consider a referral if:* (a) *the referral is filed by an authorized party.*

21. In this regard, the Court notes that the Applicant has not submitted the requested power of attorney, by which his parents Mr. Hafir Vuniqi and Mrs. Qamile Vuniqi would authorize the Applicant to represent them before the Constitutional Court.

22. The Court considers that the Applicant is not "an authorized party", either in his personal capacity, or as an authorized representative of his parents.

23. Therefore, the Court concludes that the Applicant's Referral cannot be taken into consideration and, in accordance with Article 113 (1) of the Constitution, Article 21 of the Law and Rule 36 (1) (a) of the Rules of Procedure, is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 21 of the Law on Constitutional Court and Rule 36 (1) (a) of the Rules of Procedure, in the session held on 22 May 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI157/14, Applicant Hajriz Alidemaj, Constitutional Review of Decision C. no. 1579/2014, of the Municipal Court in Prishtina, of 8 September 2014

KI 157/14, Resolution on Inadmissibility, of 16 April 2015, published on 1 June 2015

Keywords*: Individual Referral, administrative proceedings, time limit of the statement of claim, right to work and exercise profession, non-exhaustion of legal remedies.*

The Municipal Court in Prishtina, by Decision C. no. 1579/2014, of 8 September 2014, had rejected the Applicant's appeal against the Municipality of Prishtina as out of time regarding the reinstatement to his previous job position and retroactive compensation of unpaid salaries.

The Applicant alleged, *inter alia*, that the Municipality of Prishtina had violated his right to work and exercise profession, guaranteed by Article 49 of the Constitution of Kosovo.

The Constitutional Court found that the Applicant's Referral is premature and that the principle of subsidiarity requires the Applicant to exhaust all legal remedies provided by law. The Referral was declared inadmissible because of non-exhaustion of all legal remedies in accordance with Article 113.7 of the Constitution and Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI157/14
Applicant
Hajriz Alidemaj
Constitutional Review of
Decision C. no. 1579/2014, of the Municipal Court in Prishtina, of 8 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Hajriz Alidemaj with residence in Prishtina (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges Decision [C. no. 1579/2014] of the Municipal Court in Prishtina, of 8 September 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal Basis

4. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 20 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 6 November 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Kadri Kryeziu.

7. On 8 December 2014, the Court informed the Applicant about the registration of the Referral.

8. On 16 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

9. From 1 September 1981 until 31 August 2003, the Applicant was employed as a Professor of the Albanian language in the school "28 November" in Prishtina. After 31 August 2003, the Municipality of Prishtina transferred the Applicant from one school to another, changing in this way his basic salary.

10. The Applicant addressed his situation several times to the Ministry of Education of Kosovo and the Municipality of Prishtina. However, he has not received any response.

11. On 6 June 2006, the Applicant filed an appeal with the Independent Oversight Board of Kosovo (hereinafter: the IOBK) against the Decision of the Municipality of Prishtina on these reassignments and changes of the basic salary.

12. On 21 March 2007, the IOBK [Decision A 02 114/2006] approved the Applicant's appeal. In the reasoning of its decision, the IOBK stated:

> *„The Board based on the evidence presented in the case file concluded that the Appellant's request in relation to the degree of earnings is grounded and should be approved, while the request to be reinstated to the former job position depends on the needs of the employing authority on the basis of work organization and systematization of employees".*

13. On 24 January 2011, the Applicant requested execution before the Municipal Court in Prishtina, seeking to be reinstated to the previous working place,.

14. On 17 November 2011, the Municipal Court in Prishtina [Judgment C. no. 122/2011] approved the Applicant's claim and obliged the Municipality of Prishtina- Directorate of Education and Science to reinstate the Applicant to the working place as a Professor of the Albanian language in the school "28 November" in Prishtina, with all rights deriving from the employment relationship, and the payment of difference of personal income for the period from 1 September 2003 until 30 September 2011.

15. The Municipality of Prishtina filed an appeal with the Court of Appeal against the Judgment of the Municipal Court.

16. On 13 May 2014, the Court of Appeal [Decision Ac. no. 3142/2012] annulled the Judgment of the Municipal Court and remanded the case to the Basic Court for retrial.

17. In the reasoning of its decision, the Court of Appeal stated:

> *„The first instance court in the repeated procedure will eliminate all aforementioned, so that it will determine ex officio the timeliness of the statement of claim, bearing in mind that the decision of the Independent Oversight Board is dated 21.03.2007, while the claim is submitted to this court on 24.01.2011, and after assessment it will render fair and lawful decision."*

18. On 8 September 2014, the Municipal Court [Decision C. no. 1579/2014] rejected the Applicant's appeal as out of time, reasoning:

> *„With administered evidence, the court found that the claimant filed the claim on 24 January 2011. On 21 March 2007, he was served with the Decision whereby his employment relationship was terminated. The prescription time limit for all requests from the employment relationship, is within three years from the date when the Claim was filed, while the claimant was retired on 21 March 2007, whereas he filed the claim on 24 January 2011, after three years and nine months".*

19. On 10 December 2014, the Applicant filed an appeal with the Court of Appeal against the Decision of the Municipal Court [C. no. 1579/2014]. The procedure before the Court of Appeal is still in progress.

Applicant's Allegations

20. The Applicant considers that the Municipality of Prishtina violated his right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of Kosovo.

21. The Applicant requests the Court:

> "*the continuation of payment, in a retroactive manner, of the salary as a Professor of the Secondary School, not the salary as a teacher of the Primary School (...) and reinstatement to my previous working place as a professor of Albanian language".*

Assessment of the Admissibility of the Referral

22. The Court first examines whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

23. In this respect, the Court refers to Article 113 (7) of the Constitution, which provides:

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

24. The Court also refers to Article 47. 2 of the Law, which provides:

> *„The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".*

25. Moreover, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which foresees:

> *„The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".*

26. In that respect, the Court recalls that the Applicant claims that the Municipality of Prishtina violated his right to work and exercise profession guaranteed by Article 49 of the Constitution of Kosovo.

