



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO



Newsletter

July — December 2016

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Constitution of Kosovo - Chapter VIII

Constitutional Court

Article 112

[General Principles]

1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.
2. The Constitutional Court is fully independent in the performance of its responsibilities.

Composition of the Constitutional Court

The Constitutional Court of the Republic of Kosovo is composed of 9 (nine) Judges.

The Judges of the Constitutional Court of the Republic of Kosovo are appointed in accordance with Article 114 [*Composition and Mandate of the Constitutional Court*] of the Constitution and Articles 6 and 7 of the Law on the Constitutional Court of the Republic of Kosovo.

Following the establishment of the Constitutional Court in 2009 and in accordance with the former Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution, 6 (six) out of 9 (nine) judges were appointed by the President of the Republic of Kosovo on the proposal of the Assembly. Of the 6 (six) national judges 2 (two) judges served for a non-renewable term of 3 (three) years, 2 (two) judges served for a non-renewable term of 6 (six) years and 2 (two) judges shall serve for a non-renewable term of 9 (nine) years.

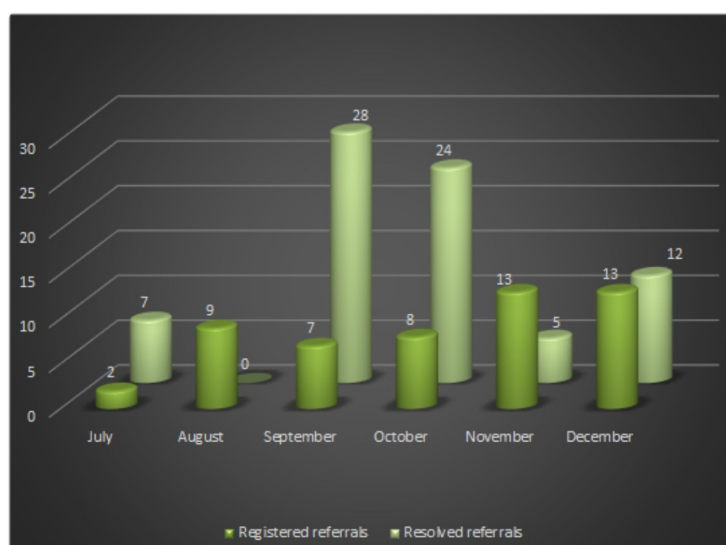
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

Currently, the Constitutional Court is composed of 9 (nine) Judges: 6 (six) national judges and 3 (three) international judges.

Status of cases

During the six-month period: 1 July – 31 December 2016, the Court has processed a total of 157 Referrals/Cases. A total of 76 Referrals were resolved or 48.4% of all available cases. During this period, 69 decisions were published on the Court webpage and served on the parties, while the others are in the process of being drafted.

*The dynamics of received referrals by month
(1 July - 31 December 2016)*



The following are 3 judgments that the Court rendered during the six month period: 1 July - 31 December 2016:

- Judgment in case KO73/16, submitted by Ombudsperson, Constitutional review of Administrative Circular No. 01/2016 issued by the Ministry of Public Administration of the Republic of Kosovo on 21 January 2016.
- Judgment in case KI65/15, Applicants Tatjana Davila, Ljubiša Marić, Zorica Kršenković, Zlata Jevtić, Constitutional Review of the non-execution of three (3) Judgments of the Kosovo Property Agency Appeals Panel of the Supreme Court, namely Judgments nos. GSK-KPA-A-021/12 of the 17 January 2013, GSK-KPA-A-141/12 of 17 April 2013 and GSK-KPA-A-045/12 of 3 October 2012, and two (2) Decisions of the Kosovo Property Claims Commission, namely KPCC/D/ A/ 211/ 2013 of 21 August 2013 and KPCC/D /C/ 216/ 2013 of 22 November 2013.
- Judgment in case KI18/16, submitted by Bedri Salihu, Constitutional review of Judgment

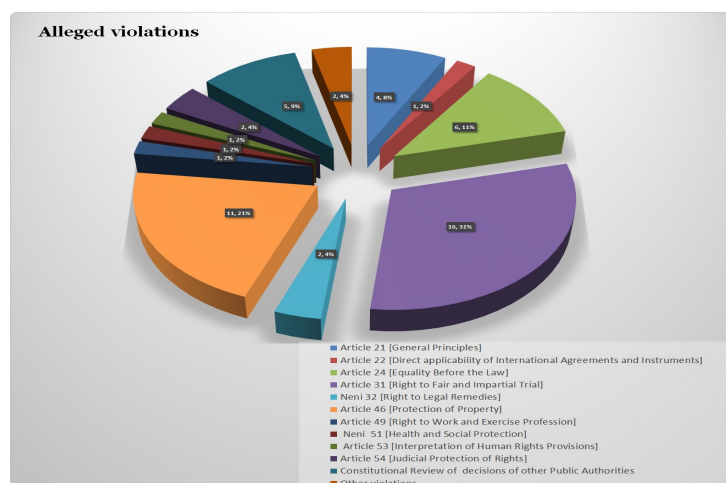
Rev. no. 308/2015 of the Supreme Court of Kosovo, of 12 November 2015.

