



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

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Prishtina, on 4 December 2017  
Ref. no.: RK 1164/17

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI58/17**

Applicant

**Ukë Muçaj**

**Constitutional review of  
Judgment Pml. No. 326/2016 of the Supreme Court  
of 23 January 2017**

### CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Referral was submitted by Ukë Muçaj from Peja (hereinafter, the Applicant), who is represented by Florent Latifaj, a lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment Pml. No. 326/2016 of the Supreme Court of 23 January 2017, which rejected as ungrounded the Applicant's request for protection of legality.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 34 (Right not to be Tried Twice for the Same Criminal Act) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter, the ECHR).

## **Legal basis**

4. The Referral is based on Article 113 (7) of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 22 May 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 22 May 2017, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Bekim Sejdiu and Selvete Gërzhaliu-Krasniqi.
7. On 13 June 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 24 October 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. On 23 March 2009, the District Public Prosecutor in Mitrovica (hereinafter, the Prosecutor) filed with the Municipal Court in Prishtina an indictment against the Applicant due to reasonable suspicion of having committed the criminal offense of accepting bribes.
10. On 24 April 2009, the Municipal Court held a session to confirm the indictment; however, the session was adjourned due to the request of the Applicant's lawyer that the case be taken over by EULEX international judges.

11. On 8 May 2009, the Applicant's case was transferred to the jurisdiction of EULEX international judges and, on 17 November 2009, the then Municipal Court rejected the indictment against the Applicant on all counts.
12. On 18 December 2009, the District Prosecutor filed an appeal against this decision with the District Court, which quashed the Municipal Court's decision and remanded the case to the Prosecutor for reconsideration.
13. On 25 May 2010, the Pre-Trial Judge at the District Court approved the continuation of the investigation for a period of 6 months. The Applicant filed with the then District Court an appeal against that decision.
14. The District Court approved the Applicant's appeal and quashed the decision of 25 May 2010, because the decision was rendered by a Pre-Trial Judge of the District Court who did not have subject-matter jurisdiction. The District Court remanded the case to the Municipal Court for reconsideration.
15. On 30 August 2010, the Municipal Court approved the continuation of the investigation for a period of one month, to be conducted by the Municipal Prosecutor of Prishtina.
16. On 4 November 2010, the Municipal Prosecutor filed a new indictment against the Applicant for the criminal offense of accepting bribes. On 20 January 2011, the Municipal Court confirmed the new indictment.
17. On 18 January 2012, the then Municipal Court [Judgment P. No. 2668/11] found the Applicant guilty of the criminal offense of accepting bribes, as well as the criminal offense of trading in influence, sentenced him to imprisonment and prohibited him from exercising any public administration or public service functions for a period of three years. The Applicant filed with the Court of Appeals an appeal against that Judgment of the Municipal Court.
18. On 27 March 2013, the Court of Appeals [PaKr. 87/13] upheld the Applicant's appeal, annulled the judgment of the Municipal Court and remanded the proceedings to the Basic Court for retrial.
19. On 26 May 2015, the Basic Court [P. No. 1462/14] found the Applicant guilty of the criminal offense of accepting bribes and sentenced him to imprisonment.
20. The Applicant filed with the Court of Appeals an appeal against that Judgment, claiming essential violations of the provisions of the criminal procedure, erroneous and incomplete determination of the factual situation, and violation of the criminal procedure and the decision on criminal sanctions.
21. On 18 April 2016, the Court of Appeals [PAKR 412/15] partially approved the Applicant's appeal in relation to the imposition of a more lenient sentence, whereas the remaining part of the challenged judgment was upheld in its entirety.
22. The Applicant filed with the Supreme Court a request for protection of legality against that Judgment of the Court of Appeals, "*on the grounds of essential*

*violation of the provisions of the criminal procedure, other violations of the provisions of the criminal procedure that affected the legality of the court decisions”.*

23. On 23 January 2017, the Supreme Court [Pml. No. 326/2016] rejected as ungrounded the Applicant's request for protection of legality.

