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

Prishtina, on 2 December 2019
Ref. no.:RK 1471/19

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RESOLUTION ON INADMISSIBILITY

in

cases No. KI176/18, KI183/18 and KI06/19

Applicant

Zeqir Demaku, Jahir Demaku, Fadil Demaku, Nexhat Demaku, Isni Thaçi, Bashkim Demaj, Selman Demaj, Driton Demaj and Agim Demaj

Constitutional review of Judgment Pml. No. 158/2018 of the Supreme Court of Kosovo of 26 September 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

Applicant

1. Referral KI176/18 was submitted by Zeqir Demaku, Jahir Demaku, Fadil Demaku and Nexhat Demaku from Gllogoc; Referral KI183/18 was submitted by Isni Thaçi from Prishtina, represented by Artan Qerkini, Law Firm "Sejdiu & Qerkini" l.l.c.; Referral KI06/19 was submitted by Bashkim Demaj, Selman Demaj, Driton Demaj and Agim Demaj from Gllogoc (hereinafter: the Applicants).

Challenged decision

2. The Applicants challenge Judgment Pml. No. 158/2018 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) of 26 September 2018.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicants' rights guaranteed by Article 24 [Equality Before the Law], and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR), as well as Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

4. The Applicants of Referral KI176/18 also allege that the Supreme Court, by the challenged decision, violated the right of the convict S.S. guaranteed by Article 29 [Right to Liberty and Security] of the Constitution.

5. The Applicants of Referral KI176/18 request the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely *"to suspend the execution of the challenged decision"*.

6. The Applicants of Referral KI06/19 request the Court to impose an interim measure, namely *"suspension of the execution proceeding of sentences by the Basic Court in Mitrovica, cases number ED: 123, 125, 126 and 127, until the Constitutional Court of the Republic of Kosovo decides this case"*.

Legal basis

7. The Referral is based on Article 113, paragraph 7 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 27 [Interim Measures] and 47 [Individual Requests] of 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] and Rule 56 [Request for Interim Measures] 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 30 May 2018, the Constitutional Court rendered Judgment in cases No. KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17, Applicant: *Isni Thaçi, Zeqir Demaku, Fadil Demaku, Nexhat Demaku, and Jahir Demaku*, Constitutional review of Judgment Pml. KZZ. No. 322/2016 of the Supreme Court of Kosovo, of 19 July 2017 (hereinafter: the Judgment of the Court in cases No. KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17). The Court declared invalid Judgment Pml. KZZ. 322/2016 of the Supreme Court of 19 July 2017.

9. On 7 November 2018, the Applicants of Referral KI176/18 filed with the Court a request for enforcement and clarification of the Judgment in cases No. KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17.

10. On 14 November 2018, the Applicants of Referral KI176/18 notified the Court that they withdraw the request to enforce and clarify the Judgment in cases No. KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17.

11. On the same date, the Applicants KI176/18 filed with the Court a request for constitutional review of the challenged decision.

12. On 15 November 2018, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur regarding Referral KI176/18 and the Review Panel, composed of Judges: Arta Rama-Hajrizi (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci.

13. On 19 November 2018, the Court notified the Applicants of Referral KI176/18 about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

14. On the same date, the Applicant of Referral KI183/18 filed the Referral with the Court.

15. On 29 November 2018, in accordance with Rule 40 (1) of the Rules of Procedure, the President of the Court ordered the joinder of Referral KI183/18 with Referral KI176/18. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as that decided by the President on the appointment of Judge Rapporteur and Review Panel in the case KI176/18.

16. On 30 November 2018, the Court notified the Applicant's representative of Referral KI183/18, Applicants of Referral KI176/18 and the Supreme Court about the registration and joinder of Referrals.

17. On 24 December 2018, the Applicants of Referral KI06/19 filed the Referral with the Court.

18. On 17 January 2019, in accordance with Rule 40 (1) of the Rules of Procedure, the President of the Court ordered the joinder of Referral KI06/19, with Referrals KI176/18 and KI183/18. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as decided by the President on the appointment of Judge Rapporteur and Review Panel in case KI176/18.

19. On 22 January 2019, the Court notified the Applicant's representative of Referral KI06/19, the Applicants of Referral KI176/18, the Applicant's representative of Referral KI183/18 and the Supreme Court about the registration of Referral KI06/19 and joinder of Referrals.

20. On 30 January 2019, the Applicants of Referral KI06/19 submitted to the Court 4 Referral forms signed by them, which included only personal information and stated the challenged decision and the decisions preceding the challenged decision.

21. On 3 April 2019, the Applicant Nexhat Demaku requested the Court to give priority to the proposal for interim measure - prohibition of the execution of the challenged decision.

22. On 8 April 2019, the Ombudsperson filed a submission with the Court *"Legal Opinion of the Ombudsperson of the Republic of Kosovo in the capacity of Friend of the Court (Amicus Curiae) for the Constitutional Court of the Republic of Kosovo"* regarding the case KI176/18, by which it submitted the assessment of this constitutional institution on Judgment Pml. No. 158/2018 of the Supreme Court of Kosovo, of 26 September 2018 (hereinafter: *Amicus Curiae*).

23. On 11 April 2019, the Judge Rapporteur, pursuant to Rule 55 of the Rules of Procedure, after consulting with the members of the Review Panel, approved the request of the Ombudsperson to submit *Amicus Curiae* regarding the case of the Applicants and informed all the judges of the Court about this.

24. On 12 April 2019, the Court notified the Applicants and the Supreme Court about *Amicus Curiae* submitted by the Ombudsperson.

25. On 13 November 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

26. On 8 November 2013, the EULEX Prosecutor of the Special Prosecution Office of the Republic of Kosovo (SPRK Prosecutor) filed an Indictment (No. PPS88/n) against the Applicants and some other persons on the grounded suspicion that in 1998 they had committed the criminal offenses sanctioned by Article 152 [War Crimes in Serious Violation of Article 3 Common to the Geneva Conventions] in conjunction with Article 31 [Co-perpetration] of the Criminal Code of the Republic of Kosovo (the CCRK).