Types of alleged violations

Types of alleged violations from 52 referrals received during the six-month period: 1 July - 31 December 2016, are as follows:

- Article 21 [General Principles], 4 cases or 17,7%;
- Article 22 [Direct Applicability of International Agreements and Instruments], 1 case or 1.9%;
- Article 24 [Equality before the Law], 6 cases or 11,5 %;
- Article 31 [Right to Fair and Impartial Trial], 16 cases or 30,8%;
- Article 32 [Right to Legal Remedies], 2 cases or 3,8%;
- Article 46 [Protection of Property], 11 cases or 21.2%;
- Article 49 [Right to Work and Exercise Profession], 1 case or 1,9%;
- Article 51 [Health and Social Protection], 1 case or 1,9%;
- Article 53 [Interpretation of Human Rights Provisions], 1 case or 1,9%;
- Article 54 [Judicial Protection of Rights], 2 cases or 3.8%;
- Constitutional Review of decisions of other public authorities, 5 cases or 9,6%, and
- Other violations, 2 cases or 3,8%;

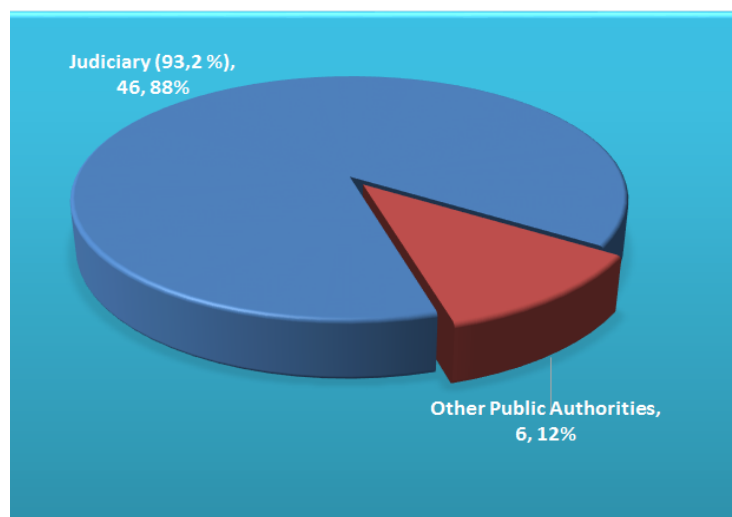
*Alleged violations by types of violation
(1 July - 31 December 2016)*



Alleged violators of rights

- 46 or 88,5% Referrals refers to violations allegedly committed by court's decisions
- 6 or 11,5% Referrals refers to violations allegedly committed by other public authorities.

*Alleged violators of rights
(1 July - 31 December 2016)*

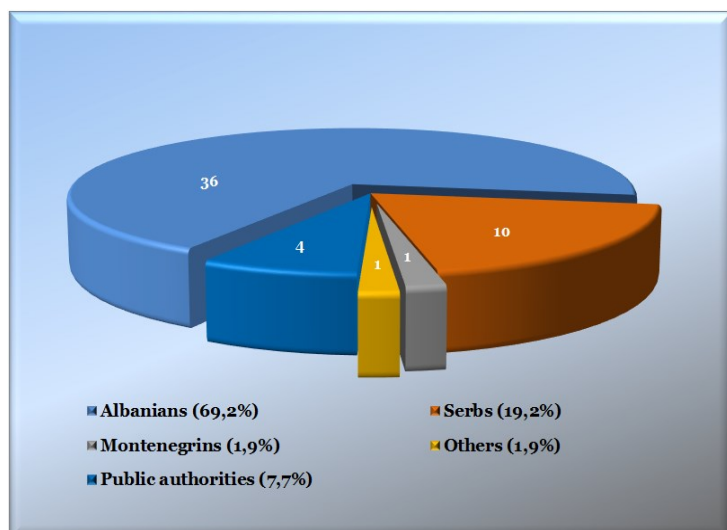


Access to the Court

The access of individuals is as follows:

- 36 Referrals were filed by Albanians, or 69,2%
- 10 Referrals were filed by Serbs, or 19,2%
- 4 Referrals were submitted by other public authorities (legal persons) or 7,7%
- 1 Referral was submitted by Montenegrin community or 1,9%
- 1 Referral was submitted by others, or 1,9%,

