

CONTENT.....1

SIX MONTHS WORKING REPORT.....2

ACTIVITIES OF THE CONSTITUTIONAL COURT.....4

EXPERIENCES AND PERSONAL PRACTICES.....6

ECtHR – IMPORTANT DECISIONS .....8

VENICE COMMISSION-IMPORTANT EVENTS.....11

JUDGMENT.....12

WHO MAY FILE REFERRAL WITH THE CONSTITUTION-  
AL COURT.....13

FILING OF THE REFERRAL.....14



**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 are serving for a non-renewable term of 9 (nine) years.

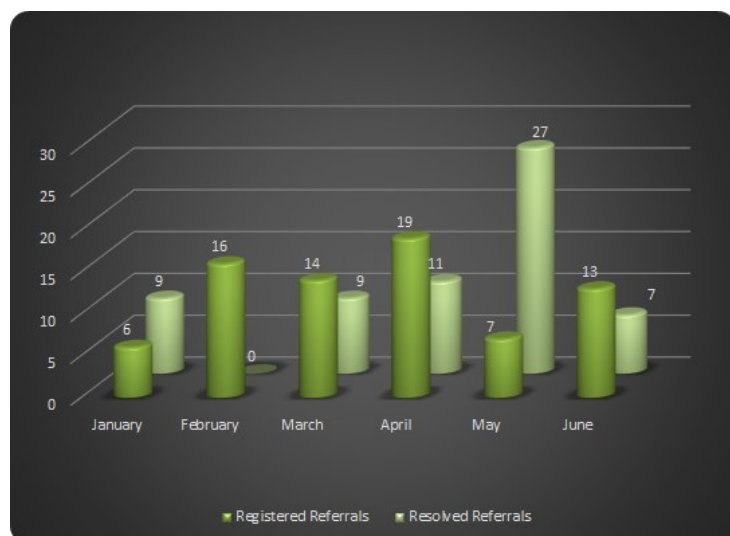
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

Currently, the Constitutional Court is composed of 8 (eight) Judges: 6 (six) national judges and 2 (two) international judges.

## Status of cases

During the six-month period: 1 January – 30 June 2017, the Court has processed a total of 156 Referrals/Cases. A total of 63 Referrals were decided or 40.4% of all available cases. During this period, 69 decisions were published on the Court webpage and served to the parties.

### *The dynamics of received referrals by month (1 January - 30 June 2017)*



The following are 5 judgments that the Court rendered during the six month period: 1 January - 30 June 2017:

- Judgment in Case KO 01/17, submitted by: Aida Dërguti and 23 other deputies of the Assembly of Republic of Kosovo. The filed referral requested the constitutional review of the Law on Amending and Supplementing the Law No. 04/ L-261 on the War Veterans of the Kosovo Liberation Army.
- Judgment in Case KO 12/17, submitted by: The Ombudsperson. The filed referral requested the constitutional review of Articles 55 (paragraphs 4 and 5), 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68 of Law No. 05/L-087 on Minor Offences.
- Judgment in Case KI 22/16, submitted by: Naser Husaj. The filed referral requested the constitutional review of Judgment Rev. No. 335/2015 of the Supreme Court of Kosovo, of 14 December 2015.
- Judgment in Case KI 34/17, submitted by: Valdete Daka. The filed referral requested the constitutional review of Decision No. 50/2017 of the Kosovo Judicial Council of 06 March 2017.

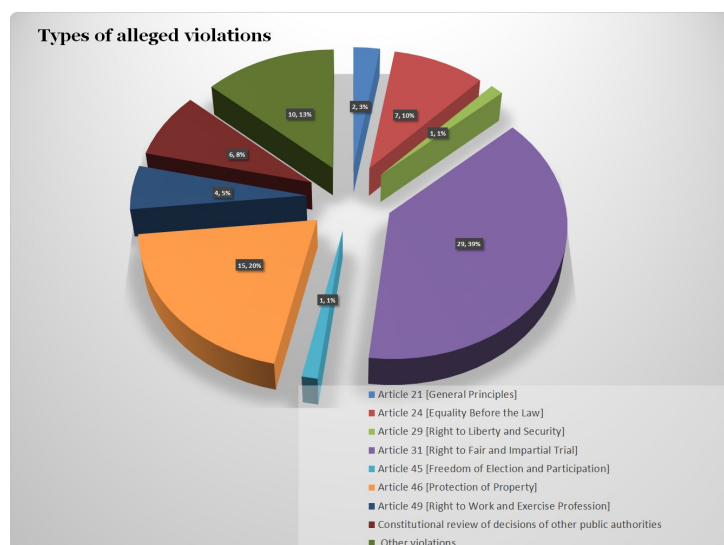
- Judgment in Case KI 31/17, submitted by: Shefqet Berisha. The filed referral requested the constitutional review of Decision CLM No. 10/2016 of the Supreme Court of Kosovo, of 24 August 2016.