27. The Court notes that, on 10 December 2014, the Applicant filed an appeal with the Court of Appeal and the proceedings are still pending.

28. The Court reiterates that the principle of subsidiarity requires that the Applicant exhausts all the legal remedies provided by the law.

29. The rationale for the exhaustion rule is to afford competent authorities, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that Kosovo legal order provides an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo,* KI41/09, of 21 January 2010, and see *mutatis mutandis,* ECHR, *Selmouni vs. France,* no. 25803/94, Decision of 28 July 1999).

30. Therefore, the Court considers that the Applicant's Referral is premature, as all available remedies have not been exhausted yet, in accordance with Article 113 (7) of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

31. It follows that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 47.2 of the Law on Constitutional Court and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 25 May 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI178/14, Parashtrues Xufe Racaj, Request for correction of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo in Case 107/14, of 26 November 2014

KI178/14, Decision to strike out the Referral, of 15 aprila 2015, published on 1 June 2015.

Keywords: *Individual Referral, rejection of the Referral, judicial effect of decisions, summarily procedure, decision to strike out the referral.*

The Constitutional Court, by Decision in case no. KI107/14 of 26 November 2014 had declared inadmissible the Applicant's Referral because it was manifestly ill-founded.

The Applicant claimed that the challenged decision had violated her rights guaranteed by Articles 5 (Right to liberty and security) and 6 (right to a fair hearing) of the European Convention on Human Rights.

The Applicant filed a request for correction of Resolution in case no. KI107/14, claiming that the Constitutional Court had issued a decision based on Articles 5 and 6 of the

Constitution of Kosovo, not in Articles 5 and 6 of the Convention, in which the Applicant had based her allegation.

The Constitutional Court, in its judgment clarified that Resolution no. KI107/14, was rendered on the basis of Articles 5 and 6 of the Convention, and that there is no error subject to correction. The Constitutional Court further held that the Applicant has not submitted any new allegation or violation. The Referral was declared inadmissible and summarily rejected in accordance with 116.1 [Legal Effect of Decisions] of the Constitution and Rules 32 (4) and 61 (1) of the Rules of Procedure.

DECISION TO STRIKE OUT THE REFERRAL
in
Case No. KI178/14
Applicant
Xufe Racaj
Request for correction of the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo in Case 107/14, of 26 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral KI178/14 was submitted by Ms. Xufe Racaj, residing in Prishtina (hereinafter, the Applicant).

Challenged decision

2. In the Referral KI178/14, the Applicant refers to the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) in the case No. KI107/14 of 26 November 2014, which was served on the Applicant on 27 November 2014.

Subject matter

3. The subject matter of the Referral KI178/14 is the request for correction, and consequent eventual reconsideration, of the Resolution on Inadmissibility No. KI107/14 of 26 November 2014.

Legal basis

4. The Referral KI178/14 is a continuation of the Referral KI107/14, which was based on Article 113 (7) of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

5. The Referral KI178/14 is specifically to be seen as based on Rule 61 (Correction of Judgments and Decisions) of the Rules of Procedure.

Proceedings before the Court

6. On 12 December 2014, the Applicant submitted the Referral to the Court.

7. On 13 January 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel consisting of Judges Snezhana Botusharova (Presiding) Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 12 February 2015, the Court notified the Applicant on the registration of the Referral 178/14.

9. On 15 April 2015, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court to strike out the Referral.

Summary of facts

10. On 23 June 2014, the Applicant submitted in Albanian language the Referral 107/14 to the Court, claiming a violation of *"Articles 5 and 6 of the Convention"*. The reference to Article 5 and 6 of the Convention was translated into English language as claiming a violation of "*Articles 5 and 6 of the Constitution"*. The English version was the original working basis for the Resolution of 26 November 2014, in Case No. KI107/14.

11. Paragraph 4 of that Resolution reads that "*the subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights, guaranteed by "Article 6 (...) and Article 5 of Constitution"*.

12. However, in the reasoning of the abovementioned Resolution (under paragraph 24), the Court noted that "*the Applicant, while justifying her Referral, alleges a breach of Articles 5 and 6 of the Constitution. Those Articles have to do with Languages and Symbols of the Republic of Kosovo; and nothing with the facts of the Referral*".

13. Meanwhile, the Court considered (under paragraph 25) that *"the subject matter has to do with a violation of the Applicant's right to fair trial"* and thus decided on the basis of Article 5 and 6 of the Convention.

14. The Court furhter considered (under paragraph 26) that *"the Applicant has not explained and showed how and why her rights (...) to a fair trial (...) were allegedly violated"*.

15. Finally, the Court concluded (under paragraph 29) that *"pursuant to Rule 36 (1) c) and Rule 36 (2) d) of the Rules of Procedure, the Court finds that the Referral is manifestly ill-founded"*.

Applicant's allegations

16. The Applicant alleges in the Referral KI178/14 that she "*requested from the Constitutional Court the application of Articles 5 and 6 of the Convention (and not of the Constitution of the Republic of Kosovo), whereas the Constitutional Court of Kosovo erroneously (error in materiae) based its Resolution no. KI107/19 of 25.11.2014 on Articles 5 and 6 of the Constitution*".

17. The Applicant wants, through the Referral KI178/14, *"to review Decision KI107/14 of 7.11.2014 of the Constitutional Court of Kosovo, which was by error (...) based on inadequate Articles (5 and 6) of the Constitution instead of Articles of the Convention"*.

Admissibility of the Referral

18. In this respect, the Court refers to Article 116 (1) [Legal Effect of Decisions] of the Constitution which provides:

> *Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.*

19. The Court also refers to Rule 32 (4) of the Rules of Procedure, which foresees:

The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.

20. In addition, the Court takes into account Rule 61 (Correction of Judgments and Decisions), which foresees:

(1) The Court may, ex officio, or upon application of a party made within two weeks of the service of a Judgment or decision, rectify any clerical and calculation errors in the judgment or decision.

