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

Prishtina, on 9 August 2019
Ref. no.:RK 1406/19

RESOLUTION ON INADMISSIBILITY

in

cases no. KI149/18, KI150/18,KI151/18, KI152/18,KI153/18 and KI154/18

Applicant

Xhavit Aliu and 5 others

Constitutional review of 6 decisions of the Supreme Court of the Republic of Kosovo rendered between 11 April and 9 August 2018

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.

Applicants

1. Referral KI149/18 was submitted by Xhavit Aliu; Referral KI150/18 was submitted by Fadil Bekteshi (the son of the deceased Muharrem Bekteshi); Referral KI151/18 was submitted by Vesel Rukolli; Referral KI152/18 was submitted by Brahim Kaqkini; Referral KI153/18 was submitted by Malush Shaqiri and Referral KI154/18 was submitted by Florije Kastrati.

2. All of the abovementioned (hereinafter: the Applicants) are residing in the Municipality of Skenderaj, Drenas and Prishtina.

Challenged decision

3. The Applicants challenge 6 decisions of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), as follows:

    1. Xhavit Aliu - Decision Rev. No. 80/2018, of 11 April 2018;
    2. Fadil Bekteshi - Decision Rev. No. 240/2018, of 9 August 2018;
    3. Vesel Rukolli - Decision Rev. No. 186/2018, of 3 July 2018;
    4. Brahim Kaqkini - Decision Rev. No. 170/2018, of 4 June 2018;
    5. Malush Shaqiri - Decision Rev. No. 222/2018, of 3 July 2018;
    6. Florije Kastrati - Decision Rev. No. 209/2018, of 9 August 2018.

Subject matter

4. The subject matter of the Referrals is the constitutional review of the challenged decisions, which allegedly violate the Applicants' rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

Legal basis

5. The Referrals are based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on 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, no. 01/2018 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 8 October 2018, the Applicant Xhavit Aliu submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 11 October 2018, the Applicants Fadil Bekteshi, Vesel Rukolli, Brahim Kaqkini, Malush Shaqiri and Florije Kastrati submitted their Referrals to the Court.

8. On 10 January 2019, Jahir Bejta, in a capacity of Director of the Association "Ngritja e Zërit", submitted to the Court a letter which, although not expressly referring to any concrete case before the Court, reiterates the allegations and arguments contained in the Applicants' Referrals.

9. On 16 October 2018, the President of the Court appointed in case KI149/18 Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.

10. On 17 October 2018, in accordance with paragraph 1 of the Rule 40 [Joinder and Severance of Referrals] of the Rules of Procedure, the President of the Court ordered the joinder of the Referrals KI150/18, KI151/18, KI152/18,KI153/18 dhe KI154/18 with Referral KI149/18.

11. On 22 October 2018, the Court notified the Applicants about the registration and joinder of the Referrals.

12. On the same date, the Court also notified the Supreme Court about the registration of the Referrals and their joinder.

Summary of facts

13. Between 28 April 2011 and 5 January 2017, the Applicants individually filed a claim with the Basic Court in Mitrovica, Branch in Skenderaj and with the Basic Court in Prishtina, Branch in Gllogoc (hereinafter: the Basic Courts) against the Government of the Republic of Serbia for compensation of material and not -material damage that was caused during the war between 1998 and 1999.

14. During the period 14 October 2013 – 12 January 2018, the Basic Courts, by individual decisions, dismissed the Applicants' claims and declared itself incompetent to decide.

15. The Applicants filed individual appeals against the decisions of the Basic Court with the Court of Appeals of Kosovo on the grounds of essential violation of the provisions of the contested procedure. The Applicants requested that the decisions of the Basic Court be annulled and the Applicants' Referrals be declared admissible.

16. Between 3 June 2016 and 23 March 2018, the Court of Appeals rendered separate decisions by rejecting each of the Applicants' appeals and upholding the decisions of the Basic Court.

17. Each of the Applicants, individually, filed separate request for revision with the Supreme Court, alleging that there has been a violation of the provisions of the contested procedure. They requested that their requests for revision be approved, the decisions of the Court of Appeals and of the Basic Courts be annulled and their legal matter be referred for reconsideration to the Basic Courts. The Applicants alleged that there are other provisions of the Law on

Contested Procedure which regulate the issue of jurisdiction in their cases. In the present case, according to them, the provisions of Article 28 of the Law on Contested Procedure related to the jurisdiction of the courts should have been applied in disputes with an international element.

