



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

Prishtina, on 23 April 2019
Ref. no.:RK 1352/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI13/18

Applicant

Miranda Qerimi

**Constitutional review of Judgment Rev. No. 235/2017 of the Supreme
Court of the Republic of Kosovo of 7 December 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Miranda Qerimi, from Vitia (hereinafter: the Applicant), who is represented by Visar Musa, a lawyer from Ferizaj.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court [Rev. No. 235/2017], of 7 December 2017, in conjunction with the Judgment of the Court of Appeals [Ac. No. 4046/13], of 12 July 2017 and the Judgment of the Basic Court in Gjilan [C. No. 374/12], of 4 September 2013.

Subject matter

3. The subject matter is the constitutional review of the abovementioned decision which rejected the Applicant's revision as ungrounded filed against the Judgment of the Court of Appeals, which reduced the total compensation awarded by the Basic Court in Gjilan.
4. The Applicant alleges that the Supreme Court and other regular courts have violated her rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and the European Convention on Human Rights (hereinafter: the ECHR), but she does not cite any specific article that may have been violated.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] 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 25 January 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), through the mail service.
7. On 5 February 2018, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović and Bekim Sejdiu.
8. On 13 February 2018, the Court notified the Applicant's representative about the registration of the Referral and asked him to submit a power of attorney indicating that he is authorized to file this referral with the Court on behalf of the Applicant.
9. On the same date, the Court sent a copy of the Referral to the Supreme Court and notified the Insurance Company "Kosova e Re" about the registration of the Referral by inviting the latter to submit its comments to the Court, if any, within 15 (fifteen) days from the day of receipt of the notification letter.

10. On 21 February 2018, the Applicant's representative submitted to the Court an old power of attorney in which he did not specifically mention his right to represent the Applicant in the proceedings before the Constitutional Court.
11. Consequently, on 23 February 2018, the Court sent to the Applicant's representative a repeated request to submit a valid power of attorney proving that he was authorized to represent the Applicant in the proceedings before the Court.
12. On 5 March 2018, the Applicant's representative submitted to the Court the requested power of attorney. On the same date, the Court received comments from the Insurance Company "Kosova e Re" regarding the Referral.
13. On 31 May 2018, the Court adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication.
14. On 16 June 2018, the mandate of judges: Snezhana Botusharova and Almiro Rodrigues was terminated. On 26 June 2018, the mandate of judges: Altay Suroy and Ivan Čukalović was terminated.
15. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.
16. On 2 October 2018, the President of the Court rendered the Decision on replacement of Judges: Snezhana Botusharova and Ivan Čukalović as members of the Review Panel, and in their place the members of the Panel were appointed the Judges: Radomir Laban and Remzije Istrefi-Peci.
17. On 3 October 2018, the Court notified the Applicant about the receipt of the comments from the Insurance Company "Kosova e Re" and sent a copy of them.
18. On 3 April 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts of the case

19. On 29 September 2009, a traffic accident occurred in the Municipality of Viti. The participant in this accident, as a pedestrian and injured party, was the Applicant who suffered serious bodily harm from the injuries she received.
20. The driver of the vehicle, who hit the applicant, was found guilty by the Municipal Court in Viti [Judgment P. No. 319/2009 of 9 February 2010, final since 2 March 2010] and was sentenced with a suspended sentence. The driver of the vehicle was insured by the Insurance Company "Kosova e Re".

The first round of the regular court decisions regarding the Applicant's statement of claim for compensation for material and non-material damage

21. On 5 May 2010, after the aforementioned judgment on the guilt of a driver of the vehicle became final, the Applicant filed a claim against the Insurance Company "Kosova e Re" with the Municipal Court in Viti and requested compensation for material and non-material damage caused by the driver of the vehicle, namely the insurer of the Insurance Company "Kosova e Re".
22. On 18 April 2012, the Municipal Court in Viti [Judgment C. No. 110/2010] partially approved the Applicant's statement of claim, so that it obliged the Insurance Company "Kosova e Re" to pay to the Applicant a certain amount of money on behalf of material, non-material damage and the procedural costs.
23. Against the above-mentioned judgment, the Insurance Company "Kosova e Re" filed an appeal with the District Court in Gjilan. The Applicant submitted a response to the appeal.
24. On 7 November 2012, the District Court in Gjilan [Decision Ac. No. 214/12] approved the appeal of "Kosova e Re" and annulled the Judgment of the Municipal Court in Viti [Judgment C. No. 110/2010 of 18 April 2012]. On that occasion, the District Court in Gjilan remanded the case for retrial to the court of first instance, now with the relevant legal amendments, the Basic Court in Gjilan.