21. The Court recalls that the Applicant basis her Referral KI178/14 on an alleged technical error of the Court.

22. In fact, the Applicant alleges that the Court, in the Resolution on Inadmissibility in the case No. KI107/14 of 26 November 2014, referred to *"Article 6 (...) and Article 5 of the Constitution" instead of "Article 6 (...) and 5 of the Convention"*.

23. However, in the Resolution on Inadmissibility in the case No. KI107/14, the Court considered and decided the Referral on the basis of Articles 5 and 6 of the Convention, as originally alleged by the Applicant. Thus no error is subject to correction, because it has been already corrected in the delivered Resolution.

24. Moreover, the Court observes that the Referral KI178/14 does not present any new allegation or evidence on the violation claimed by the Applicant in the Referral KI107/14; in fact, the Applicant only submitted a request for correction of the Resolution on Inadmissibility.

25. Thus, the Court considers that all Applicant's allegations were entirely addressed and reasoned in the case KI107/14 as requested by the Applicant and the alleged error was corrected in the previous Decision of the Court.

26. The Court further considers that the resolution taken in the case KI107/14 is final and binding and the alleged correction is without effect on the previous decision.

27. Therefore, the Court concludes that there is no case or controversy pending in relation to the subject above and, in compliance with Article 116 (1) of the Constitution, Rule 32 (4) and 61 (1) of the

Rules of Procedure, the "Referral" must be summarily rejected and stricken out.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution, Article 20 of the Law and Rule 32 (4) of the Rules of Procedure, on 25 May 2015, unanimously

DECIDES

I. TO STRIKE OUT the Referral;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur Almiro Rodrigues

President of the Constitutional Court Prof. Dr. Enver Hasani

KI164/14, Applicant Shpëtim Halimi, Constitutional review of Decision Rev. no. 223/2014 of the Supreme Court of the Republic of Kosovo, dated 1 September 2014

KI164 / 14, Resolution on Inadmissibility of 13 May 2015, published on 5 June 2015.

Keywords*: Individual Referral, civil procedure, repetition of the procedure, equality before the law, protection of property, manifestly il-founded referral.*

The Supreme Court of Kosovo, by Decision Rev. No. 223/2014, of 1 September 2014, had rejected the Applicant's request for revision regarding the reopening of the procedure and deciding his case on merits by the lower instance courts. The Applicant's appeal - basically - was related to the right to pre-emption and the annulment of the contract of sale of immovable property.

The Applicant alleged that the regular courts with their decisions denied and violated his rights guaranteed by Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution.

The Constitutional Court found that the Applicant argues in general that he was not provided with an opportunity to present his case before the regular courts and he has not provided any procedural or substantive reasoning to explain how the alleged violations occurred. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KI164/14
Applicant
Shpëtim Halimi
Constitutional review of the
Decision Rev. no. 223/2014 of the
Supreme Court of the Republic of Kosovo,
dated 1 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral was submitted by Mr. Shpëtim Halimi, from Livoq i Ulët, municipality of Gjilan (hereinafter, the Applicant), who is represented by Mr. Skender Zenuni, a lawyer practicing in Gjilan.

Challenged Decisions

2. The Applicant challenges the Decision (Rev. no. 223/2014 dated 1 September 2014) of the Supreme Court of the Republic of Kosovo (hereafter, Supreme Court), by which the Applicant's request for revision was rejected.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly *"violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo*

(hereinafter, the Constitution), namely Article 24, paragraph 1 and 2 [Equality Before the Law] and Article 46, paragraphs 1, 2 and 3 [Protection of Property]".

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 6 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 5 December 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kyeziu and Arta Rama-Hajrizi.

7. On 20 January 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 13 May 2015, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On an unspecified date, the Applicant filed a claim with the Municipal Court in Gjilan, requesting confirmation of his right to pre-emption as well as the annulment of the sales contract regarding an immovable property.

10. On 27 December 2005, the Municipal Court (Decision C. no. 636/2004) concluded that the claim of the Applicant had been withdrawn and thus closed the matter without entering into the merits of the case.

11. The Applicant has not filed an appeal against the Decision of the Municipal Court.

12. On 23 November 2010, the Applicant filed with the Municipal Court in Gjilan a request to repeat the proceedings, claiming that *"[…] the whole proceeding was based on false statements and forged documents […]."*

13. On 11 December 2012, the Municipal Court (Decision C. no. 636/2004) rejected as impermissible and incomplete the Applicant's proposal to repeat the proceedings since *"[…] the subjective deadline of 30 days and objective deadline of 5 years has passed"*. The Municipal Court also emphasized that the Applicant, in his request to repeat the proceedings, has not *"[…] submitted any evidence to confirm such claims"*.

14. The Applicant appealed to the Court of Appeal against the Judgment of the Municipal Court.

15. On 15 May 2014, the Court of Appeal (Decision Ac. no. 4943/2012) rejected as ungrounded the appeal of the Applicant and confirmed the Decision of the Municipal Court.

16. The Applicant filed a request for revision with the Supreme Court against the Decisions of the Court of Appeal and Municipal Court.

17. On 1 September 2014, the Supreme Court (Decision Rev. no. 223/2014) rejected the Applicant's request for revision, holding that

> *"[…] in this particular case there has been no conclusion on the merits because the contested procedure was concluded with a Decision on withdrawal* [by the Applicant] *of the claim […].*
> *In cases when a proposal to repeat the proceedings is submitted pursuant to Article 232 items c) and d) of the LCP* [Law on Contested Procedure], *the time limit to submit the proposal pursuant to Article 234 item d) and 3) of the LCP is 30 days from the day the proposer has been serviced the final Judgment. The proposer submitted his proposal on this ground but, not only did he not enclose with the proposal such Judgment, but, in the reasoning of the proposal he does not even mention such Judgment […]. The proceeding which is sought to be repeated, was concluded with the final Decision C.no.636/04 of 27.12.2005 whereas the proposal for repeating the proceeding was submitted on 24.11.2010."*

Applicant's allegations

18. The Applicant claims that the regular courts, by rejecting his request to repeat the proceedings, have violated his rights guaranteed by the Constitution, namely rights pertaining to *"equality before the law and protection of property"*.