27. On 27 May 2015, the Basic Court rendered Judgment (P58/14), which found the Applicants guilty of the abovementioned criminal offenses, and sentenced them as follows: Isni Thaçi, Zeqir Demaku and Jahir Demaku with 7 (seven) years of imprisonment each, while Bashkim Demaj, Selman Demaj, Driton Demaj and Agim Demaj, as well as Fadil Demaku and Nexhat Demaku with 3 (three) years of imprisonment each.

28. The Applicants filed their appeals against the Judgment of the Basic Court (P58/14) of 27 May 2015, on the grounds of essential violations of the criminal procedure provisions, violation of criminal law, incomplete and erroneous determination of factual situation and decision on criminal sanction. The

Applicants challenged, *inter alia*, the composition of the trial panel of the Basic Court.

29. The appeal was also filed by the SPRK Prosecutor, because of the decision on the criminal sanction, requesting to increase the punishment adequately to all Applicants.

30. On 14 September 2016, the Court of Appeals by Judgment (PAKR No. 456/15) rejected the appeals of the SPRK Prosecutor and of the Applicants and upheld the Judgment of the Basic Court (P58/14). The Court of Appeals modified *ex officio* the Judgment of the Basic Court regarding the Applicants Isni Thaci, Zeqir Demaku and Jahir Demaku considering the criminal offense for which they were convicted as the criminal offense in continuation. In addition, the Court of Appeals modified the sentences imposed by the Basic Court in relation to Isni Thaqi from 7 (seven) years to 6 (six) years and 6 (six) months and for Applicants Zeqir Demaku and Jahir Demaku from 7 (seven) years to 6 (six) years.

31. The Applicants filed requests for protection of legality with the Supreme Court against the Judgment of the Basic Court (P58/14) and Judgment of the Court of Appeals (PAKR No. 456/15), on the grounds of essential violations of the provisions of the criminal procedure and violations of the criminal law. The Applicants alleged, among others that, the trial panel of the Basic Court, namely, the appointment of Judge [A.A.G] in the trial panel of the Basic Court, was in violation of the rules applied by EULEX.

32. On 19 July 2017, the Supreme Court, by Judgment (Pml. KZZ. No. 322/2016), rejected as ungrounded the requests for protection of legality of the Applicants against the Judgment of the Basic Court and the Judgment of the Court of Appeals. The Supreme Court, in relation to the Applicants' objections to the application of the rules on the selection of the trial panel of the Basic Court, reasoned that "*the appointment of Judge [A. A.G.] cannot be qualified as a violation of Article 384 (1.1) or Article 384 (1.2) of the CPC. The Panel notes that even if there has been a violation of the EULEX internal regulation (as long as the alleged violations do not constitute a violation of the relevant law - as is the request in question that the CPC has been violated) then it would be a matter of discretion within the EULEX disciplinary/administrative authorities [...]*".

33. On 18 October 2017, the Applicants Fadil Demaku and Nexhat Demaku filed the request for review of criminal procedure with the Basic Court in Mitrovica.

34. On 11 and 12 December 2017 respectively, the Applicants KI176/18 and KI183/18 filed a Referral with the Court challenging Judgment Pml. KZZ. No. 322/2016 of 19 July 2017. Their Referrals were registered with the Court as cases No. KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17. The Applicants alleged before the Court that Judgment Pml. KZZ. No. 322/2016, of the Supreme Court, violated their right to fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, *inter alia*, because of

irregularities in the appointment of judges to the trial panel of the Basic Court and non-reasoning of decisions.

35. On 12 February 2018, the Basic Court rejected as ungrounded the request for review of criminal procedure regarding the Judgment of the Basic Court P. No. 58/14 filed by the Applicants Fadil Demaku and Nexhat Demaku.

36. On 30 May 2018, the Constitutional Court by Judgment in cases No. KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17, found violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and paragraph 1, of Article 6 (Right to a fair trial) of the ECHR, holding that Judgment Pml. KZZ. 322/2016 of the Supreme Court, failed to provide a thorough assessment and justification as to whether the appointment of judges to a trial panel in the case of the Applicants in the Basic Court was in accordance with the entirety of the applicable legal provisions.

37. On 26 September 2018, the Supreme Court rendered the new Judgment, namely, the second one on the Applicants' case, Pml. No. 158/2018, by which it rejected as ungrounded the requests for protection of legality of the Applicants, and another person against the Judgment of the Basic Court and the Judgment of the Court of Appeals. The Supreme Court, regarding the Applicants' objections to the application of the rules on the selection of the trial panel to the Basic Court, namely the appointment of A.A.G. to the trial panel, it reasoned that in the request for protection of legality is not challenged that she was on this list, but rather whether she was a judge by order. The Supreme Court held that the allegation was unsubstantiated, and consequently found that the Judgment of the Basic Court and the Judgment of the Court of Appeals did not constitute essential violation of the criminal procedure provisions set out in Article 384 par.1.1 and 1.2 of the Criminal Procedure Code.

Applicant's allegations

38. The Applicants of Referrals KI176/18 and KI183/18 allege violations of their individual rights, guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR, and Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

Allegations of the Applicants Zeqir Demaku, Jahir Demaku, Fadil Demaku and Nexhat Demaku (KI176/18)

39. The Applicants of Referral KI176/18 initially state that the irregularities in the composition of the trial panel of the Basic Court were held by the Constitutional Court, which *"stated that the reasons were lacking and did not accept the legal interpretation and reasoning of [the Supreme Court]."* In this regard, they refer to the part of the Judgment of the Court in cases No. KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17, dealing with the violations found in connection with the reasoning of Decision, Pml. KZZ. 322/2016, of the Supreme Court as to the appointment of Judge A.A.G. in the trial panel of the Basic Court.