18. Between 11 April and 9 August 2018, the Supreme Court rendered separate decisions (as stated in paragraph 3 of this Resolution), rejecting the requests for revision of each of the Applicants as ungrounded. The main arguments of the Supreme Court in each of these decisions were as follows:

> *"Taking into account the [provisions of the Law on Contested Procedure] LCP as well as the fact that by the request the respondent Republic of Serbia - Government of R.S. in Belgrade [...], in the present case it is about the legal-property dispute in the foreign state, the norms of international law apply, for which the domestic court is not competent to decide, therefore, the Supreme Court of Kosovo assesses that the Basic Court and the Court of Appeals have correctly applied the provisions of Article 18.3 and Article 39 par. 1 and 2 of the LCP, when they declared itself incompetent to adjudicate this legal matter and dismissed the claim [of the Applicants], since the court with territorial jurisdiction is the court in the territory of which is the seat of the Assembly of the Republic of Serbia, [and] the seat of the Assembly of the Republic of Serbia as a responding party is not in the territory of the Courts of the Republic of Kosovo.*
> *[...]*
> *The provision of Article 28 of LCP, which the Applicants refer to, foresee the jurisdiction of domestic courts in disputes with an international (foreign) elements, cannot be applied in the present case, due to the fact that this case does not have to do with foreign natural persons nor with foreign legal persons, but with a foreign state, with which to the present moment the state of Kosovo, on which territory was caused the damage, has never concluded any international agreement [...] regarding the jurisdiction of the local courts for these types of disputes [...]. The allegation in the revision [of the Applicants] that in the present case we are dealing with the territorial jurisdiction is ungrounded, based on Articles 47, 51 and 61 of the LCP, because according to the assessment of the Supreme Court, these provisions do not relate to the present case [...], the lower instance courts have correctly applied the provision of Article 18.3 of the LCP, taking into account the other reasons mentioned above".*

Applicant's allegations

19. The Applicant's allegations are identical, therefore the Court presents them as same allegations.

20. The Applicants allege that the decisions of the Supreme Court violated their rights guaranteed by Articles: 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, Article 6 (Right to a fair trial) of the ECHR and Article 15 of the UDHR.

21. The Applicants have three main categories of allegations: (i) the application of the principle *„per loci“ [ratione loci],* which, according to the Applicants, implies that the regular courts have competence to review the claims based on the country where the damage is caused; (ii) the obligation of the regular courts to apply international human rights standards, (iii) their right to judicial protection of rights and the right to access to justice.

22. The Applicants initially refer to the issue of territorial jurisdiction (namely the principle *„per loci“*) and the allegations that the regular courts have *"incorrectly applied the applicable law referred to the territorial jurisdiction of the Basic Court [...], since the court with territorial jurisdiction for the adjudication on legal matters, is always the court in the territory of which the crime was committed, moral and material damage! This valid legal definition and position corresponds to the interest of the injured party, the principle of economy in judicial and administrative proceedings, and in accordance with the international principle per loci, the resolution of claims based on the place where the crime was committed".*

23. The Applicants further refer to some examples of the international case law whereby, according to them, the Second World War victims were allowed to *"file individual indictments before the national courts for compensation of damage caused by Germany".* In this regard, they specify that in the cases of Greece and Italy, the individuals were afforded the opportunity to seek compensation for the *"damage caused by Germany during World War II in accordance with international principle "per loci."*

24. The Applicants, referring to Article 21 paragraph 1 of the Constitution, claim that the regular courts *"did not apply international advanced human rights standards. One of the standards is to allow the injured party to initiate the issue of compensation for moral and material damage caused as a result of direct action by the Serbian authorities [...]".*

25. The Applicants, referring to Article 22 of the Constitution, allege that as *"the human rights guaranteed by international conventions, agreements and instruments are a priority in the event of conflict with the laws and other provisions of public authorities",* accordingly, *"the submission of indictments before the domestic courts is also based on Article 6 of the ECHR and paragraph 15 of the UDHR [...]".*

26. The Applicants also state that *"The obligation to apply Geneva Conventions of 1994 is also foreseen by the International Humanitarian Law of Kosovo".* According to the Applicants, the regular courts have violated the constitutional provisions because they have not applied the provisions of the international conventions, as a category of domestic legal order.