19. The Applicant alleges that his right to equality, guaranteed by Article 24 [Equality Before the Law] of the Constitution, was violated, because he *"[...] was not provided with the opportunity to express himself before the Judge assigned to the case"*.

20. The Applicant also alleges that his right to protection of property, guaranteed by Article 46 [Protection of Property] of the Constitution, was violated, because *"[...] the Judge assigned to the case [...] has denied me the right to my grandparent's immovable property"*.

21. The Applicant concludes by addressing the Court with the following statement:

> *"[...] Shpëtim Halimi is of good will that this civil contest be resolved in that way that the immovable property of the grand grandfather be returned to the owner, respectively to his nephew Shpëtim Halimi.*
> *This immovable property was taken in an arbitrary manner by the Judge assigned to the case and, who, according to Shpëtim Halimi obliged him to deposit [...] DM* [Deutschland Mark] *for the grand grandparent's immovable property. [...]."*

Admissibility of the Referral

22. The Court has first to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

23. In that respect, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

Article 48 of the Law

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated*

and what concrete act of public authority is subject to challenge".

Rule 36 of the Rules of Procedure

"[...] (1) The Court may consider a referral if: [...] (d) the referral is prima facie justified or not manifestly ill-founded.
(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: [...] (d) the Applicant does not sufficiently substantiate his claim".

24. The Court recalls that the Applicant challenges the Decision (Rev. no. 223/2014, dated 1 September 2014) of the Supreme Court, alleging a violation of his right to equality before the law and protection of property, as guaranteed by the Constitution.

25. In fact, the Applicant argues, in general and without referring to any particular decision of the lower courts, that he was not provided with an *"opportunity to present his case"* before the regular courts and that allegedly his right as a *"successor"* of his grand grandfather's immovable property was violated.

26. The Court observes that the Applicant has not provided any procedural or substantive reasoning in his Referral; he merely states the aforementioned claims without explaining further how such violations have occurred.

27. In that respect, the Court notes that the Municipal Court rejected the Applicant's request to reopen the proceedings by considering that the deadline to submit such request has passed and that, in any case, the Applicant has not presented any evidence in support of his request.

28. The Court also notes that the Court of Appeal reasoned its decision in respect to Applicant's allegations of *"essential violation of contested procedure provisions and violation of material law"* by confirming that the Municipal Court has correctly applied the material law when rejecting the Applicant's request to reopen the proceedings.

29. Furthermore, the Court notes that the Supreme Court rejected the Applicant's request for revision as ungrounded by reasoning that: *"[...] the stance of the lower courts which rejected as impermissible the proposal to repeat the proceedings is accepted in its entirety because the challenged decisions did not contain*

any essential violations of the provisions of the contested procedure for which the Court of revision pursuant to Article 215 of the LCP takes care ex officio."

30. The Court considers that the proceedings before the Municipal Court, the Court of Appeal and the Supreme Court have been fair, and the decisions are thoroughly justified and reasoned.

31. Therefore, the Constitutional Court concludes that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicant had a fair trial. (See, *inter alia*, *Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991; and, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009).

32. Moreover, the Applicant has neither accurately clarified how and why the challenged decisions which rejected his request to repeat the proceedings entailed a violation of his individual rights and freedoms guaranteed by the Constitution nor has he presented evidence justifying the allegation of such a violation.

33. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

34. The Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts or other public authorities, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *García Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

35. Therefore, the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution. (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred articles of the Constitution support his claim, as required by Article 113 (7) of the Constitution and Article 48 of the Law.

36. In sum, the Court concludes that the Applicant's allegations of a violation of his rights to equality before the law and to protection of property are unsubstantiated and not proven and, thus, are manifestly ill-founded.

37. For the foregoing reasons, the Court considers that, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, Rules 36 (2) (d) and 56 (b) of the Rules of Procedure, on 1 June 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

KI169/14, Parashtrues Osman Osmanaj, Constitutional Review of Judgment PML. no. 124/2014, of the Supreme Court, of 2 July 2014

KI169 /14, Decision on Inadmissibility of 15 April 2015, published on 5 June 2015

Keywords*: Individual Referral, criminal proceedings, imprisonment sentence, false reports, the right to fair and impartial trial, manifestly ill-founded referral.*

The Supreme Court of Kosovo, by Judgment No. 124/2014 of 2 July 2014 upheld the decisions of the lower instance courts and rejected the Applicant's request for protection of legality with respect to his imprisonment sentence for committing the criminal offense of false reports.

The Applicant claimed that he was denied the confrontation with witnesses, the evidence provided by him have not been considered and that the procedure of composition of the trial panel of the court of appeal was not based on law.

The Constitutional Court found that the reasoning of the Supreme Court for confrontation with the witnesses, the composition of the trial panel of the court of appeal and the presentation of evidence is clear, and moreover, it had resulted that the proceedings in the court of appeal had not been unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded in accordance with Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI169/14
Applicant
Osman Osmanaj
Constitutional Review of Judgment PML. no. 124/2014, of the Supreme Court, of 2 July 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Osman Osmanaj, with residence in Istog (hereinafter: the Applicant).

Challenged Decision

2. The challenged decision is Judgment PML. No. 124/2014 of the Supreme Court, of 2 July 2014, by which the Supreme Court rejected the Applicant's request for protection of legality as ungrounded and upheld the Judgments of the Court of Appeal and of the Basic Court.

3. This Judgment was served on the Applicant on 23 July 2014.

Subject Matter

4. The subject matter is the constitutional review of Judgment PML. No. 124/2014, of the Supreme Court, of 2 July 2014, which allegedly violated Article 31, paragraph 4 [Right to Fair and

Impartial Trial] and Article 102 paragraph 1 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Legal Basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 24 November 2014, the first official business day after Sunday, on 23 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 8 December 2014, the President of the Court by Decision GJR. KI169/14 appointed Judge Robert Carolan as Judge Rapporteur and by Decision KSH. KI169/14 appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 26 January 2015, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.