Second round of regular court decisions regarding the Applicant's statement of claim for compensation for material and non-material damage

25. On 4 September 2013, the Basic Court in Gjilan by the Judgment [C. No. 374/2012], namely in item I of the enacting clause, partially approved the Applicant's statement of claim, so that it obliged the Insurance Company "Kosova e Re" to pay her a total amount of € 9,041.00 on behalf of material and non-material damage, plus a certain amount for the procedural costs. The Basic Court in Gjilan, in item II of the enacting clause, rejected the remained part of the statement of claim as ungrounded.
26. The Basic Court in Gjilan reasoned its decision stating that the statement of claim should be approved according to the abovementioned amount because the criminal judgment regarding the criminal liability of the insured of the Insurance Company "Kosova e Re" has already become final and his guilt was determined. The Basic Court in Gjilan further reasoned that there is sufficient evidence to prove that the Applicant has suffered serious bodily injuries and fear of varying intensity and that she had to be hospitalized and visited by specialist doctors. Regarding the traffic expertise, on which it supported its decision, the Basic Court in Gjilan stated that it was compiled by the traffic expert who was present at the hearing and answered all questions of the Insurance Company "Kosova e Re" - stating that "*I support the expertise in entirety*" and that "*the claimant [the Applicant] had no primary or secondary omissions*" in the traffic accident and in no way contributed to the accident which is caused entirely by the driver's fault. The Basic Court in Gjilan

concluded its judgment by stating that the statement of claim was partially approved on the basis of the case file and the evidence presented.

27. Against the above-mentioned judgment, the Insurance Company “Kosova e Re” filed an appeal claiming a violation of the provisions of the contested procedure, erroneous or incomplete determination of the factual situation and erroneous application of the substantive law. Insurance Company “Kosova e Re” proposed to the Court of Appeals to quash the Judgment of the Basic Court and remand the case for retrial and reconsideration.
28. Against the same judgment, on the other hand, the Applicant filed a response to the appeal against the allegations of the Insurance Company “Kosova e Re”, requesting that the judgment of the first instance remain in force but only to modify the part that is rejected and her statement of claim be fully approved.
29. On 12 July 2017, the Court of Appeals by Judgment [Ac. No. 4046/13] partially approved the appeal of the Insurance Company “Kosova e Re”. By this Judgment, the Court of Appeals modified the Judgment of the Basic Court in Gjilan [C. No. 374/2012 of 4 September 2013] so that the Applicant should now be compensated by € 3,500.00 for material and non-material damage and not € 9,041.00, as initially determined by the Basic Court in Gjilan.
30. The Court of Appeals considered that the factual situation was correctly determined by the first instance court and that the first instance judgment did not contain essential violations of the provisions of the contested procedure. The Court of Appeals considered that, in the present case, the substantive law was erroneously applied in those parts where the first instance judgment was modified by the Court of Appeals regarding the total amount of compensation.
31. The Court of Appeals reasoned the modification of the Judgment [C. No. 374/2012 of 4 September 2013] of the Basic Court in Gjilan, namely reducing the compensation for material and non-material damage as follows:

“I. The appeal of the respondent Insurance Company “Kosova e Re” headquartered in Prishtina is partly APPROVED”, (...) as regards the non-material damage - the respondent is OBLIGED to pay to the claimant Miranda Qerimi from Vitia for the compensation of suffered physical pains the amount of 2.000 Euros and the amount of 1.500 Euros for the fear, while the other part of the statement of claim for physical pain and fear beyond the adjudicated amount is REJECTED AS UNGROUNDED.

[...]

The Court of Appeals decided as in item I of the enacting clause of this Judgment by modifying the Judgment of the first instance for the category of non-material damage since it assessed that the adjudicated amounts were not in compliance with the purpose that this compensation serves. In any case of non-material damage, the Court shall take into consideration the importance of violation of goods and the purpose that this compensation serves, by taking care that the compensation is in accordance with the purposes of the compensation of the non-material damage, which is a satisfaction for the injured person. Based on this, by taking into consideration the nature of injuries caused to the claimant,

type, length and intensity of physical pain, fear and the manner how the fear was manifested, reduction of general life activity, bodily disfigurement and the other circumstances as the age of the claimant and the best case law for these types of damage, the Court decided as in item I of the enacting clause of this Judgment.”

Regarding the rejected part of the statement of claim for these categories of the damage, the Court of Appeals assesses that the adjudicated amount is not in harmony with the consequences and the purpose to which the compensation serves”.

32. Against the Judgment of the Court of Appeals, the Insurance Company “Kosova e Re” filed a request for revision with the Supreme Court, alleging essential violation of the provisions of the contested procedure and erroneous application of the substantive law with the request that the Judgment of the Court of Appeals be quashed and the matter be remanded for retrial to the Basic Court in Gjilan.
33. Against the same Judgment of the Court of Appeals, the Applicant filed a request for revision with the Supreme Court, alleging that the substantive law was erroneously applied. Through her request, the Applicant requested that the Judgment of the Court of Appeals be annulled and the amounts of compensation accorded by the Judgment of the Basic Court in Gjilan be upheld. She also asked to be compensated for the costs of request for revision and for the court fee.
34. On 7 December 2017, the Supreme Court by Judgment [Rev. No. 235/2017], rejected as ungrounded the Applicant's revision but also the revision of the Insurance Company “Kosova e Re”.

Applicant’s allegations

35. The Applicant alleges that the Supreme Court and the Court of Appeals violated the rights guaranteed by the Constitution and the ECHR, without specifying any concrete article.
36. As to the proceedings conducted before the Court of Appeals, the Applicant states that *“it is incomprehensible how the Court of Appeals”* modified the first instance judgment by damaging her as a claimant despite serious injury she has sustained. The Applicant further alleges that the Court of Appeals has not elaborated at all the written expertise of the expert nor his statement given in the court session, but has made *“enormous”* interference in every part of the first instance judgment thus approving every complaint of the Insurance Company “Kosova e Re” by reducing the amounts of compensation.
37. According to the Applicant, the Court of Appeals had the duty to respect *“the expertise of the traffic expert”* and *“to take into account all the circumstances and the evidence presented by all parties, not arbitrarily to act in an unconstitutional way and contrary to the European Convention”*. According to the Applicant, despite the fact that the first instance court also adjudicated

the amounts “*too low in relation to the consequences caused*”, the Court of Appeals modified the first instance judgment “*to the detriment of the injured claimant once in an accident and now with the damage in terms of the amount of money and I still have poor health and living without any care and monthly income*”.

38. With regard to proceedings before the Supreme Court, the Applicant states that her request for revision was rejected “*without being analyzed by the third instance*”. Further, the Applicant stated that despite the evidence “*on serious violations committed by the Court of Appeals*”, the Supreme Court rejected the request for revision “*by hindering and denying [the Applicant's] elementary right to compensation*”. The Applicant claims that despite the fact that the right to compensation is an elementary right “*guaranteed by the legal provisions but also by the Constitution of the Republic of Kosovo*”, the courts have adjudicated very low amounts to her detriment and such decisions were upheld by the Supreme Court too.
39. Finally, the Applicant requests the Constitutional Court to approve her referral so that the case be remanded for retrial to the first instance or to modify the challenged decisions as in the first instance judgment [Judgment of the Basic Court, Ac. No. 4046/2013 of 12 July 2017]. This, according to the Applicant, is necessary in order for her to enjoy the right to “*be fairly compensated in relation to the damage sustained, which I consider is seriously infringed given the way in which the decision was taken by the second instance and later without being analyzed by the third instance, flaws cannot be improved in relation to the legal provisions of the European Convention incorporated into the Constitution*”.