*Ethnic structure of the Applicants
(1 July - 31 December 2016)*



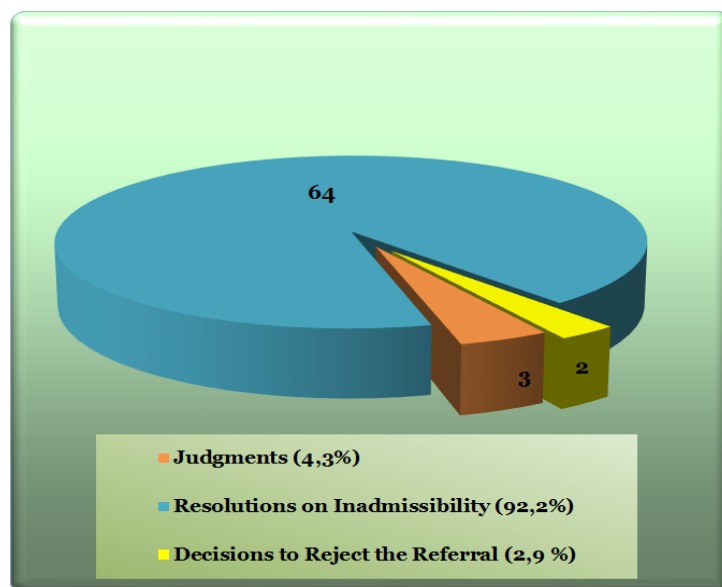
Sessions and Review Panels

During the six-month period: 1 July - 31 December 2016, the Constitutional Court held 17 plenary sessions and 66 Review Panels in which the cases were resolved by decisions, resolutions, judgments and interim measure.

The structure of the published decisions is the following:

- 3 Judgments
- 64 Resolutions on inadmissibility
- 2 Decisions on Interim Measure
- 2 Decisions on rejecting the Referral

*Structure of decisions
(1 July - 31 December 2016)*





3 August 2016

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, and the Judge of the Constitutional Court, Mrs. Gresa Caka-Nimani, received in a meeting the Chief of Party (USAID) Justice System Strengthening Program in Kosovo Mr. Patrick Wujcik, and the Deputy Chief of Party Mrs. Pranvera Reçica- Kirkbride. Chief of Party (USAID) Justice System Strengthening Program in Kosovo Mr. Patrick Wujcik, having congratulated President Rama- Hajrizi on the work that the institution she leads has done so far, re-emphasized the continuation of the support by the mission he leads for the next three years.



7 September 2017

The Constitutional Court of the Republic of Kosovo, in cooperation with the Supreme Court of the Republic of Kosovo and with the support of the German Foundation for International Legal Cooperation (IRZ), organized a workshop on “*Anticorruption*”, which was held in Thessaloniki.

The workshop attendees were given the opportunity to become more closely acquainted with the international case law and instruments for the prevention of and fight against corruption, and particularly with the legal framework and judicial mechanisms for the fight against corruption in Austria.

Prof. Dr. Matthias Hartwig, lecturer of the International Public Law and Constitutional Law at the Heidelberg University, Germany, and Dr. Johannes Windisch, Public Prosecutor at the Austrian Public Prosecutor’s Office, participated in this topic through their presentations on the fight against economic crime and corruption in Vienna and were also the moderators of this workshop.

22 September 2016

At the invitation of the Constitutional Court of the Republic of Bulgaria, the President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, and Judge Prof. Dr. Snezhana Botusharova, stayed on an official visit in the capital of Bulgaria, Sofia. President Rama-Hajrizi and Judge Botusharova were invited to participate in an international conference on “*The Protection of Fundamental Citizens’ Rights and National Security in the Modern World: Role of Constitutional Courts*”, organized on the occasion of the 25th anniversary of the establishment of the Constitutional Court of Bulgaria. During their stay in Sofia, President Rama-Hajrizi and Judge Botusharova were received in a special meeting by the President of the Constitutional Court of Bulgaria, Mr. Boris Velchev.

30 September 2016

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in an introductory meeting the new Head of EULEX



Mrs. Alexandra Papadopoulou. After wishing her success in her new duty, President Rama-Hajrizi initially informed Mrs. Papadopoulou about the composition of the Court, the work it has done so far, and the continuous efforts towards building the professional capacity of the Constitutional Court, thereupon also thanking the international donors for their support. During the conversation, President Rama-Hajrizi considered the role of, and contribution given so far by the EULEX Mission in the rule of law and the fight against organized crime in Kosovo as highly important. Mrs. Papadopoulou expressed the willingness of the mission she represents to support the independence and strengthening of the Constitutional Court of Kosovo.



26 October 2016



The Constitutional Court of the Republic of Kosovo celebrated the Seventh Judicial Year by a solemn ceremony, which was held in “Dyar” Hall of the Swiss Diamond Hotel in Prishtina. The ceremony was attended by the highest-rank state officials, accredited representatives of diplomatic missions and international organizations in the country as well as highest-level delegations of the Constitutional Courts of Albania, Macedonia, Turkey, Croatia, Portugal, Bulgaria, Montenegro, and of the Supreme Court of Albania. The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, the President of the Republic of Kosovo, Mr. Hashim Thaçi, the Prime Minister, Mr. Isa Mustafa, the President of the Assembly, Mr. Kadri Veseli, and the Minister of Justice, Mrs. Dhurata Hoxha addressed with an occasional speech the participants of the ceremony. After the solemn ceremony, on the occasion of the anniversary of the Constitutional Court of Kosovo, the first International Conference was held place in “Dyar” Hall of the Swiss Diamond Hotel on the topic: *“Incidental control as a constitutional mechanism in ensuring the constitutionality of laws in the countries in transition”*.

2 November 2016

The Constitutional Court of the Republic of Kosovo, in cooperation with the Legal Reform Project of the German Corporation for International Cooperation (GIZ), organized a workshop on the topic: *“Media and Institutions: Transparency vs. Confidentiality”*, which was held in the Emerald Hotel, in Prishtina. The purpose of the workshop, attended by the representatives and the heads of the offices for communication and information of the national institutions, was to discuss the challenges faced by the Constitutional Court and other state institutions during their daily work vis-à-vis the

national media. Among others, matters such as the most practical types of communication with the media, drafting and development of the strategic communication objectives, selection of the most effective communication methods and the line between transparency and confidentiality in the work of the institutions vis-à-vis the media were discussed during this workshop. The moderator of the workshop was Dr. Bernd Odörfer, Judge and Spokesperson of the Higher Regional Court of Stuttgart, who had previously acted as a spokesperson of the Federal Constitutional Court of Germany.

9 November 2016



The President of the Constitutional Court of the Republic of Kosovo, Ms. Arta Rama-Hajrizi, received in a meeting a delegation from the Venice Commission, composed of Ms. Tanja Gerwien, representative of the Department for Constitutional Justice of Venice Commission, Mr. Ciril Ribičič, member representing Slovenia, and Mr. Pere Vilanova Trias, member representing Andorra to the Venice Commission. During the meeting, President Rama-Hajrizi informed the guests about the work that the Constitutional Court has done so far, influence of its decisions beyond the field of constitutional justice, cooperation with other international institutions and efforts being made to become a member of the Conference of European Constitutional Courts. She highlighted the excellent cooperation that the Constitutional Court continues to have with the Venice Commission, particularly mentioning the top-level mutual visits and the continuous contribution of the Court by its responses to various constitutional matters raised via the Venice Forum. Later on, during the conversation, both parties discussed important matters concerning the submission of applications to the Venice Commission and the important advisory role that this institution plays in the processes of constitutional and electoral reforms in member states.

9 November 2016



The President of the Constitutional Court of the Republic of Kosovo, Ms. Arta Rama-Hajrizi, received in a meeting the new Head of the Mission of Organization for Security and Cooperation in Europe (OSCE) in Kosovo, Mr. Jan Braathu. Having thanked Mr. Braathu for his prior engagement and support he has provided to the Constitutional Court while acting as the Norway Ambassador to Kosovo, President Rama-Hajrizi wished him further success in his new position. During the conversation, she recognized the important role that the OSCE plays in strengthening the rule of law and promoting the human rights in Kosovo, whereupon she expressed her conviction that the relations between the two institutions will continue to be further intensified through common projects particularly in the field of human rights. The new Head of OSCE Mission, Mr. Braathu, confirmed the willingness of the institution he currently leads to support and deepen the cooperation with the Constitutional Court in all fields of mutual interest.

29 November 2016

The President of the Constitutional Court, Mrs. Arta Rama-Hajrizi, accompanied by the Deputy President of the Court, Mr. Ivan Çukalović, and the Judge, Mrs. Selvete Gërxhaliu-Krasniqi, welcomed in a meeting the European expert of constitutional law and Head of the Public Law Department at the University of Regensburg in Germany, Mr. Rainer Arnold. President Rama-Hajrizi informed Professor Arnold on the work that the Court has done so far, the current challenges in its functioning and the legal reforms that are currently being made towards advancing the constitutional system in Kosovo. Professor Arnold congratulated President Rama-Hajrizi on the achievements of the institution she leads and expressed his conviction that the development of the constitutional judiciary is an essential prerequisite for the democratic development of every country.

1 December 2016

The President of the Constitutional Court, Mrs. Arta Rama-Hajrizi, welcomed in an introductory meeting the EU Special Representative and new Head of EU Office in Kosovo, Ms. Nataliya Apostolova. President Rama-Hajrizi wished Ms. Apostolova success with the position where to she is newly appointed, and considered the hitherto cooperation of the Constitutional Court with the EU Office in Kosovo as excellent. Composition and functioning, cooperation with counterpart institutions and other international organizations, and challenges faced by the Court while performing its duties were among the topics that were



discussed in the bilateral meeting. The conversation included other topics related to the functioning of the system of justice in the country, whereupon President Rama-Hajrizi expressed her gratitude for the continuous support and assistance that the EU Office has provided to the Court, but also to other local institutions, in strengthening the rule of law in Kosovo. Ms. Apostolova expressed the EU Office willingness and readiness to provide further support to the Constitutional Court and other local institutions towards the application of EU justice standards.

19 December 2016

At the invitation of the Constitutional Court of Montenegro, the President of the Constitutional Court, Mrs. Arta Rama-Hajrizi, and Judge, Mrs. Gresa Caka-Nimani, travelled to Budva, to participate at the International Conference on the topic: *"The role of the Constitutional Court in developing the Rule of Law: Protection of human rights and fundamental freedoms"*. The Conference was organized by the Constitutional Court of Montenegro and the Council of Europe Office in this country, on the occasion of the statehood millennium and the 10th anniversary of the independence of Montenegro.



Amantina Tolaj & Bardh Bokshi

Traineeship programme at
the European Court of Human Rights

Strasbourg

During the traineeship at the ECtHR we have learned new things and have deepened our knowledge in relation to the Strasbourg institutions, the case law of the ECtHR, day to day administrative procedures within the ECtHR in addition to the interrelation between the ECtHR and the COE.

In terms of deepening our knowledge of the ECtHR's case law we were given real Chamber level cases to work with. We soon found out that working with Chamber level cases meant hard work and stretching beyond our present level of capabilities and knowledge which in the end, however, proved to be a rewarding experience.

More concretely, to work in those cases meant that you had to pay attention to every argument raised by the applicant and give an express reply to it regardless of how trivial that argument may have appeared to be.

It meant that you had to invoke the ECtHR case law in order to buttress your reasoning. And in the end, after we finished working on the said cases we produced what is known as 'communication reports' which were then reviewed by the chief lawyer of the Albanian division under which we were rendering our service.

It goes without saying that we got very healthy feedback from the chief lawyer of the division in relation to what we did well and what did not do so well in relation to the communication reports produced by us. The feedback helped us change our mindset/approach and how to tackle new cases that we were given.

Moreover, every fortnight we made analysis and discussed the ECtHR case law on Articles 3, 5, 6 and 7 of the Convention together with the lawyers from the Albanian division.

The more impressive cases that we discussed were *Rohlena v. the Czech Republic*, *Slyadnev and Svinarenko v. Russia* and *Austin and Others v. the UK*.

Beside the communication reports which were our priority work, we also wrote reports on Albanian legislation pertaining to religious matters and other matters as well.

We also wrote summaries of applications which were sent to the Registry of the Court from Kosovo and from Albanian speakers in FYROM.

All of our work i.e. the communication reports, research of legislation and summaries of applications were all done in English and sent to the Albanian division for whom we rendered our services.

Furthermore, our attendance of the Grand Chamber hearings was of quintessential importance because we had hands on experience on how a Grand Chamber hearing was conducted, the ambience of it all i.e. the courtroom, the conduct of the judges, the parties, the public and the outstanding interpreters.

It was something unique in all respects and from the professional point of view we were impressed with the way the pleadings were presented by both the lawyers of the applicants and the representatives of the Respondent Government.

The arguments set forth by those lawyers confirmed that good presentation skills and proper body language are just as important as the knowledge of law itself, and that in order to be a good lawyer one has to have all of the said skills because they are interdependent.

We also had Induction Training on topics such as the life of an application, private office of the President of the Court, case management, function of the Sections, research activities, interim measures, language departments, supervision of the execution of judgments and decisions, templates and court tools, archives and the work of the Committee for the Prevention of Torture.

Most of the Induction Training dealt with topics related to the work of the Registry of the Court whose task is to provide legal and administrative support to the Court judges in the exercise of their judicial functions. The registry is composed of lawyers, administrative and technical staff and translators.



Lessons learned

There is a lot that one can learn from the ECtHR's procedure and working methods, given the long experience of this Court in dealing with human rights issues. The Constitutional Court of the Republic of Kosovo has made substantial improvements in many respects since becoming operative in September 2009 and there is a marked improvement in the quality of judgments, resolutions and decisions.

Having said that, the Constitutional Court can make a leap in quality of its judgments if it follows a double check procedure of quality of judgments. Judgments and decisions of the ECtHR are checked once by the proofreaders and quality checkers both from the linguistic and legal point of view and the second time they are given a final check by the Registrar or his deputy.

In this regard, the Constitutional Court has to have a method and a plan in addition to a group of linguist and legal professional in order to ensure a higher quality of its judgments. The Constitutional Court already in its own way implements quality checks, however, options must be explored to have a systematic quality check of judgments as is the case with the ECtHR.

Another very interesting aspect that could make the Constitutional Court more accessible to the general public is to produce – easy to read – booklets which explain in simple terms what the Constitutional Court is about i.e. jurisdiction, procedural requirements,

eligibility of the applicants to file referrals et cetera.

A good example is “THE ECHR IN 50 QUESTIONS” a booklet which explains in simple terms what the ECtHR is about and what prospective applicants can expect when filing applications.

We are thankful to the President of the Constitutional Court of Kosovo and to all Judges of the Court, Swiss Government and the Council of Europe Office in Pristina whose generous support made it possible for us to undertake the Traineeship programme at the European Court of Human Rights in Strasbourg, France.



ECtHR – Important decisions (1 July – 31 December 2016)

* **Proceedings to dismiss a judge of the Constitutional Court of Bosnia and Herzegovina were fair and did not interfere with his freedom of expression**

In its decision in the case of *Simić v. Bosnia and Herzegovina* (application no. 75255/10) the European Court of Human Rights has unanimously declared **the application inadmissible**.

The case concerned Mr Simić's removal from office as a judge of the Constitutional Court. Relying in particular on **Article 6 § 1 (right to a fair trial)** and **Article 10 (freedom of expression)**, Mr Simić alleged in particular that the proceedings to dismiss him had been unfair and that he had been removed from office because of statements he had made in public via the media criticising the Constitutional Court. The Court found that Mr Simić had had the opportunity to present his case in proceedings before the Constitutional Court, both in written and in oral submissions, and to inspect as well as to comment on all the relevant documents, as required in fair and adversarial proceedings. It could not moreover accept his complaint that there had been no public hearing on his case as he had at no point during the proceedings requested that the sessions be held in public. Furthermore, the Court concluded that Mr Simić had been removed from office for damaging the authority of the Constitutional Court and the reputation of a judge. The reasons for Mr Simić's dismissal had therefore been motivated by behaviour considered incompatible with judicial office, namely his having written a letter to a senior politician which lacked independence and impartiality, and not because of his publicly expressed views via the media.

* **Arrest of Garri Kasparov and another activist during a protest rally and their ensuing detention discouraged participation in opposition politics**

The case *Kasparov and Others v. Russia (No. 2)* (application no. 51988/07) concerned the arrest of Garri Kasparov, the former World Chess Champion and political activist, along with another activist, Aleksandr Averin, at a protest rally in Moscow and the two men's ensuing detention. The Chamber's judgment in the case *Kasparov and Others v. Russia (No. 2)*, the European Court of Human Rights held unanimously, that there had been **a violation of Article 11 (freedom of assembly and association)** and of **Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights as regards the

applicants Mr Kasparov and Mr Averin; **a violation of Article 5** (right to liberty and security) of the European Convention on account of Mr Averin's administrative detention in a Moscow police station for 48 hours, which had exceeded the three-hour time-limit under domestic law, but no violation of Article 5 as regards Mr Kasparov's detention in the police station as it had not exceeded that time-limit; **and by six votes to one, that there was no need to examine the complaint under Article 18** (limitation on use of restrictions on rights). As in a number of other identical Russian cases which have come before the Court, the applicants' – undeniably peaceful – procession had been dispersed, the applicants arrested and sentenced to five days' imprisonment in administrative proceedings without any assessment of the disturbance they had caused or any opportunity at all to give evidence in support of their version of events. The Court held that the measures taken against the applicants had had the serious potential to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate.

* **Monitoring of an employee's use of the Internet and his resulting dismissal was justified**

In the case of *Bărbulescu v. Romania* (application no. 61496/08) the European Court of Human Rights held, by six votes to one, that there had been **no violation of Article 8 (right to respect for private and family life, the home and correspondence)** of the European Convention on Human Rights.

The case concerned Mr Bărbulescu's dismissal by his employer, a private company, for having used the company's Internet for personal purposes during working hours in breach of internal regulations. The Court found, in particular, that Mr Bărbulescu's private life and correspondence had been engaged. However his employer's monitoring of his communications had been reasonable in the context of disciplinary proceedings.

* **The Hungarian authorities' refusal to provide an NGO with information relating to the work of ex officio defence counsel was in breach of the right of access to information**

In the case of *Magyar Helsinki Bizottság v. Hungary* (application no. 18030/11) the European Court of Human Rights held, by 15 votes to 2, that there had been **a violation of Article 10 (freedom of expression)** of the ECHR.



The case concerned the authorities' refusal to provide an NGO with information relating to the work of ex officio defence counsel, as the authorities had classified that information as personal data that was not subject to disclosure under Hungarian law. The Court noted that the information requested from the police by the applicant NGO was necessary for it to complete the study on the functioning of the public defenders' system being conducted by it in its capacity as a non-governmental human-rights organisation, with a view to contributing to discussion on an issue of obvious public interest. In the Court's view, by denying the applicant NGO access to the requested information the domestic authorities had impaired the NGO's exercise of its freedom to receive and impart information, in a manner striking at the very substance of its Article 10 rights.

The Court noted that the subject matter of the survey concerned the efficiency of the public defenders system, an issue that was closely related to the right to a fair hearing, a fundamental right in Hungarian law and a right of paramount importance under the Convention, and pointed out that the NGO had wished to explore its theory that the pattern of recurrent appointments of the same lawyers was dysfunctional.

The Court found in particular that the public defenders' privacy rights would not have been negatively affected had the applicant NGO's request for the information been granted, because although the information request had admittedly concerned personal data, it did not involve information outside the public domain. The Court also held that the Hungarian law, as interpreted by the domestic courts, had excluded any meaningful assessment of the applicant NGO's freedom-of-expression rights, and considered that in the present case, any restrictions on the applicant NGO's proposed publication – which was intended to contribute to a debate on a matter of general interest – ought to have been subjected to the utmost scrutiny.

Lastly, the Court considered that the Government's arguments were not sufficient to show that the interference complained of had been "necessary in a democratic society" and held that, notwithstanding the discretion left to the respondent State (its "margin of appreciation"), there had not been a reasonable relationship of proportionality between the measure complained of (refusal to provide the names of the ex officio defence counsel and the number of times they had been appointed to act as counsel in certain jurisdictions) and the legitimate aim pursued (protection of the rights of others).

* **Unlawful surveillance by an insurance company of a road accident victim breached her right to privacy**

In the case of **Vukota-Bojić v. Switzerland** (application no. 61838/10) the European Court of Human Rights held, by six votes to one, that there had been: **a violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights; and, unanimously, that there had been; **no violation of Article 6** (right to a fair trial) of the of the European Convention.