9. On 15 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

10. On 28 May 2013, the Basic Court in Peja, Branch in Istog, [P. No. 463/2011] found the Applicant guilty of the criminal offense of false reports. The Basic Court by this Judgment imposed on the Applicant the sentence of imprisonment of 3 months, suspended for 2 years.

11. The Applicant filed an appeal against Judgment [P. No. 463/2011], of the Basic Court in Peja, Branch in Istog, of 28 May 2013.

12. On 21 October 2013, the Court of Appeal of Kosovo, [PA1. No. 771/2013] rejected the Applicant's appeal and upheld the Judgment of the Basic Court. The Court of Appeal considered that the Applicant was not deprived of any rights guaranteed by the Criminal Code of Kosovo, which can be confirmed by the examination of the case file, in particular the minutes of the main trial.

13. The Applicant then submitted a request for protection of legality to the Supreme Court of Kosovo, claiming an essential violation of the criminal law, and proposed that the court modifies the judgments of the first and second instance court, and dismisses the indictment filed against him.

14. On 2 July 2014, the Supreme Court of Kosovo, [PML. no. 124/2014] rejected the Applicant's request for protection of legality as ungrounded.

15. The Supreme Court reasoned and held:

> *"The allegation in the request for protection of legality according to which the witness, without specifying who is the witness, did not respond "to the questions of the defense counsel and this was allowed by the Court", has no grounds because it is determined by the minutes of the main hearing that the witnesses- Tahir Jahaj, Bashkim Blakaj, and Besim Osmanaj responded to all the questions of the defense counsel and it was determined in the minutes that after the being questioned the defense counsel did not have any other questions to the witness.*
>
> *From the court minutes of the main hearing, after questioning the witness- Bashkim Blakaj by the defense counsel and the accused- Osman Osmanaj, the defense counsel proposed to make "the comparison of two statements (that of Tahir Jahaj and that of Bashkim Blakaj)", a proposal which the court rejected by a decision fairly reasoning that the court first makes the assessment of the statements of the witnesses and thereafter it decides to which shall be given the trust.*
>
> *As regards the rejection for providing the list of telephone calls of 28 October 2011, the Court rendered a well-reasoned decision when it referred to the impossibility to provide this evidence due to the long period of time lapsed (the proposal*

was made in the session of 23 May 2013) and the impossibility to ensure this evidence".

16. As regards to the Applicant's complaint on the composition of the Panel of the Court of Appeal, the Supreme Court reasoned and held:

> *"The alleged violations of the law made by the second instance court that the Judge Mejreme Memaj does not meet the requirements to exercise the profession of a Judge in the Court of Appeal, are ungrounded. The President of the Court of Appeal, pursuant to Article 20, paragraph 3, subparagraph 3.1 of the Rules of Procedure of the Court of Appeal, assigns the Judges in the departments in order to provide an efficient adjudication of cases, and, if necessary, he can assign temporarily the judges in the departments in order to resolve the pending cases or provide a timely resolution of them".*

Applicant's Allegations

17. The Applicant claims that the procedure in the trial of the challenged decision violated his constitutional rights in three different ways: (1) The Applicant claims that he was not allowed to confront certain witnesses and that failure violated his rights guaranteed by Article 31, paragraph 4 [Right to Fair and Impartial Trial]; (2) The Applicant further claims that one of the judges in his trial did not have the minimal legal qualifications to serve as a judge in that court and in his trial violating his rights guaranteed by Article 102, paragraph 1 [General Principles of the Judicial System] of the Constitution; and (3) the Applicant claims that the trial court did not consider evidence of the list of certain telephone calls, violating his rights guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

18. The Applicant requests the Court: *".....to declare invalid the Judgment PML No. 124/14 rendered by the Supreme Court and the Judgment No. PA1. No. 771/13 rendered by the Court of Appeal, and to remand the case for consideration to the Court of Appeal, by a Panel composed based on the law".*

Admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, the Court has to first examine whether the Applicant has met the admissibility requirements, laid down in the Constitution, as further specified in the Law and the Rules of Procedure.

20. In this respect, the Court refers to Article 48 of the Law, which provides:

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

21. In addition, the Court takes into account Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure, which provide that:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded."*
>
> (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,*
>
> *[...]"*

22. As mentioned above, the Applicant alleges that the Judgment [PML. No. 124/14] of the Supreme Court and the Judgment [PA1. No. 771/2013] of the Court of Appeal have violated the rights guaranteed by Article 31, paragraph 4 [Right to Fair and Impartial Trial] and Article 102, paragraph 1 [General Principles of the Judicial System] of the Constitution, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

23. In this regard, the Court recalls the reasoning of the Supreme Court, in answering the Applicant's allegations of violation of the law and substantial violation of procedural provisions in his request to confront the witnesses and to present the evidence of the list of telephone calls (see paragraph 15).

24. The Court also notes that the Applicant's allegations of alleged irregularities in the procedure of the establishment of the Court of Appeal Panel are reasoned by the Supreme Court (see paragraph 16).

25. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

26. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts and law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

27. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case does not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court observes that the Applicant had ample opportunity to present his case before the regular courts.

28. The Constitutional Court can only consider whether the evidence has been presented in such a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

29. In that respect, the Court notes that the reasoning referring to the request for confrontation of witnesses, alleged irregularities in the procedure of the establishment of the panel of the Court of Appeal and also for non-presentation of the evidence of the list of

telephone calls, in the Judgment of the Supreme Court is clear. After having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

30. For the aforementioned reasons, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights invoked by the Applicant.

31. Therefore, the Referral is manifestly ill-founded and should be declared inadmissible, in accordance with Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure, in the session held on 28 May 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI176/14, Applicant Sekule Stanković, Constitutional Review of Judgment Rev. no. 233/2014, of the Supreme Court, of 3 September 2014

KI176/14, Resolution on Inadmissibility, of 15 April 2015, published on 5 June, 2015.