40. The Applicants of Referral KI176/18 allege that the Supreme Court did not enforce the Judgment of the Constitutional Court because, in reviewing its decision repealed by the Constitutional Court, the Supreme Court could not *"use other reasons for the same facts that have already occurred [...] except through the repetition of a trial, with a new trial panel, where the parties have the opportunity, at all instances, to have regular, impartial and fair trial."*

41. The Applicants of Referral KI176/18 further allege that the *"the irregular formation of the trial panel occurred [...] not in the [Supreme Court] but in the [Basic Court] as a court of fact."* Therefore, according to them, contrary to the instructions of the Constitutional Court *"The Supreme Court [...] by the challenged decision, [...] has reopened the court proceedings at the stage of reviewing [the request for the protection of legality] of the Applicants, where the original constitutional violations of Article 31 of the Constitution and Article 6.1 of the ECHR have not occurred."*

42. Therefore, they complain that, *"[The Supreme Court by the challenged decision] committed new constitutional violations [...], namely infringement of the right to a fair and impartial trial by Article 31 of the Constitution and the right to a fair trial under Article 6.1 of the ECHR, because it did not remand the case in the first instance, where violation of the constitutional rights have occurred"*, alleging that the Supreme Court exceeded its jurisdiction as it *"cannot be substituted instead of [the Basic Court] as a court of fact: the role [of the Supreme Court] is to remedy legal violations, not those of a factual nature"*.

43. The Applicants of Referral KI176/18, referring to the Judgment of the Court in case no. KI78/12, point out that the Supreme Court *"in the past had its correct case law of how to act when [the Constitutional Court] annuls its decisions: each time the case is remanded to the first instance where the constitutional violation found by a decision of [the Constitutional Court] is committed. This is what the Supreme Court itself has acted in the past when its decisions were quashed by the [Constitutional Court]"*.

44. The Applicants of Referral KI176/18 refer also to a case of the Supreme Court (Judgment Pml. No. 223/2017) of 11 June 2018, in which they held that the Supreme Court *"found that due to unlawful composition of the trial panel in a Kosovo Basic Court, a new trial with a new trial panel in the first instance court should be convened"*.

45. With regard to the alleged violations of Article 29 of the Constitution, the Applicants of Referral KI176/18 complain that, *"from the date the [Supreme Court] Judgment Pml. KZZ no. 322/2016 of 19 July 2017 was declared invalid [...], the detention on remand of [SS] constitutes an unlawful deprivation of liberty, namely a constitutional violation of Article 29.1 [Right to Liberty and Security] of the Constitution"*. According to their allegations,*" [from] the moment the Judgment Pml. KZZ No. 322/2016 is declared invalid [...] the legal basis for [S.S.] imprisonment does not exist, namely another basis and another legal reasoning for his detention [...]"*.

46. The Applicants KI176/18 also request the imposition of interim measures to suspend the execution of the challenged decision until the Court decides the case. In this regard, the Applicants allege that the fact that the Supreme Court did not take into account the findings of the Constitutional Court and the detention of [SS], *"constitutes an additional reason for [the Constitutional Court] to urgently impose interim measure, prohibition of the enforcement of the challenged decision, Judgment [of the Supreme Court] Pml. no. 158/18, as an arbitrary decision rendered for the purpose of obstructing the instructions of Judgment GIK No. Ref. 1248118"*.

47. Finally, the Applicants KI176/18 request the Court to declare their Referral admissible, finding that the right to a fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR has been violated, and to repeal Judgment Pnl. No. 158/2018of the Supreme Court.

Allegations of Applicant Isni Thaçi (KI183/18)

48. The Applicant of Referral KI183/18, alleges that the Supreme Court by the challenged decision violated his right to equality before the law guaranteed by Article 24 of the Constitution, as in a similar case (no. 938/13), approved the request for protection of legality by stating that *"the majority of the members of the panel are of the opinion that the relevant laws do not support the possibility that any trial panel may consist of EULEX judges only"*. In this regard, Applicant of Referra; KI183/18 alleges that *"[t]his correct attitude of one of the Supreme Court panels has not been taken into consideration by [...] the Panel which has decided the case of [the Applicants]] although also in [their] case the panel was composed entirely of EULEX judges."*

49. Therefore, according to him, by issuing two different decisions for the same circumstances, *"the Supreme Court of Kosovo has acted contrary to the principle of equality before the law and the principle of legal certainty of the citizens of Kosovo"*.

50. As to the allegation of a violation of the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the Convention, the Applicant of Referral KI183/18 claims that the precondition of a fair trial is the impartiality of the Court. In this regard, invoking the ECtHR case *Driza v. Albania*, it states that according to the ECtHR *"The purpose of the entire activity of the courts and of Article 6 of the Convention itself is to ensure an independent and impartial trial. This implies a total lack of prejudice on the part of the trial panel"*.

51. As to the composition of the Trial Panel in the Basic Court, the Applicant of Referral KI183/18 complains that *"[The appointment of [A.A.G.] in the trial panel of this case was made in violation of the procedures, policies and rules of selection of the trial panels. [...] According to the applicable list, she was not the EULEX judge by order to be assigned to the case. Contrary to this list, she was chosen by [Presiding Judge D.S.] as a member of the trial panel, because she was his girlfriend and because he wanted her to advance in her*

career, enabling her to adjudicate a war crimes case. [A. A. G.] was then promoted to a higher court in Kosovo".

52. The Applicant of Referral KI183/18, alleges that *"the [r]elationship of these two judges [D. S.] and [A.A.G.] constitutes a conflict of interest, of which the defense was not aware"*. The Applicant understood about this conflict of interest only *"in November 2016 [when] the defense of [the Applicant] received a number of emails from EULEX employees reflecting irregularities in the formation of the trial panel [and] reflecting the bias of this panel. For this reason [...] it was requested through a request for protection of legality that the President of the Assembly of EULEX Judges [M.S.] be heard in a capacity of a witness"*, but this, according to the Applicant, was not allowed by the Supreme Court.

53. The Applicant of Referral KI183/18, clarifies that *"Judge [A.A.G.] has been assigned to the Trial Panel by another court, at the request of the Presiding Judge of case P. 58/14. This practice of appointing EULEX judges is not provided for either by the abovementioned law or by the relevant EULEX Regulation on the formation of trial panels"*. Therefore, he raises the question *"[w]hat is the purpose of a regulation on the manner of formation of trial panels if the latter does not apply as it is written"*.

54. Referring to the EULEX Guideline for the Assignment of Judges in Criminal Cases, states that *"The regulation states that a judge assigned to Prihstina [A.A.G.] may serve as a substitute in Mitrovica, but not as a member of the Trial Panel. The purpose of the EULEX Regulation has been and remains the avoidance of irregularities and the guarantee of impartiality in the formation of panels"*. According to him, no provision of the Regulation provides for the right of the Presiding of the Trial Panel to request a member of the Trial Panel from another court as has been the case in criminal case P. 58/14. Therefore, he claims that *"in the present case we are dealing with an irregular adjudication by a Trial Panel which was not constituted under the legal provisions"*.

55. The Applicant of Referral KI183/18, furthermore alleges that despite the fact that the email correspondence [of M.S.] provided sufficient evidence of the partiality of the trial panel, that evidence was not dealt with at all and that not dealing with the allegations of the lack of impartiality of the trial panel, the Supreme Court has not dealt with one of the main allegations of the defense. The Applicant of Referral KI183/18 further refers to the case of ECtHR *Kyprianou v. Cyprus*, stating that *"Justice must not only be given, it must also be seen that justice is being given. This means that the impartiality of the court is compromised even when it is simply suspicious"*.

56. The Applicant of Referral KI183/18 also alleges that in his case the principle of equality of arms was violated because *"Although the defense insisted that to summon the expert [M. G.] who compiled the expertise together with the expert [C. B.], the defense request had been deaf to the ears "*. According to him, this action violates the requirements of Article 338 paragraph 1 of the Criminal Procedure Code (CPC).

57. The Applicant of Referral KI183/18 also complains that witness B was declared a "hostile witness" without legal basis, as the CPC does not recognize the institute "hostile witness". Article 2 of the CPC states that *"A criminal sanction may be imposed on a person who has committed a criminal offence only by a competent, independent and impartial court in proceedings initiated and conducted in accordance with the [CPC] procedure"*, whereas, *"the finding of the [Supreme] Court that the witness B. should be allowed to be considered a "hostile witness", is not consistent, based on Article 6 of the [ECHR], because [the ECHR] does not protect the rights of state authorities, such as the State Prosecutor is in fact but protects human rights in relation to state authorities"*.

58. Finally, the Applicant of Referral KI183/18 requests the Court to declare his Referral admissible; to find the violation of the right to equality before the law guaranteed by Article 24 of the Constitution, the right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, and Article 53 of the Constitution ; and requests that the Court determine any rights or responsibilities of the parties to this Referral that the Court deems reasonable and legally grounded.

Allegations of Applicants Bashkim Demaj, Selman Demaj, Driton Demaj and Agim Demaj (KI06/19)

59. The Applicants of Referral KI06/19 initially maintain that before the Court "*the proceedings of dealing with the Referral for the assessment of the Constitutionality and legality of Judgment PML. 158/2018 of 26.09.2018 is being conducted, by Jahir, Zeqir, Fadil and Nexhat Demaku*".

60. In this regard, they request the Court that, when dealing with Referral KI176/18, to consider that "*we Bashkim, Selman, Driton and Agim Demaj also join"* all those allegations and requests.

61. Finally, the Applicants KI06/19, allege that as the Court in case KI146/18, KI147/18, KI148/18, KI149/18 and KI150/18, found a violation regarding Judgment of the Supreme Court, and the Supreme Court after reviewing the case "*deliberately or unintentionally ignored this case, the Decision of the Constitutional Court [...] WE REQUEST the Court [...] to request the Basic Court in Mitrovica that the latter suspends the execution of the decision to serve the sentence of imprisonment for the cases [...] ED: 123, 125, 126 and 127 until the Constitutional Court decides on the case"*.

***Amicus Curiae* of the Ombudsperson**

62. The Ombudsperson, based the Legal Opinion presented in the capacity of *Amicus Curiae*, on Article 16, paragraph 9 of Law no. 05/L-019 on the Ombudsperson, noting that *Amicus Curiae* intends to provide legal assistance in the protection of the rights of the Applicants, namely to have their case remanded for retrial to the Basic Court in Mitrovica, as decided on the case of

S.S. by the Supreme Court of Kosovo by Judgment PLM. KZZ. No. 233/2017, of 11 June 2018.

63. The Ombudsperson considers that in the Applicants' case, the Supreme Court, by the challenged decision, disregarded the Judgment of the Constitutional Court in cases KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17, as to the allegations for the composition of the Trial Panel that decided the Applicants' case before the Basic Court, as it did not remand the case for retrial, but rendered a new decision rejecting the requests for the protection of legality.

64. The Ombudsperson also submits that the Supreme Court in Judgment PML. KZZ No. 223/2017, same as in the present case, had partially approved the request for protection of legality in the part concerning the allegations for the composition of the trial panel of the Basic Court and remanded the case for retrial.

65. He also claims that according to Judgment Agj. 1248/18 of the Constitutional Court [Judgment in the case KI146/18, KI147/18, KI148/18, KI149/18 and KI150/18, of 30 May 2018], the Supreme Court in accordance with the provisions of the CPC had the duty to remand the case for retrial.