Ms Vukota-Bojić had been involved in a road traffic accident, and subsequently requested a disability pension. Following a dispute with her insurer on the amount of disability pension and years of litigation later, her insurer requested that she undergo a fresh medical examination, in order to establish additional evidence about her condition. When she refused, the insurer hired private investigators to conduct secret surveillance of her. The evidence that they obtained was used in subsequent court proceedings, which resulted in a reduction of Ms Vukota-Bojić's benefits. She complained that the surveillance had been in breach of her right to respect for private life, and that it should not have been admitted in the proceedings. The Court held that the insurer's actions engaged state liability under the Convention, since the respondent insurance company was regarded as a public authority under Swiss law. It also held that the secret surveillance ordered had interfered with Ms Vukota-Bojić's private life, even though it had been carried out in public places, since the investigators had collected and stored data in a systematic way and had used it for a specific purpose.

Furthermore, the surveillance had not been prescribed by law, since provisions of Swiss law on which it had been based were insufficiently precise. In particular, they had failed to regulate with clarity when and for how long surveillance could be conducted, and how data obtained by surveillance should be stored and accessed. There had therefore been a violation of Article 8. The Court also found that the use of the surveillance evidence in Ms Vukota-Bojić's case against her insurer had not made the proceedings unfair. She had been given a fair opportunity to challenge the evidence obtained by the surveillance, and the domestic court had given a reasoned decision as to why it should be admitted.

(For more details please visit the website of the European Court of Human Rights: www.echr.coe.int)



1. Republic of Moldova - Conference with the Constitutional Court

2 - 3 March 2017

Chisinau - Conference in co-operation with the Constitutional Court of the Republic of Moldova on *"Evolution of constitutional control in Europe: lessons learned and challenges"*. This conference will be co-financed in the Council of Europe/European Union Programmatic Cooperation Framework (PCF).

2. 110th Plenary Session of the Venice Commission of the Council of Europe

10 – 11 March 2017

Venice - Scuola Grande di San Giovanni Evangelista.

3. World Conference on Constitutional Justice - Bureau

11 March 2017

Venice - 11th Meeting of the Bureau of the World Conference on Constitutional Justice

4. Constitutional justice - Union of Arab Constitutional Courts and Councils

March 2017

The Union of Arab Constitutional Courts and Councils will hold a Symposium on *"Latest development in Arab world: Experiences of the Arab constitutional judiciary in the field of the right to Equality, religious and cultural freedom"*.

5. Africa - Constitutional Justice

23 – 26 April 2017

Cape Town - The Conference of Constitutional Jurisdictions of Africa will hold its IVth Congress on the topic of *"Strengthening of the Independence of the Judiciary and the Respect for the Rule of Law"*.

6. Belarus - Conference with the Constitutional Court

May 2017

Minsk - Conference in cooperation with the Constitutional Court on *"The Role of Constitutional review bodies in ensuring the rule of law in rule-making and law-enforcement"*. This Conference is financed by the Council of Europe/European Union programme: *"Programmatic Cooperation Framework in the Eastern Partnership Countries"*.

7. Constitutional Justice - Joint Council

18 - 19 May 2017

Karlsruhe - The Federal Constitutional Court of Germany will host the 16th meeting of the Joint Council on Constitutional Justice of the Venice Commission.

8. 111th Plenary Session of the Venice Commission of the Council of Europe

16 – 17 June 2017

Venice - Scuola Grande di San Giovanni Evangelista.

9. Conference of European Constitutional Courts - XVIIth Congress

28 June – 1 July 2017

Batumi - The Conference of European Constitutional Courts will hold its XVIIth Congress on the topic *"Role of Constitutional Courts in upholding and applying Constitutional Principles"*.



Judgment

KO 73/16

Applicant

The Ombudsperson

Request for constitutional review Constitutional of Administrative Circular No. 01/2016 issued by the Ministry of Public Administration of the Republic of Kosovo on 21 January 2016

I. In 2010, the Parliament adopted a new law on Salaries of Civil Servants. In 2015, the Government enacted a Regulation on Classification of Jobs in the Civil Service based on the aforementioned law. In addition, the Government also adopted a catalogue of jobs in Civil Service with the aim of creating a system of uniform grades, positions and salaries in all public institutions that are financed by the Kosovo budget. In 2016, as a further implementing measure, the Government enacted an Administrative Circular requesting from the Ombudsperson to classify and place its civil servants in positions and grades as approved by the Government. The same Administrative Circular, entailing the same requests, was also sent to the Constitutional Court as well as all other independent institutions enumerated under Chapter XII of the Constitution, namely Auditor General, Central Election Commission, Central Bank, Independent Media Commission. Through the Administrative Circular, the Government requested that the abovementioned institutions submit their proposals for their internal job classification and placement to the Government for review and approval. The purpose was to determine their classification within the catalogue of jobs in the Civil Service and place the civil servants within these respective institutions in the positions and grades as approved by the Government. The Administrative Circular was subsequently challenged before the Constitutional Court under the allegations that it was unconstitutional and that it did not respect the principle of independence granted to these institutions. The Ombudsperson as the applicant in this case alleged that the Government has violated the constitutional guarantee of independence of the Ombudsperson, the Constitutional Court and other independent institutions enumerated in Chapter XII of the Constitution.