### **Applicant's allegations**

24. The Applicant claims that the challenged decision violated his right to a fair and impartial trial and his right not to be tried twice for the same crime.
25. The Applicant alleges that the evidence presented at trial included statements given by witnesses to the police. Those statements were inadmissible because the defense was not present when those statements were given and had not received them prior to the trial. The Applicant also alleges that the entire trial did not take place within a reasonable time because the investigation was continued after the rejection of the first indictment.
26. Furthermore, the Applicant alleges that *“remanding the case to the investigative procedure constitutes an essential violation of human rights and a violation of the principle known as res judicata, and therefore also a violation of Article 34 of the Constitution of Kosovo”.*
27. The Applicant requests the Court *“to hold violations stated in the Referral, to quash the judgment of the Basic Court, accordingly, of the Court of Appeals and of the Supreme Court, and the case to be remanded for retrial in accordance with the assessment of the violations found”.*

### **Admissibility of the Referral**

28. The Court first examines whether the Applicant fulfilled the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure.
29. In this respect, the Court refers to §§ 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.*
30. The Court also refers to Article 49 [Deadlines] of the Law, which provides:
- The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.*

31. In that connection, the Court notes that the Applicant is an authorized party referring that a Judgment of the Supreme Court allegedly violated his constitutional rights, has exhausted all legal remedies available to him and filed his Referral within the four (4) months legal deadline.

32. However, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which provides:

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

33. In addition, the Court refers to §§ (1)(d) and (2)(d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresee:

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

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

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

*[...]*

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

34. In that connection, the Court considers that the Applicant has not proved and substantiated his allegations on violation of his constitutional rights, as required by Article 48 of the Law and Rule 36 (2) (c) and (d) of the Rules of Procedure, and as it will be explained hereunder.

35. The Court recalls that the Applicant claims that the challenged decision of the Supreme Court violated his (i) right to a fair and impartial trial as protected by Article 31 of the Constitution and Article 6 of the European Convention on Human Rights (hereinafter, the ECHR), and (ii) his right not to be tried twice for the same crime.

**(i) Alleged violation of the right to a fair and impartial trial**

36. The Court refers to Article 31 of the Constitution and Article 6 of the ECHR.

Article 31 [Right to Fair and Impartial Trial]

*[...]*

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

Article 6 [Right to a fair trial]

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

37. At the outset, the Court reiterates that *“human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”* (Article 53 of the Constitution).
38. The Court recalls that the Applicant claims that *“constitutional violations have been committed through the essential violations of the procedural law and the substantive law”*, namely arguing that *“through violations resulting from the material and procedural law, has directly resulted in violation of judicial decisions that are contested here by constitutional violation of the rights guaranteed by the Constitution”*.
39. The Applicant specifically claims that the courts relied upon statements given by witnesses to the police and/or the prosecutor during the investigation and that he was denied the opportunity to challenge these witness statements. In addition, the Applicant alleges that the criminal proceedings against him violated his right to a trial within a reasonable time, because the Pre-trial Judge authorized the continuation of the investigation after the indictment based upon the original investigation had been quashed.
40. The Court notes that these allegations and arguments were already the grounds on which the Applicant filed his appeal with the Court of Appeals and the request for protection of legality with the Supreme Court.
41. Furthermore, the Court notes that the Judgments of the Court of Appeals and the Supreme Court both thoroughly examined and assessed the reasoning of the Judgment of the Basic Court and reasonably found it to be clear, comprehensive and coherent.
42. In fact, the Court recalls that the Applicant appealed the judgment of the Basic Court on the grounds of *“substantial violation of the provisions of criminal procedure; erroneous or incomplete determination of the factual situation; violation of the criminal law; and decision on criminal sanctions”*.
43. The Court also recalls that the Court of Appeals partially granted the Applicant’s appeal and modified the judgment of the Basic Court, in relation to the sentence of imprisonment.
44. The Court notes that the Court of Appeals preliminarily examined the issues of applicable law in the case (procedural and substantive law), the competence of the courts, the assignment of a EULEX prosecutor to the case and the admissibility of the appeal.