Keywords: *Individual Referral, contested procedure, time limit of the statement of claim, protection of property, exchange of immovable property, manifestly ill-founded referral*

The Supreme Court of Kosovo by Judgment Rev. no. 233/2014, of 3 September 2014 modified the judgments of the lower instance courts and rejected the Applicant's statement of claim as out of time with respect to the annulment of contracts for exchange of immoveable properties.

The Applicant alleged that the Supreme Court had decided in contradiction with material evidence and thus had violated his right to protection of property guaranteed by Article 46 of the Constitution.

The Constitutional Court found that the Applicant's allegations of violation of the right to protection of property does not present a substantial constitutional ground, because they raise issues of legality which fall under the jurisdiction of the regular courts, and moreover, the Supreme Court reasoned why are modified the decisions of the lower instance courts and why the statement of claim of the Applicant was rejected as out of time. The Referral was declared inadmissible as manifestly unfounded as provided by Article 48 of the Law and further specified in the Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KI176/14
Applicant
Sekule Stanković
Request for Constitutional Review of Judgment Rev. no. 233/2014, of the Supreme Court, of 3 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Mr. Sekule Stanković, from Prishtina, with residence in Medvegje, Republic of Serbia, who is represented before the Court by Mr. Visar Ahmeti and Mr. Ekrem Agushi, lawyers.

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 233/2014 of the Supreme Court of the Republic of Kosovo, of 3 September 2014 (hereinafter: the Supreme Court). By this Judgment the revision of Mrs. V. B. (the respondent) was approved and the statement of claim of the Applicant (the claimant) for annulment of the contract on exchange of immovable properties was rejected.

3. The challenged Judgment was served on the Applicant on 8 December 2014.

Subject Matter

4. The subject matter of the Referral is the constitutional review of challenged Judgment Rev. no. 233/2014, due to alleged violation of the rights guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal Basis

5. The legal basis for processing this Referral is Article 113.7 of the Constitution, Article 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 10 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 6 January 2015, the President of the Court, by Decision no. GJR. KI176/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI176/14, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu (member) and Arta Rama-Hajrizi (member).

8. On 20 January 2015, the Court informed the Applicant about the registration of the Referral and submitted a copy of this Referral to the Supreme Court.

9. On 15 April 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of Referral.

Summary of Facts

10. On 1 August 1999, the Applicant concluded a contract with Mrs. V. B. (the respondent) for the exchange of immovable properties, an apartment which is located in Dardania SUII/1, with a house of 124 m2 (square meters) and a yard of 12 are and 17 m2, described as plot no. 1946, located in Medvedje.

11. On 11 October 2011, the Municipal Court in Prishtina, Branch in Gracanica (Judgment, C. no. 863/11) approved the Applicant's statement of claim as grounded and confirmed that the contract on exchange of immovable properties, concluded on 1 August 1999, between the Applicant and the respondent was null and void and without legal effect.

12. Against this Judgment, the respondent filed an appeal with the Court of Appeal of the Republic of Kosovo (hereinafter: the Court of Appeal), by challenging all items of the Judgment.

13. On 18 September 2013, the Court of Appeal (Judgment, Ac. No. 58/2013) rejected the respondent's appeal as ungrounded and upheld the Judgment of the Municipal Court in Prishtina, Branch in Gracanica.

14. On 12 December 2013, the respondent submitted a revision to the Supreme Court against the Judgment of the Court of Appeal, challenging the Judgment as unfair.

15. On 3 September 2014, the Supreme Court (Judgment, Rev. no. 233/2014), approved the revision filed by the respondent as grounded, modified the judgments of the lower instance courts, by rejecting the Applicant's statement of claim as out of time.

16. In addition, the Supreme Court, in its Judgment, reasoned as it follows: *"In the present case, based on the fact that the contract on exchange of immovable property between the litigants has not been formalized in the legal aspect, we are not before such a contract, and if we do not have contract, it cannot be annulled as it erroneously acted the first instance court, but even the legal contract certified in the court existed, the time limit for its nullity had expired, since the internal contract was concluded on 1.8.1999, while the claim in the court was filed on 10.11.2004, whereas according to the legal provision under Article 117 of LOR, the annulment of the contract can be requested within time limit of 1 year from the day, after becoming aware of the ground of annulment, for making the contract rescindable, namely the termination of coercion, whereas in the present case have passed 5 years, 3 months and 9 days, therefore the allegation mentioned in the revision that the claim is out of time, the Supreme Court of Kosovo approved as grounded".*

Applicant's Allegations

17. The Applicant claims that the Supreme Court, by approving the revision filed by the respondent as grounded and by rejecting his statement claim for annulment of the contract on exchange of immovable properties as ungrounded, has violated his property right, guaranteed by Article 46 of the Constitution.

18. The Applicant bases his allegation of violation of Article 46 of the Constitution on the fact that: *"The Supreme Court in its reasoning among the other presented reasons, which are in full contradiction with the material evidence, because the claimant's claim in the present case was filed within legal time limit, provided by the provisions of Article 117 of Law on Obligational Relationship (LOR)."*

Admissibility of the Referral

19. The Constitutional Court, before considering the Referral, first examines whether the Applicant's Referral meets the procedural admissibility requirements, laid down in the Constitution, and further specified in the Law and the Rules of Procedure.

20. Regarding this Referral, the Court refers to Article 48 of the Law, which provides: *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*

21. In addition, Rule 36 (1) (d) of the Rules of Procedure provides:

> *(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*

22. Furthermore, Rule 36 (2) of the Rules of Procedure reads:

> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

[...]

23. In the present case, the subject matter before the regular courts was the Applicant's request regarding the annulment of the contract on exchange of immovable properties. The first and second instance courts approved the Applicant's statement of claim and decided to annul the contract. However, the Supreme Court, based on the revision filed by the respondent, modified the judgments of the abovementioned courts, by rejecting as ungrounded the Applicant's statement of claim because it was filed after the deadline provided by the law.

24. The Applicant claims that the Supreme Court, by rejecting the claim for annulment of the contract on exchange of immovable properties as out of time, violated his property right, guaranteed by Article 46 of the Constitution.

25. As to the property right, Article 46 [Protection of Property] of the Constitution provides:

1. *The right to own property is guaranteed.*

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

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

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

26. With regard to the Applicant's claim of violation of the property right, the Court, based on the case file, considers that such an allegation does not present a substantiated constitutional ground, because it is related to the issues of legality, which fall under the jurisdiction of the regular courts.

27. The Court notes that the Supreme Court, *ex officio*, assessed the legality of the lower instance court decisions, and concluded that the substantive law was erroneously applied, because, the deadline for filing the statement of claim, which had as subject matter the request for annulment of the contract on exchange of real estate, had expired.

28. In this regard, the Court reiterates that it is not its duty to go into the issues of legality, such as the verification of the fact in the present case whether the Applicant's statement of claim was filed within the time limit prescribed by law.

29. The Court reiterates that the interpretation of provisions of the substantive and procedural law is the task of the regular courts and falls under their jurisdiction.

30. The Constitutional Court can only consider whether the evidence before the courts and other authorities has been presented in a correct manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *inter alia,* Report of the European Commission on Human Rights, case *Edwards v. United Kingdom,* Application No. 13071/87, adopted on 10 July 1991).

31. The Court considers that the Supreme Court in its judgment justified why the judgments of the lower instance courts had to be modified and the Applicant's statement of claim be rejected.

32. Therefore, the Constitutional Court does not find that the pertinent proceedings before the Supreme Court have been in any way unfair or arbitrary (see, *mutatis mutandis, Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application No. 17064/06 of 30 June 2009).

33. From all the reasons above, the Court concludes that the Applicant’s Referral is to be declared as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (d), Rule 36 (2) (b), and Rule 56 (2) of the Rules of Procedure, on 28 May 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Prof. Dr. Enver Hasani

KI03/15, Applicant Hasan Beqiri, Constitutional Review of Judgment API-KZI no. 2/2011 of the Supreme Court, of 25 May 2012.

KI03/15, Decision to reject the Referral, of 13 May 2015, published on 5 June 2015.

Key words: *Individual Referral, burden of proof, imprisonment sentence, criminal proceedings, non-fulfillment of procedural requirements, inadmissible Referral.*

The Applicant challenges Judgment API-KZI no. 2/2011, of the Supreme Court, of 25 May 2012. The Applicant claims that the regular courts violated his rights guaranteed by the Constitution and international conventions, without specifying any constitutional provision in particular.

The Constitutional Court found that the Applicant's Referral does not meet the procedural requirements for further consideration due to non-completion of his Referral with the relevant documents, and that the burden of proof lies with the Applicant. The Referral was summarily rejected as inadmissible as required by Article 22.4 and 48 of the Law and Rule 29 (2) (h) and 32 (5) of the Rules of Procedure.

DECISION TO REJECT THE REFERRAL
in
Case no. KI03/15
Applicant
Hasan Beqiri
Constitutional Review of Judgment, API-KZI no. 2/2011
of the Supreme Court, of 25 May 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Hasan Beqiri, who is currently serving a sentence in Dubrava Prison.

Challenged Decision

2. The Applicant challenges Judgment API-KZI no. 2/2011 of the Supreme Court, of 25 May 2012, which, according to Applicant's information, was served on him on 22 December 2014.

Subject Matter

4. Subject matter is the constitutional review of the challenged decision, which allegedly has violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 14 January 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 9 February 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 19 February 2015, the Court notified the Applicant on the registration of Referral and requested from him to supplement it with relevant documentation.

9. On 13 May 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. The Applicant was accused of a criminal offense, was found guilty and was sentenced to imprisonment. The Applicant is currently serving the sentence in Dubrava Prison.

Applicant's Allegations

11. The Applicant claims that the regular courts violated his rights guaranteed by the Constitution and international conventions, without specifying any concrete constitutional provision.

12. The Applicant alleges that the regular courts did not present correctly the evidence and facts of the case and, therefore, the qualification of the criminal offense was erroneous.

13. Moreover, the Applicant requests that the alleged violation of human rights is assessed by the Court, based on his allegations raised in the Referral.

Admissibility of the Referral

14. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

15. Thus, the Court refers to the provisions of the Law that follow.

Article 22.4 [Processing Referrals]

> *"4. If the referral ... is ... incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for supplementing the respective referral (...)".*

Article 48 [Accuracy of the Referral]

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated (...)."*

16. In addition, the Court refers to Rules 29 (2) [Filing of Referrals and Replies] and Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides:

> *29 (2) "The referral shall also include:*
>
> *[...]*
>
> *(h) the supporting documentation and information.*
>
> *[...]"*
>
> *32 (5) "The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral (...)".*

17. The Court recalls that the Applicant alleges that the regular courts violated his rights guaranteed by the Constitution and international conventions, because the facts and evidence were not presented in the proper manner and consequently the qualification of the criminal offense was wrong.

18. Pursuant to Article 22.4 of the Law, the Court requested the Applicant to submit the challenged decision and other decisions of the regular courts.

19. However, within the prescribed time limit, the Court has not received any decision of the regular courts.

20. The Court considers that it cannot take into account the Applicant's allegations without the supporting documents and material evidence, in accordance with Article 22.4 of the Law and Rules 29 (2) (h) and 32 (5) of the Rules of Procedure.

21. The Court further considers that the Applicant has not shown a *prima facie* case, in order for the Court to assess the fulfillment of all procedural requirements on admissibility.

22. In addition, the Court emphasizes that it is not a fact-finding court and the burden of proof lies with the Applicant who failed to meet the procedural requirements laid down in the Constitution, the Law and the Rules of Procedure.

23. In sum, the Court considers that the Applicant's Referral does not meet the procedural requirements for further consideration due to non-completion of his Referral with the relevant documents, as required by Article 22.4 and 48 of the Law and Rule 29 (2) (h) of the Rules of Procedure.