## Types of alleged violations

The types of alleged violations in the 99 referrals received during the six-month period: 1 January - 30 June 2017, are the following:

- Article 21 [General Principles], 2 cases or 2.7%;
- Article 24 [Equality before the Law], 7 cases or 9.3%;
- Article 29 [Right to Liberty and Security], 1 case or 1.3%;
- Article 31 [Right to Fair and Impartial Trial], 29 cases or 38.7%;
- Article 45 [Freedom of Election and Participation], 1 case or 1.3%;
- Article 46 [Protection of Property], 15 cases or 20%;
- Article 49 [Right to Work and Exercise Profession], 4 cases or 5.3%;
- Constitutional review of decisions of state institutions, 6 cases or 8%;
- Other violations, 10 cases or 13.3%;

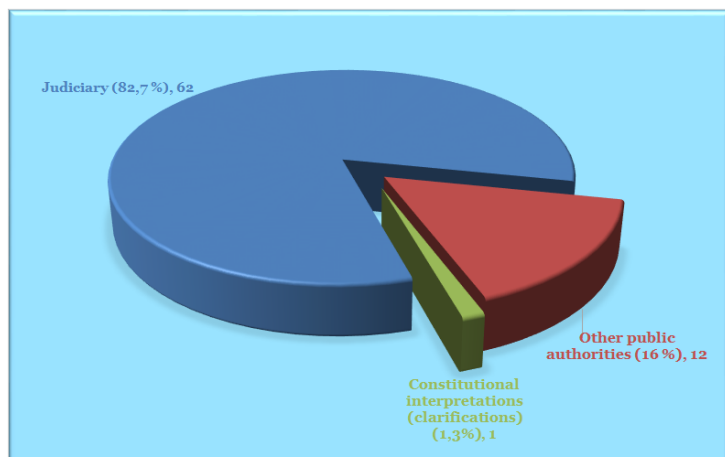
### *Alleged violations by type (1 January - 30 June 2017)*



## Alleged violators of rights

- 62 or 82,7 % of Referrals refers to violations allegedly committed by court's decisions
- 12 or 16 % of Referrals refers to violations allegedly committed by other public authorities
- 1 or 1,3 % of Referrals refers to constitutional interpretation or clarification

*Alleged violators of rights  
(1 January - 30 June 2017)*

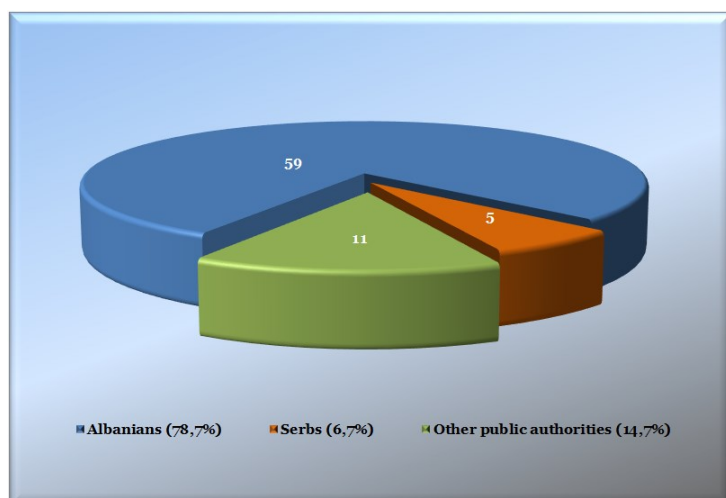


## Access to the Court

The access of individuals to the Court is the following:

- 59 Referrals were filed by Albanians, or 78,7%;
- 5 Referrals were filed by Serbs, or 19,2%
- 11 Referrals were submitted by other public authorities (legal persons), or 14,7%;

*Ethnic structure of the Applicants  
(1 January - 30 June 2017)*



## Sessions and Review Panels

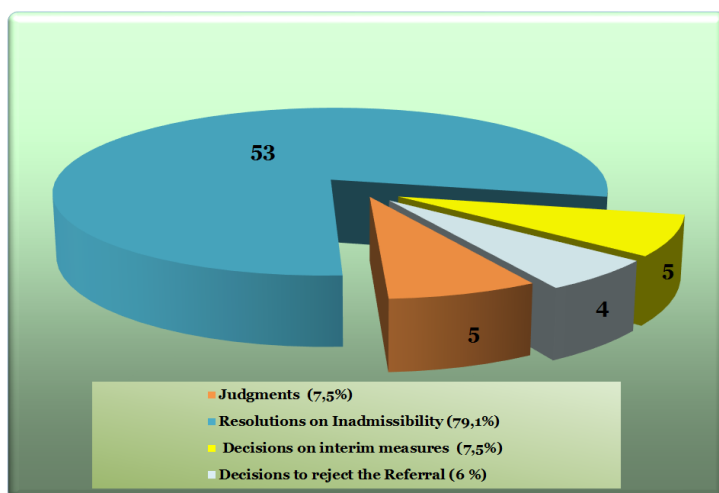
During the six-month period: 1 January - 30 June 2017, the Constitutional Court held 19 plenary sessions and 67 Review Panels in which the cases were resolved by decisions, resolutions, judgments and interim measure.

From 1 January to 30 June 2017, the Constitutional Court has published 70 decisions.

The structure of the published decisions is the following:

- 5 Judgments (7,5%)
- 53 Resolutions on Inadmissibility (79,1%)
- 5 Decisions on interim measure (7,5%)
- 4 Decisions on dismissal of Referrals (6%)

*Structure of decisions  
(1 January - 30 June 2017)*





**1 February 2017**



At the Constitutional Court of the Republic of Kosovo was held a workshop on the topic: *“The role and the powers of the Constitutional Court: Relation with regular courts and other institutions”*. The workshop was organized with the initiative of the Kosovo Judicial Institute and in cooperation with the Constitutional Court of Kosovo, which was attended by 17 new prosecutors of Basic Prosecution Offices from various cities of the country. The Judge of the Constitutional Court, Mrs. Gresa Caka-Nimani, and the Chief Legal Advisor of the Constitutional Court, Mr. Sevdail Kas-trati, informed the new prosecutors about the work process and the role that the Constitutional Court plays vis-à-vis the legislative, executive and regular judiciary branches of power, as well as the effects of the Court decisions. The submission of referrals to the Constitutional Court by authorized parties under the Constitution and the admissibility criteria for filed referrals were among the topics discussed in the workshop.

**3 March 2017**

The Deputy President of the Constitutional Court of the Republic of Kosovo, Prof. Dr. Ivan Çukalović, received in a meeting the President of the European Association for Education Law and Policy and the Former Chair of the Right to Education of UNESCO, Prof. Dr. Jan De Groof. During the conversation, Deputy President Çukalović informed Professor De Groof about the organization and functioning of the Court, the work done so far, and the enforcement of its decisions by other public authorities in the country. Deputy President Çukalović also made a short elaboration about the decision-making process and the compliance with the case-law of the European Court of Human Rights during the review of referrals, whereupon he highlighted the valuable contribution of the international judges of the Constitutional Court.

Cooperation with counterpart institutions in the region and beyond, membership in international organizations, the process for the appointment of judges and the challenges that Kosovo constitutional judiciary is currently facing, were among the topics of the joint discussion.



**31 March 2017**

Legal Advisors of the Constitutional Court of the Republic of Kosovo and their counterparts from the Supreme Court of Kosovo took part in the joint workshop on: *“The European Human Rights Protection under European Convention on the Human Rights and the EU Charter of Fundamental Human Rights”*, held at “Royal” Hotel in Prishtina.



Organized with the support of the German Foundation for International Legal Cooperation (IRZ), the aim of the workshop was to train legal advisors of both Courts on the theory and categories of human rights, judicial protection of human rights based on European standards, and the human rights protection of the European Court of Justice.



The workshop was moderated by the Presiding Judge of the Higher Administrative Court of the Land Baden-Württemberg, Prof. Dr. Jan Bergmann, who during his presentation showed a few Judgments rendered by the European Court of Human Rights as important examples.

**22 May 2017**



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, stayed on an official visit to the Federal Constitutional Court of Germany in Karlsruhe. She was received by the President of the Court, Mr. Andreas Voßkuhle, with whom she discussed various aspects of deepening the mutual cooperation between the two courts.

President Rama-Hajrizi informed President Voßkuhle about the work of the Constitutional Court of Kosovo done so far and achievements made in consolidation of the constitutional judiciary in the country as well as the efforts of this court to become a member of regional initiatives and various international institutions.

She thanked President Voßkuhle for the support that the Constitutional Court of Germany and his country have continuously provided to the Constitutional Court of Kosovo thus contributing directly to the consolidation of democracy and protection of human rights in Kosovo, in accordance with international justice standards.

President Voßkuhle congratulated President Rama-Hajrizi for the achievements made and committed to advance the support of the institution lead by him to the Constitutional Court of Kosovo.

**23 May 2017**

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, stayed on an official visit to the Constitutional Court of Austria in Vienna on Tuesday, 23 May 2017.