This violation was allegedly committed by interfering in the internal matters of organization, budget and staff management.

II. The Court admitted the case for review and considered that it raised serious questions of fact and law which must be examined in merits, through a Judgment. The main questions with which the Constitutional Court was concerned with amounted as to i) whether the Government, when enacting the Administrative Circular, took into account the specific constitutional place and status of independent institutions and the constitutional guarantees for their functional, organizational and financial independence; and ii) whether the legal principle “equal pay for equal work” was constitutionally applicable in view of their constitutional standing. The Constitutional Court ascertained that the contested Administrative Circular touched upon the constitutional status of the independent institutions and that it had a substantive impact in relation to their organizational, functional and financial status. The Court did not contest the authority of the Government to unify classification of job positions and grades as part of its public administration obligations. However, the Court emphasized that when doing so, the Government is to take into account the special status of the Ombudsperson, the Constitutional Court and other independent institutions in accordance with their constitutional guarantee of independence. Therefore, the Court considered that the preparation, the content and the applicability of any norms related to their functioning and internal job descriptions and remuneration has to be adequately and appropriately developed and determined. According to the Judgment, the Court concurred that the Government has a constitutional prerogative and duty to act as the policymaker of the state, including in the area of classification and categorization of job positions. However, the Court considered that despite the aforementioned prerogatives of the Government, it could not be expected that the staff of the constitutionally independent institutions should conform in an identical manner to the system of recruitment, job classification, categorization and remuneration provided by a legal act of general nature of the Government, or any act of the executive branch, without first taking due account of the specificities and uniqueness of the institutions in question.

In concluding part of the Judgment, the Court noted that the contested Administrative Circular did not take into account the unique position of the Ombudsperson and of the Constitutional Court as constitutionally independent institution, given that the Circular was prepared without participation of the involved institutions or without taking into account the opinions expressed. For these reasons, the Court declared that the Administrative Circular issued by the Government violated in its entirety the provisions of the Constitution stipulated in Chapter VII [Constitutional Court] and XII [Independent Institutions].

Regarding the parties that are entitled to file a request for constitutional review to the Constitutional Court under Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo:

1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;

(2) the compatibility with the Constitution of municipal statutes.

3. The Assembly of Kosovo, the President of the Republic of Kosovo and the Government are authorized to refer the following matters to the Constitutional Court:

(1) conflict among constitutional competencies of the Assembly of Kosovo, the President of the Republic of Kosovo and the Government of Kosovo;

(2) compatibility with the Constitution of a proposed referendum;

(3) compatibility with the Constitution of the declaration of a State of Emergency and the actions undertaken during the State of Emergency;

(4) compatibility of a proposed constitutional amendment with binding international agreements ratified under this Constitution and the review of the constitutionality of the procedure followed;

(5) questions whether violations of the Constitution occurred during the election of the Assembly.

4. A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.
5. Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.
6. Thirty (30) or more deputies of the Assembly are authorized to refer the question of whether the President of the Republic of Kosovo has committed a serious violation of the Constitution.
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.
8. The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue.
9. The President of the Assembly of Kosovo refers proposed Constitutional amendments before approval by the Assembly to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.
10. Additional jurisdiction may be determined by law.



Initiation of proceeding at the Constitutional Court?

The initiation of proceeding at the Constitutional Court is made through a Referral to the Court. The Referral is filed by filling out the Referral Form which can be downloaded from the Court's website or can be requested directly at the Court (even though this may take longer).



Before filling out the Referral Form you are advised to consult "Guidelines" for filling out the Form which you can also find on the webpage of the Constitutional Court.

After you have filled out the Referral Form you should submit it in person to the Court during the regular work schedule, or through regular mail or electronic mail (e-mail). The Referrals should be justified and necessary evidence and other documents should be attached (do not submit original documents as they will not be returned to you after the completion of the case review).

Any question in this regard may be addressed at email address: gjykata.kushtetuese@gjk-ks.org.

What is the procedure before the Court?

In the event that the Constitutional Court finds the appeal admissible, it will request the respondent party to submit its reply or documents.

Failure on the part of the respondent party to reply will not affect the proceedings before the Constitutional Court.

The procedure is conducted in writing. However, the Court may decide to hold a public hearing when the issue pertinent to the adoption of a decision requires previous discussion.

The appellant may present his/her case before the Constitutional Court or he/she may designate a person to represent him/her.

In the latter case, the appellant is advised to engage a lawyer to present the case.

Your representative is obliged to produce a power of attorney.



INFORMATION ON THE COURT

The building of the Constitutional Court:

The Constitutional Court of the Republic of Kosovo, since it became functional in 2009, has been located in the building of the former Kosovo Protection Corps - KPC, located in the center of Prishtina, in the area of Pejton. The position of the Court in the center of the capital city, symbolizes an equal access to all citizens and other authorized parties to the Constitutional Justice. Over the years this building has been adapted according to the needs and nature of work of the Constitutional Court. This has been carried out with the support of our donors namely, the construction of the Courtroom has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the library of the Court was entirely supported by GIZ - the Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011. This building is composed of a total area of 784 m² and is used by 65 employees of the Court.



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