27. The Applicants, referring to Article 54 of the Constitution, also state that *"the right to judicial protection of rights, the right to access to justice at the national level and the institutional guarantees for the protection of human rights have been denied".*

28. Finally, the Applicants request the Court to annul the decisions of the regular Courts as well as *"to request the Basic Court in Mitrovica – branch in Skenderaj to reprocess and adjudicate the legal case for compensation of moral and material damage in conformity with applicable law and good court practice [...]."*

29. In addition to all other Applicants, the Applicant Xhavit Aliu (KI149/18) has also attached a letter requesting that the time-limit be returned to the previous situation pursuant to Article 50 [Return to Previous Situation] of the Law, emphasizing that *"due to his mother's forgetfulness, he was late informed about the receipt of the Decision from the Supreme Court of Kosovo, Rev. 80/2018 of 11.4.2018 so that the deadline for submitting the referral for constitutional review of the decision of the Supreme Court expired for 7 days"* and thus could not file the referral within the prescribed time limit of 4 (four) months.

30. Also in case KI150/18 the Applicant is Fadil Bekteshi, the son of the deceased Muharrem Bekteshi, who filed the Referral with the Court on his behalf.

Admissibility of the Referral

31. The Court shall first examine whether the Referrals have met the admissibility requirements established in the Constitution and further specified in the Law and foreseen in the Rules of Procedure.

32. As an initial note, the Court notes that the subject matter of of these joined referrals and the allegations raised in those referrals are similar to a number of other referrals on which the Court has already decided (See, *mutatis mutandis*, cases of the Constitutional Court, KI73/17, KI78/17 and KI85/17, *Istref Rexhepi and 28 others*, Resolution on Inadmissibility of 23 October 2017, cases KI KI97/17, KI99/17, K115/17 and KI121/17 *Mala Mala, Ali Salihu, Nurije Beka and Xhevat Xhinovci*, Resolution on Inadmissibility of 10 January 2018 and Case No. KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, *Fehmi Hoti and 15 others*, Resolution on Inadmissibility of 19 February 2019, and all cases of "Ngritja e Zërit";, see also the relevant legal provisions cited in those cases).

33. Turning to the circumstances of the present cases, 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".*

34. The Court further refers to Article 48 [Accuracy of the Referral], 49 [Deadlines] and 50 [Return to the Previous Situation] 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... ."

Article 50
[Return to the Previous Situation]

"If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired".

35. Furthermore, the Court also refers to the Rules of Procedure, namely subparagraph 1 (c) and paragraph (2) of Rule 39 [Admissibility Criteria], which stipulate as follows:

(1) The Court may consider a referral as admissible if:

[...]

(c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant,

[...]

(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."

Regarding the 4 Applicants [KI151/18, KI152/18, KI153/18, KI154/18]

36. The Court finds that the four Applicants [not including Referral KI149/18 that will be treated separately] are authorized parties, who challenge an act of a public authority after exhaustion of all legal remedies. The Applicants have also

clarified the rights and freedoms they claim to have been violated in accordance with Article 48 of the Law and have submitted the referral in accordance with the deadline set out in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.

37. In addition, in relation to these four referrals, the Court must consider whether the admissibility criterion set out in Rule 39 (2) of the Rules of Procedure is met. In this regard, the Court recalls that the Applicants allege that the regular courts have violated certain rights protected by the Constitution, the ECHR and the UDHR, with particular emphasis on the right to fair and impartial trial and the right to protection of judicial rights.

38. In this regard, the Court notes that the Applicants allege that the regular courts erroneously interpreted the law in force when referring to the territorial jurisdiction of the Basic Court. They further allege that the court in which territory the damage is caused is the court competent to adjudicate their cases. As a result, according to the Applicants, they have been denied "*the right to judicial protection and access to justice*".

39. The Court considers that the Applicants' allegations essentially relate to the interpretation by the regular courts of the relevant legal provisions governing their territorial jurisdiction, namely the competence to deal with the claims of the Applicants.

40. The Court reiterates its position that correct and complete determination of factual situation, as well as the relevant legal interpretations, in principle fall within the jurisdiction of the regular courts. The role of the Constitutional Court is to ensure compliance with the standards and rights guaranteed by the Constitution, namely, it cannot act as a "fourth instance court". (See *mutatis mutandis,* regarding the principle of subsidiarity, Judgment of the European Court of Human Rights of 16 September 1996, *Akdivar v. Turkey,* no. 21893/93, paragraph 65; see also *mutatis mutandis*, regarding the "fourth instance" doctrine, the Constitutional Court cases KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012, paragraph 33; as well as the joined cases KI73/17, KI78/17 and KI85/17 Applicants *Istref Rexhepi and 28 others*, Resolution on Inadmissibility of 27 November 2017, paragraphs 46 and 47).

41. In the present case, the Court notes that the Supreme Court has considered the Applicants' allegations regarding the interpretation made by the Court of Appeals and the Basic Courts of the relevant legal provisions relating to the competence to adjudicate in the Applicants' cases.

42. The Supreme Court, during the examination of the Applicants' allegations, reasoned that the Basic Courts and the Court of Appeals have correctly applied the provisions of the Law on Contested Procedure when they found that they had no jurisdiction to adjudicate in these court cases. Therefore, the Supreme Court rejected the Applicants' allegations, reasoning that the general territorial jurisdiction is in the court in the territory of which is the seat of the Assembly of the Republic of Serbia which is not in the territory of the courts of Kosovo.

43. Thus, in some of its decisions (see, for example, Decision in case Rev. No. 240/2018), the Supreme Court, *inter alia*, reasoned that:

> *"[...] in accordance with the provision of Article 28.2 of the LCP, when it comes to disputes with a foreign element, the court of the country is competent only if this international competence derives expressly from an international agreement or by law itself [...] Article 39.1 of the LCP, foresees that "in the adjudication of disputes against Kosovo [...] the general territorial jurisdiction is vested in the court within whose territory is the headquarters of its assembly. While in paragraph 2 it is foreseen "in the adjudication of disputes against other legal persons, the general territorial jurisdiction is vested in the court within whose territory their headquarters is registered.' Thus, also with the provision of Article 54.1 of the Law on the Resolution of the Collision of Law with the provisions of other states provides that in the legal-property disputes the jurisdiction of the domestic court exists if the property of the respondent or the thing sought by lawsuit is located in our country".*

44. The Supreme Court further specified that in the case of the Applicants "*we are dealing with a foreign state, with which to the present moment the state of Kosovo in the territory of which the damage was caused has not concluded any international agreements for the jurisdiction of the local courts for these types of disputes*".

45. The Court considers that the findings of the Basic Courts, the Court of Appeals and of the Supreme Court were reached after a detailed review of all the arguments and interpretations put forward by the Applicants. In this way, the Applicants were given the opportunity to present at all stages of the proceedings the arguments and legal interpretations they consider relevant to their cases.

46. Accordingly, the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair and that the allegation of arbitrary legal interpretation by the regular courts could not be proved.

47. With regard to the Applicants' allegations as to "*their right to judicial protection and access to justice*", the Court emphasizes the case law of the European Court on Human Rights (ECtHR), on which it is obliged to refer to under Article 53 of the Constitution. On the latter, the Court also highlights its case-law built on the case-law of the ECtHR, where it was emphasized the existence of procedural barriers imposed by the principle of sovereign state immunity - as one of the fundamental principles of international public law - in relation to judicial proceedings that may be conducted against a state in the domestic courts of another state. (See the joined cases of the Constitutional Court, KI96/18, KI97/18,KI98/18, KI99/18,KI100/18,KI101/18, KI102/18,KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18,KI117/18, KI119/18 and KI125/18, Applicant *Fehmi Hoti and 15 others*, Resolution on Inadmissibility of 30 January 2019, paragraphs 58 and 59, see also *mutatis mutandis* the ECtHR cases cited in the aforementioned

case of the Constitutional Court, *Jones and Others v. the United Kingdom*, 34356/06 and 40528/06, Judgment of 14 January 2014 and *Al-Adsani v. United Kingdom*, Application 35763/97 Judgment of 21 November 2001).

48. Moreover, in the case of *Al-Adsani v. the United Kingdom*, the ECtHR reasoned as follows: "*The right of access to court may be subject to limitations, unless the essence of the very right is impaired. Such limitations must pursue a legitimate aim and be proportionate. The recognition of sovereign state immunity in civil proceedings follows the legitimate aim of respecting the international law [...]. As far as proportionality is concerned, the Convention should, as far as possible, be interpreted in accordance with other rules of international law, including those relating to the immunity of States. Thus, the measures taken by the state which reflect the general rules of international law on the immunity of States cannot, in principle, be regarded as a disproportionate limitation of the right of access to the court*". Such an attitude, as far as concerns the tension between the principle of sovereign immunity of states and the right to access to justice (court), was emphasized by the International Court of Justice (see, for example, case: *Germany v. Italy; Greece as an intervening party*, Judgment of 3 February 2012).

49. In the light of the foregoing arguments, the Court considers that it is important to emphasize the fact that the regular courts of Kosovo, in the case of the Applicants, did not deal with, namely, did not adjudicate regarding the Applicants' right to seek compensation of damage, but only with respect to the territorial jurisdiction of the courts of Kosovo to conduct proceedings against another state.

50. While referring to the Applicants' allegations about the application of the Geneva Convention in their judicial cases, the Court notes that the Applicants have only referred to this Convention but did not provide any further arguments regarding this allegation. (See, for the ultimate authority in this regard, the joined cases of the Constitutional Court, KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18,KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, cited above, paragraph 61).

51. The Court reiterates its general view that the mere fact that the Applicants do not agree with the outcome of the decisions of the Supreme Court, or of other regular courts, as well as the mere mentioning of articles of the Constitution or of international instruments, are not sufficient to build a reasoned allegation of constitutional violations. When such violations of the Constitution are alleged, the Applicants must provide a reasoned allegations and convincing arguments. (See the case of the Constitutional Court, KI136/14, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, paragraph 33).

52. The Court also notes that the submitted facts and the allegations of the Applicants are almost identical to some earlier Referrals, for which the Court has decided that they are inadmissible, as manifestly ill-founded on constitutional basis. (For the latest authority in this regard, see the joined cases of the Constitutional Court, KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18,

KI116/18, KI117/18, KI119/18 and KI125/18, cited above, cases KI73/17, KI78/17 and KI85/17, cases KI97/17, KI99/17, K115/17 and KI121/17, cited above). All these referrals raised almost identical allegations with the referrals addressed in this decision and, as in those cases, even in these joined cases, the Court considers that they are to be declared as ungrounded on constitutional basis.

53. In sum, the Court considers that the Applicants' Referrals do not prove that the proceedings before the regular courts have caused a violation of their rights guaranteed by the Constitution, namely Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, Article 6 of the ECHR , and Article 15 of the UDHR.

Regarding the Applicant Xhavit Aliu [KI149/18]

54. With respect to this Referral, the Court finds that the Applicant is an authorized party that challenges an act of a public authority and has exhausted all legal remedies. However, before examining other admissibility requirements, the Court must examine the fulfillment of the requirement of filing the referral within a period of four (4) months, as provided for in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.

55. The Court recalls that the Applicant challenges the constitutionality of Decision Rev. No. 80/2018 of the Supreme Court of 11 April 2018, while he filed the Referral KI149/18 to the Court on 8 October 2018, thus, after a period of four (four) months.

56. With regard to the delay in submitting the Referral, the Court recalls that the Applicant requests a return to the previous situation in accordance with Article 50 of the Law, on the grounds that *"his mother's forgetfulness, he was late informed about the receipt of the Decision from the Supreme Court of Kosovo, Rev. 80/2018 of 11.4.2018 so that the deadline for submitting the referral for constitutional review of the decision of the Supreme Court expired for 7 days"*.

57. In support of his arguments, the association "Ngritja e Zërit" has stated that they *"do not correspond with any Basic Court on legal acts regarding compensation of damage caused as a consequence of war"*, consequently when the party came to the office and was notified about the possibility of filing the Referral to the Constitutional Court, consequently *"for 7 days the deadline for submitting the referral for constitutional review of the decision of the Supreme Court has expired"*.

58. In the present case, The Court notes that the Applicant's reasoning for not submitting the Referral to the Court in accordance with the legal deadline set out in Article 49 of the Law is of subjective nature and relates to his inability to recognize the law and his rights. However, the Court considers that the Applicant did not provide any evidence to prove that due to the objective circumstances beyond his control he failed to submit the Referral within the 4 (four) month legal deadline. In addition, the Applicant did not provide

evidence that indicates that the Referral was filed within 15 (fifteen) days from avoiding the obstacle that would justify the request for return to the previous situation, as required by Article 50 of the Law.

59. Therefore, the Court finds that the Applicant did not substantiate his request for return to the previous situation, pursuant to Article 50 of the Law and, therefore, his request should be rejected.

60. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt within a reasonable time and that past decisions are not continually open to constitutional review. (See, ECtHR case, *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, Decision of 25 August 2005; see also, the case of the Constitutional Court KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24).

61. Based on the foregoing, it follows that the Referral [KI149/18] of the Applicant Xhavit Aliu was filed out of the legal time limit provided by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and as such is inadmissible.

As to the Applicant Fadil Bekteshi [KI150/18]

63. The Court initially recalls that the Referral KI150/18 was submitted by Fadil Bekteshi, the son of the deceased Muharrem Bekteshi. All decisions of the regular courts challenged before this Court were rendered on behalf of the deceased, namely the Applicant's father.

64. In this regard, the Court must first assess whether the admissibility requirements established by the Constitution, the Law and the Rules of Procedure have been met as regards the Referral KI150/18.

65. As a matter of priority of the admissibility to be considered in the present case, is the fact whether Referral KI150/18 was submitted by an authorized party as required by paragraphs 1 and 7 of Article 113 of the Constitution - cited above. This question arises as to the fact that the Applicant is the son of the deceased and the Court must determine whether his son can complain for and on behalf of his father, in the present case concerning rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. In order to legitimize the Applicant as an authorized party, the Court must grant him the status of indirect or direct victim.

66. In this respect, it is well known that individuals who claim to be direct victims of potential violations of the Constitution or other international instruments protecting human rights and freedoms may appear before this Court. Also, the case law of this Court shows that, in certain cases, indirect or direct victims may also be admitted as authorized parties. (See the case of the Constitutional Court regarding Article 25 of the Constitution in conjunction with Article 2 of the ECHR, KI41/12, *Gëzim and Makfire Kastrati*, Judgment of 26 February 2013).

67. However, the case law of the Court to date has not stated that in cases such as the present one, an individual who claims to be an indirect or direct victim of human rights and freedoms may be legitimized as an authorized party as regards Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The Court recalls that the rights complained of by the son of the deceased who was a party to the proceedings before the regular courts relate to the claim of the now deceased to be compensated for war damages. His request, the regular courts - including the Supreme Court – was rejected for jurisdictional issues as inadmissible because it was considered that the state of Serbia could not be sued in the courts of Kosovo (See paragraphs 18 and 46 of this Resolution explaining the reasons for rejecting the Applicant's and others' Referral).

68. For the purpose of determining the status of the victim for the Applicant, the Court refers to the ECtHR case law, which provides for cases in which an indirect or direct victim may appear before it and be legitimized as an authorized party. In general, to date, the ECtHR has acknowledged the status of indirect or direct victim only to close relatives or *"next-of-kin"* who have succeeded in proving that they have significant interest in the issue of the deceased person with whom they were related.

69. The status of an indirect or direct victim is continuously accorded to persons who raise allegations about the death or disappearance of their relative. (See ECtHR case: *Varnaava and others v. Turkey*, applications No. 16-64/90 and 8 others, Judgment of 18 September 2009, paragraph 112). This approach of the ECtHR is justified by the fact that Article 2 of the ECHR is one of the most fundamental provisions of the entire ECHR defence system. (See ECtHR case: *Fairfield v. United Kingdom*, application no. 24790/04, Judgment of 8 March 2005). For Article 2 of the ECHR, the ECtHR has acknowledged as indirect or direct victims close family members, in particular cases related to the positive obligation of the state to protect their right under Article 2 of the ECHR. (See ECtHR cases: *Van Colle v. United Kingdom*, no. 7678/09, Judgment of 13 November 2012, paragraph 86; and *Tsalikidis and others v. Greece*, application no. 73974/14, Judgment of 16 November 2017, paragraph 64).