66. According to the Ombudsperson, these irregularities also affect the reducing of citizens' trust in the courts, namely the judicial system of the Republic of Kosovo.

67. Finally, the Ombudsperson requests that the Court to declare invalid the challenged decision, to order the Supreme Court to implement the Judgment of the Court in cases KI146/17, KI147/17, KI148/17, KI149/17 and KI150/17, and to act in accordance with its practice in case PML.KZZ No. 223/2017.

Admissibility of the Referral

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

69. 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".*

70. The Court further examines whether the Applicants have fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court

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...".

71. Regarding the fulfillment of these requirements, the Court considers that the Applicants are authorized party, challenging an act of a public authority, namely Judgment [Pml. No. 158/2018], of 26 September 2018, of the Supreme Court, after exhaustion of all legal remedies provided by law. The Applicants also clarified the rights and freedoms they claim to have been violated in accordance with the requirements of Article 48 of the Law, except for the Applicants KI06/19, who state that they join the allegations of the Applicants in Referral 176/18. The Applicants also submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

72. However, the Court should also examine whether the Applicants have met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 of the Rules of Procedure establishes the criteria based on which the Court may consider a Referral including the criterion that the referral is not manifestly ill-founded. Specifically, Rule 39 (2) of the Rules of Procedure stipulates:

"(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".

73. The Court recalls that the Applicants allege that, despite the review of their case by the Supreme Court, the challenged decision violated their right to fair and impartial trial, and the right to equality before the law. The Applicants of Referral KI176/18 also allege that the Supreme Court, by the challenged decision, violated to convict S.S. the right guaranteed by Article 29 [Right to Liberty and Security] of the Constitution.

74. The Applicants of Referral KI176/18, to whose allegations join the Applicants of Referral KI06/19, more specifically, allege that:

i) The Supreme Court did not reason its decision because, despite the violations found by the Constitutional Court regarding the composition of the trial panel of the Basic Court, it rendered the same decision;

ii) The Supreme Court in the challenged decision violated the right to a fair trial, and contrary to its previous practice has exceeded its competences as, despite all violations found by the Constitutional Court, it has not remanded the case for retrial to the Basic Court, but reviewed the case and rendered a new Judgment;

iii) The detention on remand of S.S., following the violations found by the Constitutional Court, constitutes an unlawful deprivation of liberty, namely a constitutional violation under Article 29.1 [Right to Liberty and Security] of the Constitution.

75. The Applicant of Referral Isni Thaçi KI183/18, more specifically alleges that:

iv) Contrary to its case-law, where the Supreme Court in a similar case remanded the case to the Basic Court for retrial, as the trial panel was composed entirely of EULEX judges only, as in the Applicant's case, the Supreme Court has not remanded its case for retrial and thereby violated the right to equality before the law;

v) The Supreme Court did not properly address the Applicants' allegation of the composition of the trial panel at the Basic Court, which was in contradiction with the rules for assigning EULEX judges to the trial panels;

vi) The regular courts declared witness B. as a "hostile witness" in violation of the law and gave trust to the witnesses A. and K, contrary to the principle *in dubio pro reo*, although the court found that witnesses A. and K had no experience in delivering an accurate and well-structured version of the events.

vii) The forensic expert, M.G., was not questioned during the court procedure, thus violating the principle of equality of arms and adversarial principle.

76. The Court initially recalls that in its Judgment in case KI146/17, KI147/17, KI148/18, KI149/18 and KI150/18, it found a violation of the right to fair trial as the Judgment of the Supreme Court, Pml. KZZ. 322/2016, did not provide a full assessment and reasoning as to whether the appointment of judges to the trial panel in the case of the Applicants before the Basic Court was in accordance with the entirety of the applicable legal provisions. Whereas with regard to all the other allegations of the Applicants, including those repeated in the present Referral, the Court has already held that they mainly raise issues of legality and not of constitutionality, and that the Supreme Court, in relation to those allegations, provided a detailed reasoning in its Judgment, Pml. KZZ. 322/2016.

77. The Supreme Court, in enforcement of the Judgment of the Court, reviewed the Applicants' requests for protection of legality based on the findings of the Judgment of the Court in KI146/17, KI147/17, KI148/18, KI149/18 and KI150/18, namely, in relation to the allegations concerning the appointment of judges to the trial panel of the Basic Court.

78. The Court recalls that the allegations which were the subject of review in the cases of the Court KI146/17, KI147/17, KI148/18, KI149/18 and KI150/18 and for which the Court, in its earlier decision, found that they raise issues legality and not constitutionality, will not be considered because such allegations have already been rendered final by the Court. The latter will only consider the new allegations of the Applicants.

I. With regard to the alleged violations of the right to fair and impartial trial under Article 31 of the Constitution and Article 6 of the ECHR

79. The Court notes that the Applicants challenge the authority of the Supreme Court to review their case, namely to review the requests for protection of legality on the basis of the findings of the Constitutional Court (Judgment in the case KI 146/17, KI 147/17, KI 148/17, KI 149/17, and 150/17, of 30 May 2018). The Court notes that its assessment and findings in the aforementioned case have found that it was the Supreme Court that by its decision (Judgment PML. KZZ. No. 322/2016, of 19 July 2017), failed to provide a full reasoning as to whether the legal provisions in respect of the appointment of judges to the trial panel were respected in the case of the Applicants.

80. In this regard, the Court considers that it was the task of the Supreme Court to reconsider its decision in accordance with the findings of the decision of the Constitutional Court and to notify the Court about the implementation of its decision (see operative part of the Judgment in the case KI 146/17, KI 147/17, KI 148/17, KI 149/17, and 150/17, of 30 May 2018).

81. The Court also recalls that the Applicants allege violation of Article 31 of the Constitution and Article 6 of the ECHR on the grounds that the Supreme Court did not reason its decision, because, despite the violations found by the Constitutional Court in relation to the composition of the trial panel of the Basic Court, it rendered the same decision.

82. Therefore, the Court will consider and assess whether the Supreme Court has reconsidered its decision in accordance with the findings of the Constitutional Court.

1. With regard to the right to a reasoned decision

1.1. General principles

83. The Court recalls that, according to the case law of the European Court of Human Rights (hereinafter: ECHR), the right to a fair trial also includes the right to a reasoned decision.

84. According to its established case law, the ECtHR considers that, based on the principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (See *Tatishvili v. Russia*, No. 1509/02, ECtHR Judgment of 22 February 2007, paragraph 58; *Hiro Balani v Spain*, ECtHR, application No. 18064/91, Judgment of 9 December 1994, para. 27; *Higgins and Others v. France*, ECtHR, case No. 134/1996/753/952, Judgment of 19 February 1998, paragraph 42; *Papon v. France*, ECtHR, Case No. 54210/00, Judgment of 7 June 2001).

85. In addition, the ECtHR has found that national authorities enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6 (1) of the ECHR, but that courts must *"indicate with sufficient clarity the grounds on which they based their decision"* (See, *Hadjianastassiou v. Greece*, ECtHR Judgment of 16 December 1992, paragraph 33).

86. According to the case law of the ECtHR, a basic function of a reasoned decision is to demonstrate to the parties that they have been heard. In addition, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice. (See *mutatis mutandis*, ECtHR *case Tatishvili v. Russia*, ECtHR, application no. 1509/02, Judgment of 22 February 2007, paragraph 58; see also the ECtHR case *Hirvisaari v. Finland*, no. 49684/99, paragraph 30, 27 September 2001).

87. Although the courts are not obliged to address all the allegations put forward by the Applicants - they should nevertheless address the allegations central to their cases and which are addressed to all stages of the proceedings (see case *IKK Classic*, Judgment of 9 February 2016, paragraph 53).

88. The Court reiterates that the right to obtain a court decision in conformity with the law includes the obligation for the courts to provide reasons for their decisions, at both procedural and substantive level (See *mutatis mutandis* case *IKK Classic*, Judgment of 9 February 2016, paragraph 54).

89. The extent to which this duty to give reasons, in accordance with the ECtHR case law, may vary according to the nature of the court decision and must be determined in the light of the circumstances of the case. (See the case of ECtHR *Garcia Ruiz v. Spain*, [GC], application no. 30544/96, Judgment of 21 January 1999. para. 29, *Hiro Balani v. Spain*, Judgment of 9 December 1994, paragraph 27, *Higgins and Others v. France*, ECtHR, application no. 134/1996/753/952, Judgment of 19 February 1998, paragraph 42).

90. The Court reiterates that, the reasoning of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on

arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them. (the Constitutional Court, case no. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, paragraph 61; no. KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58).

1.2. Application of the abovementioned standards/ principles to the Applicants' case

91. The Court notes that, after reviewing the requests for protection of legality with regard to the Applicants' allegations of the composition of the trial panel of the Basic Court, it initially assessed the fulfillment of the subjective criteria for the exclusion of Judge A.A.G. from the trial panel, because of the allegations that she had such relations with the Presiding Judge that affected her bias and whether there were facts proving that she was assigned to the trial panel at his request.

92. In this regard, the Supreme Court, through the decision challenged by the Applicants, held that the allegations of conflict of interest with the Presiding Judge were based on uncertain sources as it was information obtained from the media and anonymous e-mails, which have been sent in copies, while the regular courts base their decision on evidence that has been extracted under the rules of criminal law. Moreover, even after assessing the copies of the e-mails in which the Applicants were summoned, the Supreme Court found that the alleged relationship between Judge A.A.G and Presiding Judge was not substantiated, as the Presiding Judge did not propose Judge A.A.G in the trial panel as alleged by the Applicants and, also in the first instance court there was insufficient judge for the second member of the trial panel, and consequently it was necessary to appoint a judge from the mobile list.

93. Whereas, regarding the Applicants' allegation of a violation of the rules of the Guidelines for case allocation in certain cases, which relates to the objective criteria of impartiality, the Court recalls that the Supreme Court reasoned that *"according to Article 3.1 of the Guideline, "within the session the cases shall be allocated to judges according to the numerical system where each third case coming in section will be allocated to Judge A, each third case to Judge B and each third case to Judge C (no. 1. for judge A, no.2 for judge B, no.3 for judge C, no.4 for judge A and so on). For exceptional reasons (for example the quality and complexity of the case and the number of cases in cases entrusted to each judge), the selecting judge may allocate the specific cases in a manner other than previously mentioned". This provision speaks about a random allocation/assignment in ordinary situations - first sentence, and in exceptional situations - second sentence."*

94. The Supreme Court also reasoned that *"When it comes to selecting [A.A.G.] from the mobile list, the request for protection legality does not challenge that she was on this list, but it challenges whether she was the judge by order. This allegation again deals with speculation, is unsubstantiated and was not approved for the reasons stated above. The Supreme Court, in conclusion,*

found that the challenged judgments do not contain essential violation of the provisions of criminal procedure under Article 384 par 1. 1. and 1.2. [...]".

95. The Court considers that the Supreme Court, when assessing the Applicants' allegations, referred to the relevant provisions of Law No. 03 L-053 and the Guidelines for the assignment of cases to EULEX judges. Moreover, although the Supreme Court held that the evidence presented by the Applicants was not evidence that was provided by law, it again examined whether that evidence proved that when appointing A.A.G as part of the trial panel, the order of appointment of judges was not respected, as provided by Law No. 03 /L-53 and Guidelines on Case Allocation.

96. The Supreme Court has clarified that the Guideline in question specifies the manner in which judges are assigned to trial panels in ordinary and extraordinary cases. After assessing the Applicants' evidence, the Supreme Court held that the evidence presented by the Applicants did not prove that when assigning the composition of the trial panel the rules on the appointment of judges in the Applicants' case were violated.

97. Therefore, in conclusion, the Supreme Court, having considered the evidence presented before it, held that A.A.G. was not appointed to the trial panel by order of the Presiding Judge as alleged by the Applicants. Also, the Supreme Court, after analyzing the rules for the assignment of judges to trial panels, concluded that the evidence presented did not prove that the entirety of the applicable legal provisions had been violated when appointing A.A.G. in the trial panel.

98. Consequently, the Court considers that the reasoning by the Supreme Court, referring to the Applicants' allegations of irregularity in relation to the appointment of Judge A.A.G as part of the trial panel of the Basic Court, is clear and properly addresses the Applicants' allegations.

99. Therefore, the Court considers that the Applicants failed to prove that the challenged decision violated their right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. Therefore, the Court finds that the Applicants' Referral concerning the alleged violation of Article 31 of the Constitution and Article 6 of the ECHR is manifestly ill-founded on constitutional basis.

II. With regard to the allegation of violation of equality before the law

100. The Applicants allege violation of equality before the law, which is guaranteed by Article 24 of the Constitution as a result of the contradictory decisions of the Supreme Court regarding the composition of the trial panel by EULEX judges. In relation to this allegation, the Applicants specify that: *"Contrary to its case-law, where the Supreme Court in a similar case had remanded the case to the Basic Court, as the panel was composed entirely of EULEX judges, as in the Applicant's case, the Supreme Court did not remand the case for retrial and thereby violated the right to equality before the law".*

101. Initially, the Court notes that this case has not been considered by the Supreme Court, since it in its decision it was focused solely on matters for which the Constitutional Court found a violation in the preliminary decision of the Supreme Court, relating to the issue of the appointment of the judge A.A.G as a member of the trial panel of the Basic Court.

102. However, the Court will next consider this specific allegation, where the Applicants refer to a decision of the Supreme Court (PML. 223/17 of 11 June 2018), in which the Supreme Court remanded the case for retrial on the ground that it found that the composition of the trial panel only by EULEX judges was considered to be contrary to law.

103. As to the Applicants' allegation of violation of equality before the law, the Court refers to its case law, which emphasizes that only differences in treatment based on an identifiable characteristic *or status*, may represent unequal treatment within the meaning of Article 24 of the Constitution. In addition, in order for an issue to be raised under Article 24, there must be a difference in the treatment of persons in analogous situations or similar situations (See, *mutatis mutandis,* the case of the Constitutional Court, KI157/18, Applicant *the Supreme Court of Kosovo*, Judgment of 13 March 2019, paragraph 33, see also ECtHR cases *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Application No. 5095/71, 5920/72 and 5926/72, 7 December 1976, par. 56, *Carson and Others v. United Kingdom*, Application No. 42184/05, 16 March 2010, paragraph 61).

104. The Court notes that the Applicants have not submitted any *prima facie* evidence indicating under what identifiable characteristic or status they were discriminated against in the proceedings before the Supreme Court.

105. However, with regard to the allegation on the issue of the contradictory decision of the Supreme Court, the Court, referring to the ECtHR case law, recalls that the ECtHR has in principle linked the issue of the importance of the compatibility of the case law with the principle of legal certainty and public confidence in the judicial system (See *mutatis mutandis,* ECtHR Judgment of 28 October 1999, *Brumărescu v. Romania*, No. 28342/95, paragraph 61; ECtHR Judgment of 1 December 2005; *Păduraru v. Romania*, Application No. 63252/00, paragraph 98; ECtHR Judgment of 2 November 2010, *Ştefănică and Others v. Romania*, Application No. 38155/02, paragraph 38; ECtHR Judgment of 25 April 2013; *Balažoski and Others v. the former Yugoslav Republic of Macedonia*, No. 45117/08 paragraph 29; ECtHR Judgment of 20 October 2011, *Nejdet Shahin and Perihan Şahin v. Turkey*, Application No. 13279/05, 52; see also ECtHR Judgment of 10 May 2012, *Albu and Others v. Romania*, Application No. 34796/09 and 63 other applications, paragraph 34, and see the case of the Constitutional Court, KI42/17, Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility of 30 January 2018, paragraph 33).

106. In this context, the ECtHR, through its case law, has also maintained that the requirements of the principle of legal certainty and the protection of the legitimate confidence of the public, do not confer nor guarantee an acquired

right to consistency of case-law. (see ECtHR Judgment of 18 December 2008, *Unédic v. France*, no. 20153/04, paragraph 74; ECtHR Judgment of 20 October 2011, *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 58; see also *Albu and Others v. Romania*, cited above, paragraph 34 and see also Constitutional Court Case, KII42/15, *Habib Makiqi*, Resolution on Inadmissibility of 27 October 2016, paragraph 38).

107. The ECtHR specifically noted that *"in principle, it is not its function to compare different court decisions, even if they are brought in seemingly similar proceedings; it must respect the independence of these courts [...]."* (See case *Ādamsons v. Latvia*, cited above, paragraph 118, as well as the case *Nejdet Sahin and Perihan Şahin v. Turkey*, cited above, paragraph 50 and see also the case of the Constitutional Court, KI29/17, *Adem Zhegrova*, Resolution on Inadmissibility of 2 October 2017, paragraph 47).

108. However, the ECtHR through its case law establishedthe criteria for assessing the conditions in which contradictory decisions of the last instance courts are in contradiction with the right to a fair trial. In this regard, the ECtHR notes that it must be established: a) whether there are any profound and long-lasting differences in the case law in the domestic courts; b) whether the domestic law provides for a mechanism to overcome those inconsistencies; and c) whether this mechanism has been implemented and if so, to what extent (See *mutatis mutandis,* the case of ECtHR, *Iordan Iordanov and Others v. Bulgaria*, Application no. 23530/02, Judgment of 2 October 2009, paragraph 49-52; see also case of the Constitutional Court, KI29/17, *Adem Zhegrova*, Resolution on Inadmissibility of 2 October 2017, paragraph 51).