Comments filed by the Insurance Company “Kosova e Re”

40. On 5 March 2018, the Insurance Company “Kosova e Re”, in the capacity of the interested party, submitted its comments to the Court regarding the admissibility of the Referral in question.
41. The interested party states that the Applicant's Referral is not grounded and that, according to them, the Constitutional Court “*only decides on the compliance of the legal provision with the Constitution and does not decide on other factual or legal issues [...]*”.
42. Further, the interested party states that following the Judgment [Rev. No. 235/2017 of 7 December 2017] they did not consider reasonable to address the Constitutional Court and consequently, they have fulfilled all obligations to the Applicant based on this challenged Judgment of the Supreme Court.

Admissibility of the Referral

43. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and in the Rules of Procedure.

44. In this respect, the Court refers to paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

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.

45. The Court further assess whether the Applicant has met the admissibility criteria as further specified in the Law. In this regard, the Court first refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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 and what concrete act of public authority is subject to challenge.

Article 49
[Deadlines]

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...

46. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, which challenges an act of a public authority, namely Judgment [Rev. No. 235/2017] of 7 December 2017 of the Supreme Court, after having exhausted all legal remedies provided by law.

47. As regards the fulfillment of the requirement laid down in Article 48 of the Law, the Court considers that the Applicant has clarified, in substance, the rights and freedoms which she claims to have been violated. In this regard, the Court notes that although the Applicant does not accurately specify the articles of rights and freedoms, which allegedly have been violated, the Court notes that she has raised allegations that in substance can be understood about what right and freedom she meant, and in the present case, relates to the right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. Therefore, the Court finds that the requirements of Article 48 of the Law have been met.

48. Regarding the fulfillment of the requirement set out in Article 49 of the Law, the Court finds that the Applicant has submitted the Referral in accordance with the deadlines established in that Article.

49. However, in addition to those criteria, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider the Referral, including the requirement that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) states that:

“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim”.

50. In this regard, the Court initially recalls that the Applicant alleges that the Supreme Court, by Judgment [Rev. No. 235/2017 of 7 December 2017] violated her rights guaranteed by the Constitution and the ECHR, namely the right to a reasoned court decision and the right to a real compensation for the damage sustained.
51. The Court notes in this respect that the Applicant's essential allegations relate to alleged violations of procedural safeguards guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The latter are interpreted in detail through the case law of the ECtHR, in accordance with which the Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution. Accordingly, in interpreting the Applicant's allegations, the Court will refer to the case law of the ECtHR and its case law - constructed based on that of the ECtHR.
52. The Court recalls that the Applicant stated that the Supreme Court rejected the request for revision without analyzing it, while the Court of Appeals modified the Judgment of the Basic Court in Gjilan drastically and without considering the injuries she has sustained as a consequence of the accident and consequently with erroneous application of the substantive law. Consequently, the Applicant requested the Court to modify the challenged decisions in order to establish the compensation given in the first instance judgment [Basic Court Judgment, Ac. no. 4046/2013 of 12 July 2017]. Therefore, the Applicant requests the Constitutional Court to confirm the decision through which she was granted 9,041.00 € for material and non-material compensation and to declare as unconstitutional the decision of the Court of Appeals and of the Supreme Court that determined, namely, confirmed the amount of compensation of 3,500.00 €.
53. The Court considers that the Applicant's allegations raise issues of legality as the latter concern the application of the legal provisions and the assessment of evidence on the basis of which the Applicant should be compensated for material and non-material damage caused by the insurer of the Insurance Company “Kosova e Re”. The Court recalls that such allegations of the scope of legality do not fall within the jurisdiction of the Court and, therefore, in principle, cannot be considered by the Court.

54. In this respect, the Court reiterates that it is not its role to deal with errors of facts or law, allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). It cannot itself assess the law that lead a regular court to issue one decision instead of another. If it were different, the Court would act as a “fourth instance court”, which would result in exceeding the limitations provided for by its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law. (See, case *Garcia Ruiz v. Spain*, ECtHR, No. 30544/96, of 21 January 1999, paragraph 28; and see also case: KI70/11, Applicants: *Faik Hima, Magbule Hima dhe Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
55. To give a response to the Applicant's allegations, however, the Court notes that after her request for revision, the Supreme Court rejected as ungrounded her allegations of erroneous application of the substantive law by the Court of Appeals. The Supreme Court, in spite of the allegation of non-reasoning of the court decision, responded to the allegations of a violation of the substantive law raised by the Applicant confirming that there was no violation that would thus make the request for revision as grounded.
56. In this regard, the Supreme Court reasoned the confirmation of the Judgment of the Court of Appeals and consequently confirmed the applicability of the substantive law - including the changes made to compensation in respect of material and non-material damage - by stating as follows:

“The revision of the claimant [the Applicant] and the respondent [“Kosova e Re”] are ungrounded.