In the meeting with the President of the Constitutional Court of Austria, Mr. Gerhart Holzinger, President

Arta Rama-Hajrizi discussed, among others, about the possibilities of advancing the existing cooperation between the two constitutional courts.

She thanked President Holzinger for the support that the Constitutional Court of Austria has provided to the Constitutional Court of Kosovo since its establishment, through exchange of experiences as well as implementation of joint projects.

During the meeting both presidents discussed in general about the functioning of the justice system in both countries and the existing challenges in the efforts of the Constitutional Court of Kosovo to become a member of the Conference of European Constitutional Courts.





**Venera Kabashi**

Traineeship programme at  
the European Court of Human Rights  
Strasbourg

I was part of the fourth group that attended a five months study visit at the European Court of Human Rights ("ECtHR"). Unlike other colleagues, I have been placed at Division 4.2 under direct supervision of Mr. Peter Kempees, Head of Division and Mr. Ylli Peco, Lawyer at the Registry. I have exclusively worked on cases lodged against Albania, with very few exceptions to that. My day to day work included the following tasks and duties:

- Filtering of new cases
- Drafting of Single Judge notes
- Drafting Chamber notes and Chamber Judgments
- Drafting Judgments that were based on well-established case-law ("*WECL*" procedure)
- Conducting research upon request of the Research Division and upon direct request of my supervisor in respect of pending cases before the Grand Chamber
- Drafting communication letters and questions to the Government
- Participating in trainings, meetings with Judges and attending public hearings
- Discussing Grand Chamber cases on weekly basis with other lawyers of the Registry
- Providing occasional translation of allegations raised by new cases and other daily business as requested by the supervisors

### *Lessons learned*

Prior to my departure and start of the training, I had made a list of things which I was most interested to learn during my five month visit. I knew that there is a lot to grasp and that five-months would not suffice to learn all there is to learn. So, my main focus was on learning things that are pertinent to my work as Legal Advisor at the Constitutional Court.

From the substantial part of the training, I was interested to have a more in-depth knowledge in respect to main articles of the Convention that are invoked before our Constitutional Court and some other articles that were likely to be invoked in the near future. In this respect, I used all possible resources within the ECtHR to understand the application and other underpinnings of Article 5, Article 6 and Article 1 of Protocol No. 1 to the ECHR. These are the Convention rights that are mostly invoked before our Constitutional Court. I have also gained considerable knowledge of other articles of the Convention as well, namely article 8, 10, 11, 13 and 14.

From the organizational part i.e. working methods and alike, I was interested to learn how does ECtHR work and how do lawyers conduct their work when it comes to assessing an application and deciding upon the merits of a case. These issues were important to learn about in order to enrich our own working methods once back home.

I learned a lot with respect to: research within the resources of the ECtHR and comparative law research; analysing allegations of a breach of Convention right (s); reviewing and responding to such allegations; construction of arguments and reasoning of decisions on inadmissibility and admissibility.

I have made a list of the best practices that I considered could be implemented back home and discussed them with my supervisors at the Constitutional Court. Some of these ideas turned into concrete project proposals whereas some other ideas have started to be implemented on voluntary basis within the Legal Unit.

All in all, the experience of working for 5 months at the ECtHR has proven to be highly beneficial for my personal and professional growth and for the further advancement of the human resources of the Legal Unit of the Constitutional Court.

Lastly, I wish to express my gratitude to the Constitutional Court of Kosovo, the Swiss Government and the Council of Europe Office in Pristina whose generous support made it possible for me to undertake the Traineeship programme at the ECtHR.





**Vesa Caka**

Traineeship programme at  
the Venice Commission

Strasbourg

During my practice at the Venice Commission, I have been assigned at the Election Division of the Commission, where I have been given multiple tasks by the staff, including in the area of legal research and that of public relations and communication.

Apart from providing legal research on the judicial reform of the Republic of Albania, I have been continuously assigned to analyze and research on the justice system reform in Albania, including an analysis of the factors that could lead to potential resistance towards the judicial reform in this country. I have also provided a summary report on the legal provisions regulating the appointment, mandate, disciplinary measures and the termination of the mandates of the Judges in the Regular Courts of the Republic of Albania.

Following the preparation of the Interim Opinion of the Venice Commission on the draft Constitutional Amendments on the Judiciary of Albania, I have been assigned to research and identify all the opinions of the Venice Commission which refer to the liability of judges, starting from 2009 up to date. Finally, I have also compiled all the references related to the Interim Opinions of the Venice Commission on the draft Constitutional Amendments pertaining to the judiciary in Albania.