109. The Court notes that in the case law of the ECtHR, the criterion of the existence of "profound and long-lasting differences" is fundamental in assessing the consistency of the case law (See *mutatis mutandis Lupeni Greek Catholic Parish and Others v. Romania,* Judgment of 29 November 2016, paragraphs 116-135; *Iordan Iordanov and Others v. Bulgaria,* Application No. 23530/02; cited above, paragraphs 49-52; *Nejdet Şahin and Perihan Şahin v. Turkey*, cited above, paragraph 53). In this context, the ECtHR also held that the effect of such a distinction in relation to the number of other cases should be assessed (See *Abu and Others v. Romania*, Judgment of 10 June 2012, paragraph 38).

110. The Court notes that it is not its task to compare various decisions of the Supreme Court, and that it respects in entirety the independence of the regular courts. The Court notes that the Applicants, referring to the Judgment of the Supreme Court (Pml KZZ 223/2014 of 11 June 2018), which held that the composition of the trial panel only by EULEX judges is in breach of the law, allege that the Supreme Court decided differently from their case, and as a result may have violated the principle of legal certainty.

111. However, the Court, referring to its case-law and that of the ECtHR, considers that on the basis of only one Judgment of the Supreme Court which, allegedly has been rendered in similar cases, it is neither possible to understand nor to ascertain that there are profound and long-lasting differences in the case law of

the Supreme Court, which could endanger the principle of legal certainty and consequently result in a violation (See *mutatis mutandi,* case of the Constitutional Court, KI29/17, *Adem Zhegrova*, cited above, paragraph 53).

112. Consequently, referring to its case law and that of the ECtHR, and the standards established by that case law, which principles this Court applies, it is impossible to find that in the Applicants' case the criteria of the existence of contradictory decisions in the case law of the Supreme Court have been met.

II. With regard to the allegations of Applicants of Referral KI176/18 of constitutional violations against the person S.S.

113. The Court also notes that the Applicants of Referral KI176/18, also allege violation of Article 29 [Right to Liberty and Security] by the Supreme Court in relation with person S.S.

114. In this regard, the Constitution of the Republic of Kosovo does not provide *actio popularis* which is a modality of individual appeals, which enable each individual who attempts to protect public interest and constitutional order to address the Constitutional Court with certain questions and requests, indicating a violation of the constitutional rights of a certain individual or group (See, *mutatis mutandis,* the case of the Constitutional Court, KI157/11, Resolution on Inadmissibility, of 17 January 2013, paragraph 26).

115. The Court notes that, in respect of the allegations of violation of the constitutional rights of the person S.S., the Applicants of Referral KI176/18, have no *locus standi* before the Court. The Court holds that the individuals are entitled to challenge only individual acts of public authorities infringing upon their individual rights and only after the exhaustion of all legal remedies provided for in paragraph 7 of Article 113 of the Constitution (See, *mutatis mutandis*, case of the Constitutional Court, KI102/17, Applicant: *Meleq Imeri*, Resolution on Inadmissibility, of 10 January 2018, paragraph 20).

116. Therefore, in the circumstances when the Referral was filed by an unauthorized party, the Court cannot assess the merits of the case and consequently, in the present case either, the Court does not assess the allegations of Applicants KI176/18 if the challenged Judgment violated constitutional rights of the person S.S., namely Article 29 of the Constitution. Accordingly, for the foregoing reasons, the Court finds that Referral KI176/18, as to the allegations of violation of the constitutional rights of the person S.S. has not been lawfully filed by an authorized party as provided by Article 113, paragraphs 1 and 7 of the Constitution, Article 47 of the Law, Rule 39 (1) (a) of the Rules of Procedure, and as such is inadmissible.

Request for interim measure

117. The Court recalls that the Applicants of Referral KI176/18 also request the Court to render a decision to impose interim measures, namely to suspend the execution of the Judgment of the Supreme Court.

118. The Applicants of Referral KI06/19 request the Court to impose interim measure, namely *"suspending the procedure of execution of sentences by the Basic Court in Mitrovica, cases number ED: 123, 125, 126 and 127, until the Constitutional Court of the Republic of Kosovo decides this case."*

119. Having regard to the fact that the Court has now decided on the inadmissibility of the Referral, it does not consider it necessary to consider the Applicants' requests for interim measures.

Conclusion

120. The Court concludes that:

(i) The Supreme Court addressed the Applicants' allegations regarding the appointment of the trial panel of the Basic Court, and, therefore, holds that such allegations are manifestly ill-founded on constitutional basis, and as such are to be rejected as inadmissible, in accordance with Article 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure;

(ii) The allegations of the Applicant of Referral KI183/18 of violations of Article 24 [Equality Before the Law] of the Constitution are manifestly ill-founded on constitutional basis, and as such are to be rejected as inadmissible, pursuant to Article 113.7 of the Constitution and Rule 39 (2) of the Rules of Procedure; and

(iii) Applicants of Referral KI176/18, are not authorized party to raise a violation of Article 29 of the Constitution on behalf of the person S.S. as defined by Article 113, paragraphs 1 and 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, in accordance with Article 113.7 of the Constitution, Articles 20 and 27 of the Law and pursuant to Rule 39 (1) (a) and (2), Rule 59 (b) and Rule 57 (1) of the Rules of Procedure, on 13 November 2019, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the requests for interim measure;

III. TO NOTIFY this decision to the parties;

IV. TO PUBLISH this Judgment 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**

Nexhmi Rexhepi | Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.