45. Following these preliminary issues, the Court of Appeals thoroughly examined the Applicant's appeal submissions.
46. In fact, the Court of Appeals considered the ground of appeal on substantial violation of the provisions of criminal procedure, namely the reasoning and comprehensibility of the impugned judgment. After detailed analysis, the Court of Appeals refused the appeal as unfounded.
47. The Court of Appeals also analyzed in detail the evidence administered during the main trial, including the examination page by page of the witnesses' statements. The Court of Appeals considered that the Basic Court completely and correctly established the factual situation and that the arguments raised in the appeals do not undermine these findings. Thus the Court of Appeals refused as unfounded that ground of the appeal.
48. The Court of Appeals also examined the decision on criminal sanction and found adequate and proportional the imprisonment of one year, to be suspended for the time period of two years.
49. The Court of Appeals "*carefully assessed the thorough and detailed analysis of the evidence (...) and found no contradictions in the stance of the Basic Court.*" The Court of Appeals was "*fully convinced by the conclusions and reasoning of the Basic Court*".
50. The Court also recalls that the Applicant requested for protection of legality on the grounds of "*essential violation of the provisions of the criminal procedure, other violations of the provisions of the criminal procedure that affected the legality of the court decisions*".
51. The Court observes that the Supreme Court noted that "*the judgment of the court of the second instance has provided answers to all allegations made in the request for protection of legality; therefore there is no need to reiterate the aforementioned*". The Supreme Court considered that "*the legal qualification of the criminal offence as well as the acquisition of the material benefit is an outcome of the correct and lawful evidence found in the case files of this matter, as well as the legal stance taken by the courts of the first and second instances as expressed in the impugned judgments are also approved by this court*". The Supreme Court concluded that "*the legal provisions of the substantive law have been applied correctly*".
52. The Court notes that the Supreme Court reviewed the evidence pertaining to the circumstances of the commission of the criminal offense and assessed the Applicant's allegations presented in the request for protection of legality.
53. The Supreme Court noted that the Applicant was "*reiterating his formerly submitted appeal filed against the judgment of the court of the first instance*" and considered that "*the judgment of the court of the second instance has provided answers to all allegations made in the request for protection of legality*".

54. Accordingly, the Supreme Court further considered that *“the legal qualification (designation) of the criminal offence as well as confiscation of the material benefit is an outcome of the correct and lawful evidence found in the case files of this criminal matter”*.
55. The Supreme Court also approved *“the legal stance taken by the courts of the first and second instances as expressed in the impugned judgments [...]. In other words, the legal provisions of the substantive law have been applied properly”*. Consequently, the Supreme Court found that *“conclusions reached by the first and second instance courts are correct”*.
56. Moreover, the Court, similarly as to the Supreme Court, notes that the Applicant is *“reiterating his formerly submitted appeal filed against the judgment of the court of the first instance”* and of the Court of Appeals, and he is repeating the same allegations before the Constitutional Court. However, even though colored by a constitutional appearance, these allegations pertain in substance to the domain of legality and as such do not fall under the jurisdiction of the Constitutional Court.
57. In that respect, the Court reminds that the mere reference to one or more provisions of the Constitution, alleging that they have been violated, does not constitute sufficient ground to lead the Court to assess whether there has been a violation of the Constitution or of the ECHR.
58. In fact, the Court considers that the allegations brought before the Court are related with errors of facts and law allegedly committed not only by the Supreme Court but also by the Court of Appeals and the Basic Court. The arguments made by the Applicant before the Constitutional Court are the same in substance as the ones presented before the Supreme Court. It appears that the Applicant is coming before the Constitutional Court as it would be a “fourth instance” court.
59. In that connection, the Court recalls that the European Court on Human Rights (hereinafter, the ECtHR) held that *“[...] it is not the [ECtHR’s] function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law (see ECtHR Judgment of 12 July 1988, Schenk v. Switzerland, No. 10862/84, paras. 45-46). It is not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, unlawfully obtained evidence – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair”*. (See ECtHR case *Khan v. United Kingdom*, Application No. 35394/97, Judgment of 12 May 2000, § 34).
60. The Court emphasizes that, as a general rule, the establishment of the facts and the interpretation and application of law is a matter solely for the regular courts whose findings and conclusions in this regard are binding on the Constitutional Court. However, where a decision of a regular court is clearly arbitrary, the Court

can and must call it into question. (See Constitutional Court case No. KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, 17 August 2016, § 40).