I have been fully engaged and provided continuous research during the preparation of the Interim Opinion on the Constitutional Amendments pertaining to the judiciary in Albania. The Interim Opinion was adopted on the 105th Plenary Session of the Venice Commission. Besides legal research, I have also been continuously engaged on issues pertaining to public

relations and provided my assistance on the improvement of the visibility for activities of the Venice Commission, including but not limited to the following:

- The website: [www.venice.coe.int](http://www.venice.coe.int)
- The newsletters of the Venice Commission
- The members update of the Venice Commission

It worth to be noted that the new version and format of the newsletter that I had prepared and recommended, is being used as a template for the Newsletter of the Venice Commission.

I also had the opportunity to participate on the 104th Plenary Session of the Venice Commission. This has been an excellent opportunity to closely experience and benefit from the discussions and the adoption of the opinions by the Member States of the Venice Commission. During this Plenary Session, I was engaged to support and assist with the protocol of the session. I have also assisted with the preparation of the Synopsis (CDL-PL-PV (2015)003syn-e) of the 104th Plenary Session of the Venice Commission (Venice, 23-24 October 2015).

### *Lessons learned*

It has been a great honor, pleasure and a privilege to be able to support the teams of the Venice Commission for five months and more importantly, it has been a tremendous learning opportunity for me. This opportunity has increased and expanded my knowledge about the Venice Commission and the Council of Europe.

I have had the chance to closely observe, monitor and learn the key operations and the manner in which the Venice Commission handles its international affairs and its legal cooperation. I am looking forward to using and applying my new knowledge and skills to the Constitutional Court of Kosovo.

I am very confident and committed to effectively use my five months experience at the Commission to continuously support operations at the Constitutional Court of Kosovo. And, I look forward to further contribute to the future cooperation between the Constitutional Court of Kosovo and the Council of Europe Office in Prishtina, the Council of Europe and the Venice Commission.

Lastly, I wish to express my sincere gratitude to the Constitutional Court, to the Swiss Government and the Council of Europe Office in Pristina whose generous support made it possible for me to undertake the Traineeship programme at the Venice Commission.

## ECtHR – Important decisions (1 January – 30 June 2017)

**\* By refusing to exempt two Muslim pupils from compulsory mixed swimming lessons, the Swiss authorities had given precedence to the children's obligation to follow the full school curriculum and had not infringed the right to freedom of religion**

In its judgment in the case of ***Osmanoglu and Kocabaş v. Switzerland*** (application no. 29086/12) the European Court of Human Rights held, unanimously, that there had been **no violation of Article 9 (right to freedom of thought, conscience and religion)** of the ECHR.

The case concerned the refusal of Muslim parents to send their daughters, who had not reached the age of puberty, to compulsory mixed swimming lessons as part of their schooling and the authorities' refusal to grant them an exemption. The Court found that the applicants' right to manifest their religion was in issue and observed that the authorities' refusal to grant them an exemption from swimming lessons had been an interference with the freedom of religion, that interference being prescribed by law and pursuing a legitimate aim (protection of foreign pupils from any form of social exclusion).

The Court emphasized, however, that school played a special role in the process of social integration, particularly where children of foreign origin were concerned. It observed that the children's interest in a full education, facilitating their successful social integration according to local customs and mores, took precedence over the parents' wish to have their daughters exempted from mixed swimming lessons and that the children's interest in attending swimming lessons was not just to learn to swim, but above all to take part in that activity with all the other pupils, with no exception on account of the children's origin or their parents' religious or philosophical convictions. The Court also noted that the authorities had offered the applicants very flexible arrangements to reduce the impact of the children's attendance at mixed swimming classes on their parents' religious convictions, such as allowing their daughters to wear a burkini.

It also noted that the procedure in the present case had been accessible and had enabled the applicants to have the merits of their application for an exemption examined.

The Court accordingly found that by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities had not

exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education.

**\* Ban on US nationals adopting Russian children led to unlawful discrimination**

In its judgment in the case of ***A.H. and Others v. Russia*** (application nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13) the European Court of Human Rights held, unanimously, that there had been **a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life)** of the European Convention on Human Rights.

The applications were brought by 45 US nationals: both on their own behalf, and on behalf of 27 Russian children. In late 2012, the US applicants had been in the final stages of procedures to adopt the Russian children, many of whom required specialist medical care. However, after a Russian law had been passed which banned adoptions of Russians by US nationals, all of these procedures were abruptly halted. The applicants claimed that, because the proceedings had been at a late stage, a bond had already formed between the adults and children. They complained that the ban had violated their right to family life, that it had been discriminatory, and that it had amounted to ill-treatment of the children (as it prevented them from receiving specialist medical care in the US).

The Court found that the adoption ban had unlawfully discriminated against the prospective parents. In particular, this was because it had prevented the adoption of Russian children by the US applicants purely on the basis of the prospective parents' nationality; and because such a ban had been disproportionate to the Government's stated aims, given that it had been retroactive, indiscriminate, and was applied irrespective of the status of proceedings or the individual circumstances. However, the Court found inadmissible the complaint that the ban had caused ill-treatment of the children, as it found that they had received adequate medical treatment in Russia.

**\* Article 8 of the Convention protects certain events of private and family life, obliging journalists to show prudence and precaution in reporting them**

In its judgment in the case of ***Rubio Dosamantes v. Spain*** (application no. 20996/10) the European Court of Human Rights held, unanimously, that there had been **a violation of Article 8 (right to respect for private and family life)** of the European



Convention on Human Rights. The case concerned a complaint by the pop singer Paulina Rubio that her honour and reputation had been harmed by remarks made on television about her private life. The Court found that Ms Rubio's fame as a singer did not mean that her activities or conduct in her private life should be regarded as necessarily falling within the public interest. The fact that she could have benefitted from media attention did not authorise TV channels to broadcast unchecked comments about her private life.

The Court reiterated that certain events of private and family life were given particularly careful protection under Article 8 of the Convention, meaning that journalists had to show prudence and precaution when talking about them. Thus the spreading of unverified rumours or the limitless broadcasting of random comments on any possible aspect of a person's daily life could not be seen as harmless.

The national authorities should have assessed the TV programmes in question, to distinguish between and to weigh in the balance those matters which were intimately part of Ms Rubio's private life and those which might have had a legitimate public interest.

**\* Serbian authorities' reaction to an article written about a well-known human rights activist had been disproportionate**

In its judgment in the case of *Milisaavljević v. Serbia* (application no. 50123/06) the European Court of Human Rights held, unanimously, that there had been **a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned a journalist's complaint about her conviction for insult following an article she had written about Nataša Kandić, a well-known human rights activist. The courts held that by failing to put one particular sentence – "Ms Kandić [had] been called a witch and a prostitute" – in quotation marks, the journalist, Ms Milisaavljević, had tacitly endorsed the words as her own. The Court found in particular that it was evident, even without the quotation marks, that that sentence, written by another journalist and previously published in a different magazine, had not been Ms Milisaavljević's personal opinion of Ms Kandić, but that she had merely been transmitting how Ms Kandić was perceived by others. Moreover, the domestic courts, limiting their reasoning to the lack of quotation marks, had completely failed to balance Ms Kandić's right to reputation against Ms Milisaavljević's freedom of expression and duty, as a journalist, to impart information of general interest.

**\* Croatian official was not incited to commit corruption, but his defence rights were restricted in the criminal proceedings against him**

The case *Matanović v. Croatia* (application no. 2742/12) concerned a complaint about entrapment, secret surveillance measures and the non-disclosure and use of the evidence thus obtained. Mr Matanović, the applicant, a vice-president of the Croatian Privatisation Fund, was convicted of corruption in 2009 for accepting and facilitating bribes in exchange for support of investment projects and privatisations. His conviction was essentially based on evidence obtained via telephone tapping following a covert operation involving an informant.

In its judgment in the case, the European Court of Human Rights held, unanimously, that there had been **no violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights as concerned Mr Matanović's complaint of entrapment. The Court found in particular that, on balance, the prosecuting authorities' investigation had essentially remained within the bounds of undercover work, rather than inciting Mr Matanović to commit offences he would not have otherwise committed; but, that there had been **a violation Article 6 § 1** of the Convention as concerned the non-disclosure of certain evidence in the criminal proceedings against Mr Matanović. In particular, due to a lack of procedural safeguards, Mr Matanović had been prevented from establishing whether recordings in the prosecution's possession, excluded from the case file because they had concerned individuals who were not eventually accused in the proceedings, could have reduced his sentence or put into doubt the scope of his alleged criminal activity; and lastly, that there had been **a violation of Article 8 (right to respect for private and family life, the home and the correspondence)** because the procedure for ordering and supervising the tapping of Mr Matanović's telephone had not been lawful.

**\* Taxes and fees imposed by German churches did not violate religious freedom**

Under German law, some churches and religious societies are entitled to levy a church tax and/or fee on their members. The five applicants complained that, when such taxes or fees were calculated and levied on the basis of the joint income of both the applicant and their spouse, it violated their right to freedom of religion. In particular, they complained variously of being obliged to pay for their spouse's special church fee when they themselves were not a member of the church; of requiring the financial assistance of their spouse to pay their own special church fee, making them dependant on their spouse for their freedom of religion; or of being obliged to pay an unfairly high church tax, as it had been calculated taking their spouse's income into account. Some applicants also complained that the taxes or fees had been discriminatory. In its judgment in the case of *Klein and Others v. Germany*

(application nos. 10138/11, 16687/11, 25359/11 and 28919/11) the European Court of Human Rights held, unanimously, that most of the complaints under **Article 9 (freedom of religion) of the European Convention of Human Rights** were inadmissible. In particular, this was because in these cases the taxes/fees had been levied not by the State, but by the applicants' churches – which the applicants were free to leave under German law. As such, in most of the cases the levying and calculation of the taxes/fees had been an autonomous church activity, which could not be attributed to the German State.

However, in one case the State had been involved in levying a special church fee on an applicant who was not a member of the relevant church. This was because the fee which had been levied on the applicant's wife had been subtracted directly from the applicant's tax reimbursement claim by way of an off-set – therefore subjecting the applicant to his wife's financial obligations towards her church. However, this off-set had arisen because the couple themselves had chosen to file a joint tax assessment, and it appeared that the applicant could have cancelled it by lodging a settlement notice.

In these circumstances, the off-set had been a proportionate way for the State to try to rationalise the couple's tax liabilities, which had involved **no violation** of the Convention. The Court also held inadmissible all of the applicants' further complaints under **Article 8 (right to respect for private and family life)**, **Article 9 (freedom of religion)** and **Article 12 (right to marry)**, taken alone and/or in conjunction with **Article 14 (prohibition of discrimination)**.

**\* Supreme Court judge's inability to challenge his suspension in court breached the Convention (23/5/2017)**

In its judgment in the case of **Paluda v. Slovakia** (application no. 33392/12) the European Court of Human Rights held, unanimously, that there had been a **violation of Article 6 § 1 (right of access to a court)** of the European Convention on Human Rights.

The case concerned the inability of a judge to challenge in court a decision to suspend him from office. Mr Paluda, the applicant and judge of the Supreme Court, was suspended pending disciplinary proceedings against him for accusing the President of the Supreme Court of abuse of authority.

The Court accepted that the guarantee of access to court under Article 6 § 1 of the Convention applied to Mr Paluda's suspension and that there had been a legal basis for denying it to him. However, it observed that the legitimacy of the aim pursued by denying him access to court as questionable and concluded that, in any event, that denial had not been proportionate in the circumstances. In coming to that conclusion, the

Court found that the body suspending Mr Paluda and initiating the disciplinary proceedings against him – the Judicial Council of Slovakia – itself had not provided the institutional and procedural guarantees inherent in Article 6 § 1 of the Convention. Among other things, the Court noted that under domestic law as it stood at the relevant time the Judicial Council had by definition been presided over by the President of the Supreme Court that is the very person who had been at the centre of Mr Paluda's criticisms.

Next, at the time of his suspension, Mr Paluda had not been heard either about the suspension itself or about the underlying disciplinary proceedings against him – the Judicial Council of Slovakia – itself had not provided the institutional and procedural guarantees inherent in Article 6 § 1 of the Convention.

Among other things, the Court noted that under domestic law as it stood at the relevant time the Judicial Council had by definition been presided over by the President of the Supreme Court that is the very person who had been at the centre of Mr Paluda's criticisms. Next, at the time of his suspension, Mr Paluda had not been heard either about the suspension itself or about the underlying disciplinary proceedings against him. Lastly, he had been unable to exercise his mandate for two years during which time he had had half of his salary withheld and he had been unable to exercise any other gainful activity.

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





## 1. Conference of European Constitutional Courts - XVII 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"*.

## 2. Association of Asian Constitutional Courts and Equivalent Institutions (AACC)

7 – 11 August 2017

Solo - The AACC will hold meetings of its Secretaries General, its Board of Members and an International Symposium.

## 3. World Conference on Constitutional Justice

11 – 14 September 2017

Vilnius – In Lithuanian capital city will be held the 4th Congress of the World Conference on Constitutional Justice on the topic: *"Rule of Law and Constitutional Justice in the Modern World"*.

## 4. 112nd Plenary Session of the Venice Commission of the Council of Europe

6 - 7 October 2017

Venice - Scuola Grande di San Giovanni Evangelista.

## 5. Yerevan Conference

19 – 21 October 2017

Yerevan - The Constitutional Court of Armenia and the Conference of Constitutional Control Organs of the Countries of New Democracy (CCCOCD) will organise a conference on *"The Role of the Constitutional Courts in Overcoming Constitutional Conflicts"*. The Venice Commission supports this conference in the framework of the European Union/ Council of Europe the Partnership for Good Governance (PGG).

## 6. Conference of Constitutional Jurisdictions of Africa (CJCA)

4 – 6 November 2017

Algiers - Scientific Seminar of the Conference of Constitutional Jurisdictions of Africa, co-organised with the Constitutional Council of Algeria, on *"Access of individuals to constitutional justice"*.

## 7. Association of Constitutional Courts Using the French Language (ACCPUF)

16 – 17 November 2017

Paris - Celebration of the 20th anniversary of ACCPUF and Seminar-conference on *"Writing decisions"*.

## 8. 113th Plenary Session of the Venice Commission of the Council of Europe

8 – 9 December 2017

Venice - Scuola Grande di San Giovanni Evangelista.





## Judgment

KO 01/17

## Applicant

Aida Derguti and 23 other Deputies of the Assembly of the Republic of Kosovo

*Request for Constitutional review of the Law on Amending and Supplementing the Law No. 04/L-261 on the War Veterans of the Kosovo Liberation Army*

I. In 2014, the Assembly adopted the Law No. 04/L-261 on the War Veterans of the Kosovo Liberation Army, which was promulgated on 18 April 2014 (Basic Law). On 30 December 2016, the Assembly adopted the Law on Amending and Supplementing the Law No. 04/L-261 on the War Veterans of the Kosovo Liberation Army (Challenged Law). Subsequently, on 10 January 2017, before the promulgation and entry into force of the Challenged Law, twenty four (24) Deputies of the Assembly of the Republic of Kosovo (the Applicants) submitted a Referral to the Constitutional Court challenging the constitutionality of Articles 3 (2), 4 and 5 of the Challenged Law, only as regards its substance. The Applicants, in substance alleged that the contested provisions were not compatible with Articles 24 [Equality Before the Law] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo, in conjunction with Article 14 [Prohibition of Discrimination] of the European Convention on Protection of Human Rights and Fundamental Freedoms (the Convention) and Article 1 [Protection of Property] of Protocol No. 1 to the Convention, as well as Articles 7 and 22 of the Universal Declaration of Human Rights. Article 3 (2) of the Challenged Law amended Article 16 of the Basic Law, which stipulated that War Veterans living abroad but not in the neighboring countries or Kosovo shall be entitled to other benefits according to the Basic Law but shall not be entitled to pension. The Applicants claimed that the War Veterans who enjoy the status of a War Veteran and live abroad are denied the right to a pension benefit, which was already foreseen by the Basic Law. In this respect, the Applicants alleged that denial of entitlement to pensions benefit based solely on their place of residence is discriminatory. The Applicant alleged that Article 3 of the Challenged Law is not compatible with the right to equality, taken in conjunction with the right to property. Article 4 of the Challenged Law adds another provision to

the Basic Law, which divides the War Veterans into three categories based on their time of mobilization and serving in the Kosovo Liberation Army. In addition, this added provisions provides for three different levels of pensions for War Veterans in accordance with the three categories. In this regard, the Applicant alleged that Article 4 is not compatible with the right to equality, taken in conjunction with the right to property. Article 5 of the Challenged Law deleted Article 18 of the Basic Law, which guaranteed a pension benefit for War Veterans not lower than the minimum wage. In this respect, the Applicant in substance alleged that this contested provision is not compatible with the right to property guaranteed by the Constitution and Protocol No.1 of the Convention.

II. The Court, by unanimity, decided to declare the Referral admissible and assessed the substance of the Referral. With regard to Article 3 (2) of the Challenged Law, the Constitutional Court considered that the denial of the right to pension for the War Veterans living abroad, but not in the neighboring countries or Kosovo, amounts to violation of their right to equality before the law in conjunction with the rights to property. The Court found that KLA Veterans who do not reside in Kosovo or neighboring countries are in a relatively similar situation to those who do reside in Kosovo or in the neighboring countries. The Court further concluded that the denials of such pension constitutes a limitation to their right to pension which was neither justified nor grounded on objective reasons. Thus, the Court found that Article 3 (2) of the Challenged Law, excluding the War Veterans living abroad but not in the neighboring countries or Kosovo from benefiting the pension is not compatible with right to equality before the law and right to property guaranteed under Articles 24 and 46 of the Constitution. With regard to Article 4 of the Challenged Law, the Constitutional Court concluded that all War Veterans subject to the Law are in a relatively similar situation, considering their contribution as a War Veteran. However, differential treatment, that is categorization based on time of mobilizations and service, is justified on objective and reasonable grounds and is compatible with the right to equality, taken in conjunction with the right to property. With regard to Article 5 of the Challenged Law, the Constitutional Court noted that the entitlement to pension benefit for War Veterans constituted a possession under Article 46 of the Constitution and Article 1 of Protocol No. 1 to the Convention. The Constitutional Court further considered that the decrease of the amount of pension below the minimum wage in Kosovo, as it was foreseen by the Basic Law before its amendment, constituted interference with the right to property, however, there is a justified interference with the free enjoyment of the right to property on the grounds of serving public interest and having due regard to the proportionality principle. The Court found that decrease of the pension benefit below minimum wage is compatible with the right to property guaranteed by the Constitution and Convention.



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](mailto: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.