Regarding the nature of injuries and length of physical pain, fear, and the scale of disfigurement and reduction of life activity, the need for foreign help, enriched food [is] determined the amount of compensation of the damage and all the other circumstances of the case have been taken into consideration, especially the unpleasant experiences and possible complications during the treatment. On the occasion of determination of the compensation of non-material damage for the reduction of general life activity, the Court of the second instance took into consideration their length, the age of the claimant and the purpose that this compensation serves, and also by taking care not to have this contrary to the purpose of the compensation of this non-material damage.

Due to the above mentioned reasons, it was decided as in the enacting clause of the Judgment by applying Article 22 of the LCP [Law on Contested Procedure]”.

57. In the present case, the Court notes that the Supreme Court only upheld the judgment of the Court of Appeals considering that the latter was taken in full compliance with the applicable, procedural and substantive law.
58. In this regard, the Court recalls that, in rejecting a complaint or, as in the present case, rejecting a request for revision as an extraordinary legal remedy,

the Supreme Court may, in principle, merely approve the reasons for issuing a decision of the lower court, in this case the Court of Appeals. (See cases of ECtHR, *García Ruiz v. Spain*, cited above, paragraph 26, *Helle v. Finland*, Application No. 20772/92, Judgment of 19 December 1997, Reports 1997-VIII, paragraphs 59-60).

59. Similarly and in the same line of reasoning, the Court also recalls that the cases where a court of third instance or of the appeal confirms decisions rendered by the lower courts - its obligation to reason decision-making differs from cases where a court changes lower court decision. In the present case, the Supreme Court did not modify the decision of the Court of Appeals but merely upheld its legality, as, according to the Supreme Court, the factual situation was correctly determined and the decision in the Court of Appeals was in accordance with the substantive law concerning compensation for material and non-material damage. Thus, the Supreme Court has fully confirmed that the reduction of compensation was made in accordance with the legislation in force and that when adjudicating the indemnity the Court of Appeals “took into account their duration, the age of the claimant, and the purpose this reward serves, and this does not contradict the purpose of rewarding such non-material damage.”
60. In this regard, the Court considers that, although the Supreme Court may not have responded to every item raised by the Applicant in her request for revision (see *Van de Hurk v Netherlands*, cited above, paragraph 61), she addressed the Applicant's substantive arguments regarding the application of the substantive law (see ECHR case, *Buzescu v. Romania*, cited above, paragraph 63, and *Pronina v. Ukraine*, Application No. 63566/00, Judgment of 18 July 2006, paragraph 25), and thus the obligation to provide a reasoned court decision was met, in accordance with the requirements of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
61. The Court further considers that the Applicant did not substantiate that the proceedings before the Supreme Court or the Court of Appeals were unfair or arbitrary, or that her fundamental rights and freedoms protected by the Constitution were violated, as a result of erroneous application of the substantive law. The Court reiterates that the interpretation of the law is a duty of the regular courts and is a matter of legality (See: case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).
62. The Court further notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts, namely the Court of Appeals and the Supreme Court, cannot of itself raise an arguable claim of violation of the right to fair and impartial trial. (see, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; see also: case KI56/17, Applicant *Lumturije Murtezaj*, Resolution of Inadmissibility of 18 December 2017, paragraph 42).

63. Therefore, the Court considers that the Applicant has not substantiated the allegations that the relevant proceedings were in any way unfair or arbitrary, and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR. (See *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
64. In conclusion, pursuant to Article 48 of the Law and Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, consequently, inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Article 48 of the Law and Rule 39 (2) of the Rules of Procedure, on 3 April 2019, unanimously

DECIDES

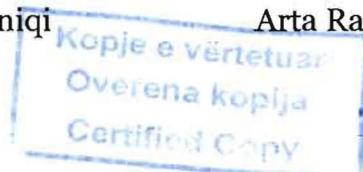
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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