61. Moreover, the Court reiterates that it is not its task to deal with errors of law allegedly committed by a regular court (legality), unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which have led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “fourth instance”, which would be to disregard the limits imposed on its jurisdiction. (See ECtHR case *García Ruiz v. Spain*, Application no. 30544/96, 21 January 1999, § 28; and Constitutional Court case No. KI63/16, *Ibidem*, §45).
62. Thus it is not up to the Court to speculate as to the establishment of the facts, the interpretation and application of the criminal and criminal procedural law by the Supreme Court and by the other courts during the course of the criminal proceedings.
63. On the contrary, the Court reiterates that it is up to the Applicant to substantiate with facts and arguments his alleged constitutional violation. Without that contribution the Court cannot conclude that the Supreme Court or the regular courts acted in an unfair or unreasonable manner in establishing the facts, or interpreting and applying the law. That consideration is also in conformity with the jurisprudence of the ECtHR and of the Court. (See the ECtHR case of *Alimuçaj v. Albania*, Application No. 20134/05, Judgment of 7 February 2012, § 176: see also Constitutional Court cases No. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylja*, 5 December 2013).
64. Moreover, it is up to the Applicant to state the violation of his constitutional rights and to indicate which Articles of the Constitution have been breached; to describe the circumstances of the violation related to the challenged act or decision; to specify how and why they were violated; to present relevant and pertinent evidence on how and why the violation was committed; to define the nature of the violation and to explain the constitutional implications of the violation; to substantiate with valid and compelling arguments that the actions of the public authority are contrary to the constitutional norms.
65. The Court recalls that the Applicant claimed that “*constitutional violations have been committed through the essential violations of the procedural law and the substantive law*”. However, the Court reiterates that it is the master of the legal characterization to be given to the facts of the case and it does not consider itself bound by the characterization given by the Applicant or other parties in the proceedings. (See, the ECtHR case *Guerra and Others v. Italy*, Application No. 116/1996/735/932, Judgment of 19 February 1998, § 44).
66. In addition, the Court notes that the Applicant had the benefit of the conduct of the proceedings based on adversarial principle; he was able to adduce the arguments and to submit the arguments he considered relevant to his case at the various stages of those proceedings; he was given the opportunity to challenge effectively the arguments and evidence presented by the prosecutor; all the arguments relevant for the resolution of his case were heard and reviewed by the

regular courts; the factual and legal reasons against the challenged judgments were examined in detail by the regular courts. Accordingly, the decision-making process resulting in the challenged judgment was fair and was not arbitrary.

67. More specifically, the Court notes that the Applicant had opportunity to question the witnesses at the main trial. The trial court used the witness statements given in the pre-trial phase of the investigation to test the credibility of the witnesses. The Applicant had the opportunity to challenge the interpretation of the witnesses' credibility. The courts reasoned their decision that the statements given to police by two of the witnesses were credible and the statements given by these two witnesses at the trial were not, because only the statements given to police matched with the evidence given by the third witness at the trial.
68. In addition, the Court reiterates that "*the assessment of evidence is a matter for the domestic courts and that the Court shall not substitute its own view of the facts for an assessment which has been reached in the course of domestic proceedings. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see Dombo Beheer B.V. v. the Netherlands, 27 October 1993, § 31, Series A no. 274)*". (See ECtHR case *Trofimchuk v. Ukraine*, Application No. 4241/03, Judgment of 28 October 2010, §50).
69. Moreover, the Court considers that the Applicant has not substantiated, neither with the necessary factual evidence nor with legal arguments, the allegation that the invoked provisions of the Constitution and of the ECHR have been violated. In sum, the Applicant has not showed that the proceedings viewed in their entirety were unfair or arbitrary. (See the ECtHR case *Garcia Ruiz v. Spain*, No. 30544/96, Judgment of 21 January 1999, § 29; and, *mutatis mutandis*, Constitutional Court case No. KI42/16, Applicant *Valdet Sutaj*, Resolution on Inadmissibility, of 7 November 2016, § 40).
70. In this respect, the Court reiterates that the requirement of "fairness" as guaranteed by Article 31 of the Constitution, in connection with Article 6 of the ECHR, covers proceedings as a whole, and the question whether a person has had a "fair" trial is looked at by way of a cumulative analysis of all the stages, not merely of a particular incident or procedural defect; as a result, defects at one level may be put right at a later stage. (See ECtHR case *Monnell and Morris v. the United Kingdom*, Application No. 9562/81; 9818/82, Judgment 2 March 1987, §§ 55-70).
71. Furthermore, the Court recalls that the "fairness" required by Article 31 of the Constitution, similarly as to Article 6 of the ECHR, is not a "substantive" fairness, but rather a "procedural" fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court. (See ECtHR case *Star Cate – Epilekta Gevmata and Others v. Greece*, Application No. 54111/07, Decision of 6 July 2010).