70. Relatives of the deceased, as indirect or direct victims, may also file complaints under Articles 3 and 5 of the ECHR - on behalf of the deceased or missing person in the event that the allegation of a violation is closely connected with the death or disappearance and as such raises issues protected by Article 2 of the ECHR. (See ECtHR case: *Khayrullina v. Russia*, application no. 29729/09, Judgment of 19 December 2017, paras. 91-92 and 100-107).

71. The ECtHR has recognized this status to ex-spouses (see cases: *McCann and others v. the United Kingdom,* applications no. 18984/91 and others, Judgment of 27 September 1995); unmarried partners (see case: *Velikova v. Bulgaria*, no. 41488/98, Judgment of 18 May 2000); parents (see case: *Ramsahai and Others v. the Netherlands*, application no. 52391/99, Judgment of 15 May 2007); sisters or brothers (see case: *Andronicou and Constantinou v. Cyprus*, no. 25052/94, Judgment of 9 October 1997); children (see case:

McKerr v. United Kingdom, no. 28883/95, Judgment of 4 May 2001); nephews and nieces (see case: *Yaşa v. Turkey*, no. 22495/93, Judgment of 2 September 1998).

72. The Court notes, in relation to these cases, that none of them concerns the right to fair and impartial trial guaranteed by Article 6 of the ECHR. In fact, in cases which were not closely related to the "death" or "disappearance" of the direct victim, the ECtHR applied a much more restrictive approach. (See Case: *Karpylenko v. Ukraine*, application No. 15509/12, Judgment of 11 February 2016, paragraph 104).

73. For example, in a case concerning the prohibition on assisting suicide allegedly in contravention of Articles 2, 3, 5, 8, 9 and 14 of the ECHR, the ECtHR stated that the sister-in-law of the deceased complained of rights which were non-transferable as a category of "non-transferable rights" and therefore could not be regarded as an indirect or direct victim in that particular case. (See cases: *Sanles Sanles v. Spain*, Case No. 48335/99, Judgment of 26 October 2000 and *Biç and Others v. Turkey*, Case No. 55955/00, Judgment of 2 February 2006 - in conjunction with Articles 5 and 6; and cases: *Fairfield v. the United Kingdom*, cited above, - in conjunction with Articles 9 and 10; and the case: *Roigas v. Estonia*, application No. 49045/13, Judgment of 12 September 2017 - reference to Article 8).

74. Another example that demonstrates that the relatives of the deceased person cannot complain about the rights guaranteed by Article 6 of the ECHR is the case *Biç and others v. Turkey*, cited above. In that case, the wife and children of Mr. Ihsan Biç, three months after the death of the latter, among other things, complained that he had not been tried by an independent and impartial tribunal and that the proceedings against him had expired within a reasonable time. They also complained of a violation of Article 5 of the ECHR. The ECtHR clarified that the complaints submitted by them falling under Articles 5 and 6 of the ECHR do not fall under the category of rights which relatives could complain about after the death of the person who was the main subject of the court proceedings. (See Case: *Biç and others v. Turkey*, cited above, paragraphs 17-24).

75. In line with the ECtHR case law, outlined above, the Court finds that the son of the deceased in case KI150/18 cannot be legitimized as an authorized party in the present case as the rights and freedoms for which he specifically complains are not such that they could regard him as an indirect or direct victim.

76. Therefore, in accordance with Articles 113.1 and 113.7, Article 47 of the Law and Rule 39 (1) (a) of the Rules of Procedure, Referral KI158/18 is to be declared inadmissible as it was submitted by an unauthorized party.

Conclusions

77. In conclusion, the Court finds that:

(i) with regard to 4 Applicants KI151/18, KI152/18, KI153/18, KI154/18, their referrals are manifestly ill-founded on constitutional basis and are to be declared inadmissible in accordance with Rule 39 (2) of the Rules of Procedure;
(ii) with regard to Applicant KI149/18, his referral was submitted out of the legal deadline provided by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and as such is inadmissible.
(iii) with regard to Applicant KI150/18, the Referral was submitted by an unauthorized party and not in accordance with Articles 113.1 and 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (a) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Articles 48 and 49 of the Law and Rules 39 (1) (a) and (c) and 39 (2) of the Rules of Procedure, on 19 July 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; and

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Safet Hoxha Arta Rama-Hajrizi