24. Therefore, the Court concludes that Referral is to be summarily rejected and thus is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 22.4 and 48 of the Law and Rules 29 (2) (h), 32 (5) and 56 (2) of the Rules of Procedure, on 1 June 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Prof. Dr. Enver Hasani

INDEX OF LEGAL TERMS

B

92, 93, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, 121, 127, 128, 129, 131, 132, 133, 134, 135, 136, 141, 142, 143, 144, 145, 146, 150, 151, 152, 153, 156, 157, 158, 159, 162, 163, 164, 165, 166, 170, 171, 172, 173, 174, 175, 181, 183, 184, 185, 188, 191, 192, 194, 195, 197, 198, 199, 200, 201, 205, 206, 207, 208, 209, 213, 214, 215, 216, 217, 218, 219, 220, 224, 225, 226, 227, 228, 229, 233, 234, 235, 236, 243, 244, 245, 246, 249, 250, 251, 252, 253, 256, 257, 258, 259, 260, 261, 262, 265, 266, 267, 268, 269, 273, 274, 275, 276, 277, 278, 279, 280, 281, 285, 286, 287, 288, 289, 291, 292, 294, 295, 296, 297, 298, 299, 306, 312, 313, 314, 315, 320, 321, 322, 323, 324, 325, 326, 330, 331, 332, 338, 341, 342, 343, 347, 349, 350, 351, 352, 358, 359, 361, 362, 363, 364, 365, 366, 370, 371, 372, 373, 376, 377, 378, 379, 380, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 398, 399, 400, 401, 407, 308, 309, 410, 411, 415, 416, 417, 418, 419, 422, 423, 424, 425, 426, 429, 431, 434, 437, 439, 441, 442, 443, 446, 447, 448, 449, 450, 454, 456, 457, 458, 459, 460, 361, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 474, 475, 476, 477, 478, 479, 480, 481, 483, 484, 485, 486, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 502, 503, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 522, 523, 524, 525, 526, 528, 529, 530, 531, 535, 536, 537, 538, 539, 543, 544, 545, 546, 547, 549, 551, 552, 553, 555, 557, 558,

191, 192, 200, 201, 208, 209, 210, 211, 212, 213, 215, 219, 220, 228, 229, 235, 236, 245, 246, 252, 253, 261, 268, 269, 276, 277, 280, 281, 288, 289, 298, 299, 300, 305, 306, 314, 315, 324, 325, 331, 332, 351, 352, 355, 365, 372, 373, 379, 380, 387, 388, 390, 394, 395, 400, 401, 410, 411, 417, 419, 420, 425, 426, 430, 433, 435, 444, 449, 450, 462, 463, 464, 465, 466, 470, 471, 472, 473, 475, 476, 477, 480, 481, 485, 486, 492, 493, 497, 498, 507, 508, 512, 513, 517, 518, 524, 530, 533, 538, 539, 541, 546, 547, 554, 555,

Judge Rapporteur

14, 20, 23, 27, 30, 33, 36, 39, 42, 47, 50, 53, 56, 61, 64, 65, 79, 82, 90, 93, 100, 103, 107, 110, 112, 115, 133, 136, 143, 146, 150, 153, 156, 159, 163, 164, 166, 172, 175, 182, 185, 189, 192, 198, 201, 206, 209, 217, 220, 226, 229, 230, 236, 243, 246, 250, 253, 254, 259, 262, 266, 269, 274, 277, 278, 281, 286, 289, 290, 296, 299, 300, 312, 315, 316, 322, 325, 329, 332, 349, 352, 363, 366, 370, 373, 377, 380, 385, 388, 392, 395, 398, 401, 408, 411, 416, 419, 423, 426, 447, 450, 458, 463, 464, 471, 473, 474, 481, 483, 486, 490, 493, 495, 498, 499, 505, 508, 510, 513, 515, 518, 522, 525, 528, 531, 536, 539, 544, 547, 552, 555, 556, 558,

Judgment

15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 31, 34, 35, 36, 37, 38, 43, 46, 60, 66, 67, 68, 69, 70, 71, 72, 75, 77, 80, 81, 83, 84, 85, 86, 88, 89, 96, 113, 114, 121, 124, 126, 127, 128, 129, 131, 133, 134, 135, 137, 138, 139, 140, 142, 144, 145, 146,

Z

INDEX OF ARTICLES OF THE CONSTITUTION

Security

31	**Right to Fair and Impartial Trial**	14, 25, 60, 64, 68, 83, 86, 101, 104, 115, 120, 121, 125, 134, 135, 140, 141, 157, 164, 166, 169, 175, 184, 187, 190, 194, 199, 203, 207, 209, 212, 214, 227, 229, 232, 234, 251, 253, 257, 279, 280, 313, 318, 319, 323, 330, 332, 337, 342, 348, 350, 364, 378, 382, 386, 389, 409, 411, 413, 414, 448, 449, 454, 496, 500, 537, 541, 542
32	**Right to Legal Remedies**	25, 64, 68, 183, 184, 187, 218, 220, 222, 234, 235, 238, 337, 350, 352, 359, 378, 382, 417, 418, 420, 496, 500, 502
33	**The Principle of Legality and Proportionality in Criminal Cases**	227, 229, 231, 313, 318, 321
34	**Right not to be Tried Twice for the Same Criminal Act**	251, 253, 255, 313, 318, 321
45	**Freedom of Election and Participation**	431
46	**Protection of Property**	28, 30, 31, 34, 48, 62, 64, 68, 101, 113, 130, 132, 135, 140, 141, 164, 166, 234, 235, 242, 244, 330, 337, 348, 529, 531, 533, 534, 545, 547, 550
49	**Right to Work and Exercise Profession**	40, 54, 91, 92, 96, 99, 173, 175, 267, 268, 272, 287, 289, 292, 295, 395, 417, 418, 420, 448, 449, 454, 479, 480, 516, 517, 520, 521
53	**Interpretation of Human Rights Provisions**	15, 25, 92, 96, 103, 104, 126
54	**Judicial Protection of Rights**	15, 65, 68, 103, 104, 113, 115, 120, 129, 207, 209, 212, 234, 235, 238, 287, 289, 292, 295, 350, 352, 382, 409, 411, 413, 414, 502
55	**Limitations on**	267, 268, 272

_____