72. Thus, the Court concludes that the reasoning provided by the Court of Appeals and the Supreme Court, when deciding on the Applicant's appeals, is extensive and comprehensive, and the proceedings before the regular courts have not been unfair or arbitrary. (See ECtHR case *Shub vs. Lithuania*, Application No. 17064/06, Judgment of 30 June 2009).
73. Therefore, the Court finds that the Applicant has not substantiated with facts and arguments his allegation that the Supreme Court has violated his right to a fair and impartial trial as guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

**(ii) Alleged violation of the right not to be tried twice for the same crime**

74. The Court recalls that the Applicant also claims a violation of his right not to be tried twice for the same crime, as guaranteed by Article 34 of the Constitution, because the decision to prosecute him has been based on the same facts as the earlier decision not to prosecute him.
75. The Court refers to Article 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution which establishes:

*No one shall be tried more than once for the same criminal act.*

76. The Court also refers to Article 4 (1) of Protocol No. 7 to the ECHR, which establishes:
- 1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*

77. The Court recalls that, with respect to this principle, as contained in Article 4 of Protocol 7 to the ECHR, the ECtHR held that “a decision is final ‘if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them”’. (See ECtHR case *Ulf Sundqvist v. Finland*, Application No. 75602/01, Decision as to Admissibility, 22 November 2005).
78. In accordance with this reasoning, the Court considers that Article 34 of the Constitution, as Article 4 (1) of Protocol No. 7, requires a final decision on a criminal charge following full criminal trial proceedings before any new criminal proceedings can be considered to come within the scope of Article 34.
79. The Court recalls that the then Municipal Court (Judgment P. No. 2668/11) on 18 January 2012 found the Applicant guilty of the criminal offense of accepting bribes. The Applicant did not prove that he has been found guilty of having committed the same criminal offense prior to his conviction of 18 January 2012.

80. The Court considers that the wording “*more than once*” (Article 34 of the Constitution) and “*again*” (Article 4 of Protocol No. 7) means a trial and punishment *more than once* and *again* for an offence for which the Applicant has already been finally acquitted or convicted. The provision encompasses both the right not to be tried twice and the right not to be punished twice.
81. The Court also recalls that, on 17 November 2009, the Municipal Court rejected the indictment against the Applicant at the session on the confirmation of the indictment. A new indictment was filed on 4 November 2010, which was the beginning of the criminal proceedings leading up to a final decision.
82. The Court considers that a decision on rejecting the confirmation of an indictment, as such, does not constitute a final decision for the purpose of Articles 34 of the Constitution and 4 (1) of Protocol No. 7. Thus there had been no “final” decision.
83. The Court further considers that the new indictment of 4 November 2010 and the following conviction of 18 January 2012 do not amount to new proceedings falling under the sphere of Articles 34 of the Constitution and 4 (1) of Protocol No. 7. Consequently, those provisions are not applicable to the case.
84. Therefore, the Court finds that the Applicant has not substantiated with facts his allegation on that he was tried twice for the same criminal act, in violation of his right as guaranteed by Article 34 of the Constitution, in conjunction with Article 4 (1) of Protocol No. 7 to the ECHR.

### **Conclusion**

85. The Applicant filed his Referral, alleging that the Judgment of the Supreme Court violated his rights to a fair and impartial trial and not to be tried twice for the same crime.
86. The Court considers that the Referral is manifestly ill founded, as the Applicant has neither substantiated his allegations on a constitutional basis nor has he showed that the decisions of the regular courts have in any way caused a constitutional violation of his guaranteed rights under the Constitution.
87. Thus the Referral has not met the admissibility requirements established by Article 113 (1 and 7) of the Constitution, provided by Article 48 of the Law and foreseen by Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.
88. Therefore, the Court determines that the Referral is inadmissible.

## FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and 36 (2) (d), and 56 (b) of the Rules of Procedure, in the session held on 24 October 2017, unanimously

## DECIDES

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

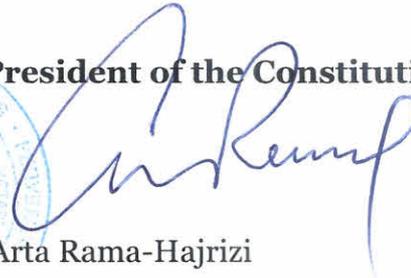
**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi